United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, THURSDAY, APRIL 23, 2009 No. 60

Senate

The Senate met at 9:31 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

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

Let us pray.

Loving Lord, who rules the raging of the sea, make us aware of how near You are to us at all times. May this knowledge bring us peace and inspire us to look to You for guidance. Refresh our Senators with Your spirit. Quicken their thinking and reinforce their judgment. Empower them to conserve and strengthen the best and holiest of our American heritage. Lord, help them to remember that righteousness exalts a nation but sin will destroy any people. In all their labors, inspire our lawmakers to fulfill Your purposes.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 23, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

MEASURE PLACED ON THE CALENDAR—H.R. 1664

Mr. REID. Madam President, it is my belief that H.R. 1664 is due for a second reading and is at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1664) to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.

Mr. REID. Madam President, I object to any further proceedings at this time.

The ACTING PRESIDENT pro tempore. Objection having been heard, the bill will be placed on the calendar.

SCHEDULE

Mr. REID. Madam President, following leader remarks, the Senate will resume consideration of S. 386, the Fraud Enforcement and Recovery Act. There are currently six amendments pending. One of those amendments is a second-degree amendment.

When the Senate resumes consideration of this bill this morning—I assume there will be no morning business, so whenever Senator MCCONNELL and I finish—Senator LEAHY will be here to work with the manager on the Republican side and Republicans and Democrats on a time to vote on pending amendments. Those votes, we hope, will occur this morning.

As I announced earlier, we are going to turn to the House message with respect to the budget resolution, which is basically an apparatus to get us to conference on this matter, and we will do that sometime this afternoon. Senator MCCONNELL and I have to go to the White House this afternoon, so we will have all that worked out before we go down there. Senators should be prepared for votes in relation to the motions to instruct conferees this afternoon.

UNANIMOUS CONSENT REQUESTS—EXECUTIVE CALENDAR

Mr. REID. Madam President, at this time, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 56, the nomination of Thomas L. Strickland to be Assistant Secretary for Fish and Wildlife; that the nomination be confirmed and the motion to reconsider be laid upon the table; that no further motions be in order; that any statements relating to this nomination be printed in the RECORD; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MCCONNELL. Reserving the right to object, let me say to my good friend the majority leader, there is at least one Member on my side who is not yet prepared to clear this matter. Therefore, I must, for the moment, object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. REID. Madam President, we understood that the ranking member of the Environment and Public Works Committee—the committee that reported this—was the individual holding this up, so I talked to Senator INHOFE.

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

We had a good conversation. I called him back and he said he had no problem with Mr. Strickland. Obviously, this has been rolling around and somebody else has put a snag on it.

I would now ask my friend, the Republican leader, if I ask unanimous consent for 4 hours of debate on this individual, would there be an objection to this?

Mr. MCCONNELL. Madam President, I would say to my friend, the majority leader, that I am not able, at this particular time, to enter into an agreement on this nomination.

Mr. REID. Madam President, that is very unfortunate, but I understand.

I now ask unanimous consent, as in executive session, that at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to executive session to consider Calendar No. 62, the nomination of Kathleen Sebelius to be Secretary of Health and Human Services; that there be 5 hours of debate with respect to this nomination, with the time equally divided and controlled between the leaders or their designees; that upon the use or yielding back of that time, the Senate proceed to a vote on confirmation of Kathleen Sebelius; that upon confirmation, the normal procedure of the Senate be followed and that following that we resume legislative session.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MCCONNELL. Madam President, reserving the right to object, this nomination came out of committee yesterday. It was fairly contentious. It was not a party-line vote, but a number of Members on my side opposed the nomination. So at least for today, I am not able to enter into a consent agreement on a time specific to consider the nomination of Governor Sebelius. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. REID. Madam President, we need not quibble on the time. It came out Tuesday or Wednesday, and I understand people may want to look at this more closely. That is fine. It appears to me it wouldn't do me any good or the Senate any good to ask for more time at this time. No matter what time I set aside, the Republican leader couldn't agree now?

Mr. MCCONNELL. I would say to my friend, the majority leader, I cannot today agree to a time specific for consideration of this nomination.

Mr. REID. Madam President, we have another individual who we feel should be approved, David Hayes, to be Deputy Secretary of the Interior. I would ask my friend, the Republican leader, if we suggested 3 hours of debate under the conditions I outlined for the other two, is the Republican leader in a position to agree to have this nomination?

Mr. MCCONNELL. Madam President, I would say to my good friend, the majority leader, not at this time.

RECOGNITION OF THE REPUBLICAN LEADER

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

HOLOCAUST DAYS OF REMEMBRANCE

Mr. MCCONNELL. Madam President, later this morning, President Obama will speak at a Days of Remembrance ceremony here in the Capitol Rotunda—an annual event that was established by Congress as a living memorial to the victims of the Holocaust. Throughout the week, Louisville, Lexington, and other communities in Kentucky and the Nation have held events to commemorate this solemn occasion.

As we remember the terrible sufferings of the Jewish people and all others who have suffered and who continue to suffer at the hands of hatred and intolerance, we spread one of the most enduring lessons of the Holocaust—that evil exists in the world and it is the responsibility of free and just nations to protect the innocent by speaking for all those who cannot speak for themselves.

The theme of the 2009 Days of Remembrance is ''Never Again: What You Do Matters.'' Those words should serve as a reminder to all of us that anti-Semitism and other forms of religious hatred are as real today as they were in the middle of the last century and that the best way to honor the victims of the Holocaust is for us to work toward building a more hopeful and a more peaceful world.

I yield the floor.

RESERVATION OF LEADER TIME

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

FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 386, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 386) to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Reid amendment No. 984, to increase funding for certain HUD programs to assist individuals to better withstand the current mortgage crisis.

Inhofe amendment No. 996 (to amendment No. 984), to amend title 4, United States Code, to declare English as the national language of the Government of the United States.

Vitter amendment No. 991, to authorize and remove impediments to the repayment of funds received under the Troubled Asset Relief Program.

Boxer amendment No. 1000, to authorize monies for the special inspector general for the Troubled Asset Relief Program to audit and investigate recipients of nonrecourse Federal loans under the Public Private Investment Program and the Term Asset Loan Facility.

Kyl amendment No. 986, to limit the amount that may be deducted from proceeds due to the United States under the False Claims Act for purposes of compensating private intervenors to the greater of $50,000,000 or 300 percent of the expenses and cost of the intervenor.

Coburn amendment No. 982, to authorize the use of TARP funds to cover the costs of the bill.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. The Senate is considering S. 386, to which six amendments are pending.

Mr. LEAHY. I thank the Chair.

Madam President, yesterday, when we were finally allowed to proceed to the Fraud Enforcement and Recovery Act, we began making real progress. Ten amendments were offered during the course of the day, four amendments were adopted, and six remain pending. I believe, had we not stopped voting at 5 o'clock, we could have finished the bill and passed it last night. As things stand, we hope to dispose of the six remaining amendments through the course of this morning. We should complete Senate consideration of the bill without further delay.

I should note that the number of Senators who have cosponsored this bill continue to grow—now at 17 Senators. Most of the Senators who offered amendments yesterday praised the underlying bill. I think we have only one pending amendment that regards the underlying bill; only one that actually directly relates to it. Senator GRASSLEY will speak to that amendment. Most of the amendments that have been offered, almost all the remaining amendments pending, aren't within the jurisdiction of the Judiciary Committee, they are within the jurisdiction of the Banking Committee, and I look forward to the leadership of that committee—the committee of jurisdiction—with respect to guidance on those amendments.

In my view, it would have been better if Senators had withheld their amendments and waited to offer them on the housing and banking legislation that is going to be considered next week by the Senate. Then you would have at least had a bill that was relevant to the amendments. But, of course, every Senator can do whatever he or she wants to. Now, the banking/housing amendments that have been added to this Judiciary bill will complicate passage and enactment of what everyone agrees is needed—the fraud enforcement legislation. I think that is unfortunate.

Among the examples are amendments affecting the use of TARP funds.

Modifying the Troubled Asset Relief Program is a complicated matter. I wish it were not complicating this bill. I have no problem with such amendments being on a bill that actually relates to TARP, but this one does not. Indeed, in the 6 weeks, the month and a half since the fraud enforcement bill was reported by the Judiciary Committee, my staff and I reached out to Senators and no one raised these TARP issues. Had they, we would have engaged with Chairman DODD and Senator SHELBY and tried to work them out as best we could in the proper setting.

The Obama administration has reformed the TARP process. It is doing its best to get a handle on the use of these funds. I intend to look to their views and to those of Chairman DODD, but I believe complicating passage of this fraud enforcement bill with those issues is not helpful. Nonetheless, we will do what we have to in order to complete this process.

The Obama administration's Statement of Administration Policy expresses their strong support for enactment of the underlying fraud enforcement bill. They note:

> Its provisions would provide Federal investigators and prosecutors with significant new criminal and civil tools and resources that would assist in holding accountable those who committed financial fraud.

To give an idea, the Justice Department, the FBI, the Secret Service, the Special Inspector General for the TARP, law enforcement officers, good government advocates—all support the underlying bill. The New York Times wrote last weekend:

> Senators should not be asking if the expenditure on fraud enforcement called for in this bill is affordable, but whether it is enough.

Fraud has damaged our economy. It has wrecked the lives and life savings of thousands of hardworking Americans. That is why this bill should not be complicated with a lot of extraneous material that is not in the jurisdiction of this bill. We have people around this country facing economic crises. They are preyed upon by some of these mortgage fraud groups. They promise to help them out of any kind of a mortgage difficulty they have and then they steal their retirement accounts. They steal the money they may have saved for their children to go to college. They steal the equity in their homes. Then they disappear, so people are left with no homes, no equity, no retirement accounts. If they saved money for their children to go to college, there is no money there, and the people who have committed the fraud get away.

On those occasions when sometimes they are chased down, they may actually face a fine. But if they have stolen $200 million and get a $10 million fine—big deal. It is the cost of doing business. But if we have very tough legislation that allows the Justice Department and others to go in right at the get-go, to be able to go in and go after these people and make it very clear: If you are involved in this kind of fraud, if you are involved in this kind of theft, you are not going to get a fine, you are going to go to prison, then they are going to pay attention.

I can tell you from my own experience as a prosecutor, I know fines in this kind of fraud situation do not serve as much of a deterrent. But if we are able to send in the police to arrest these people, and they know they are going to spend years behind bars, then they start paying attention. That is the only thing that really does it, and that is the only thing that is going to protect these Americans, American taxpayers, honest, hardworking men and women—the only thing that is going to protect them from losing everything they have in a downturn in the economy.

We should pass this bill without further delay. We should move to the task of helping law enforcement find and hold accountable those who engage in such fraudulent conduct. This should be fairly easy. We can pass this bill and say: We are against crime, we are against fraud, we want the good guys to win, we want the bad guys to go to jail. It is as simple as that. That is why there are Republicans and Democrats who support this—across the political spectrum.

Strengthening fraud enforcement is a key priority for President Obama. During the campaign the President promised to ''crack down on mortgage fraud professionals found guilty of fraud by increasing enforcement and creating new criminal penalties.''

The President made good in his promise in his budget, calling on FBI agents ''to investigate mortgage fraud and white collar crime,'' and more Federal prosecutors and civil attorneys ''to protect investors, the market, and the Federal Government's investment of resources in the financial crisis, and the American public.''

As taxpayers, we all have a stake in this. If these people are able to get away with their fraud, if they are able to get away with siphoning off this money, we taxpayers pay the bill in the long run. Those who are hit with the fraud pay far more than that. They may pay with their life savings, with their homes, with everything they have ever worked for.

This bipartisan Fraud Enforcement and Recovery Act is a chance to authorize the necessary additional resources to detect, fight, and deter fraud that robs the American people and the American taxpayers of their funds. Investing resources in detecting and deterring fraud yields dividends for the American people. That is what this bill would do, and we should pass it without further delay.

I want my colleagues to know, at some point, if people are not here to offer amendments, we will call up and vote on the amendments that are pending and then go to final passage. I know the Democratic and Republican leaders talked about a budget matter that has to come up that will probably take us into the evening. I am trying to save the time of all Senators, so I urge Senators to come because at some point everything that is pending is going to be called up and is going to be voted on up or down. I would at least like to have the Senators on the floor who are sponsoring them. Then we will go to final passage.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1002

Mr. THUNE. Madam President, I ask unanimous consent that amendment No. 1002 to the bill be brought up and made pending.

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

The clerk will report.

The legislative clerk read as follows:

> The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 1002.

Mr. THUNE. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

> (Purpose: To require the Secretary of the Treasury to use any amounts repaid by a financial institution that is a recipient of assistance under the Troubled Assets Relief Program for debt reduction)
>
> At the end of the bill, add the following:

TITLE II—DEBT REDUCTION PRIORITY ACT

SEC. 21. SHORT TITLE.

This title may be cited as the ''Debt Reduction Priority Act''.

SEC. 22. FINDINGS.

Congress finds the following:

(1) On October 7, 2008, Congress established the Troubled Assets Relief Program (TARP) as part of the Emergency Economic Stabilization Act (Public 110-343; 122 Stat. 3765) and allocated $700,000,000,000 for the purchase of toxic assets from banks with the goal of restoring liquidity to the financial sector and restarting the flow of credit in our markets.

(2) The Department of Treasury, without consultation with Congress, changed the purpose of TARP and began injecting capital into financial institutions through a program called the Capital Purchase Program (CPP) rather than purchasing toxic assets.

(3) Lending by financial institutions was not noticeably increased with the implementation of the CPP and the expenditure of $250,000,000,000 of TARP funds, despite the goal of the program.

(4) The recipients of amounts under the CPP are now faced with additional restrictions related to accepting those funds.

(5) A number of community banks and large financial institutions have expressed their desire to return their CPP funds to the

Department of Treasury and the Department has begun the process of accepting receipt of such funds.

(6) The Department of the Treasury should not unilaterally determine how these returned funds are spent in the future and the Congress should play a role in any determination of future spending of funds returned through the TARP.

SEC. 23. DEBT REDUCTION.

(a) IN GENERAL.—Title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) is amended by adding at the end the following:

''SEC. 137. DEBT REDUCTION.

''Not later than 30 days after the date of enactment of this section, the Secretary of the Treasury shall deposit any amounts received by the Secretary for repayment of financial assistance or for payment of any interest on the receipt of such financial assistance by an entity that has received financial assistance under the TARP or any program enacted by the Secretary under the authorities granted to the Secretary under this Act, including the Capital Purchase Program, in the Public Debt Reduction Payment Account established under section 3114 of title 31, United States Code.''.

SEC. 24. ESTABLISHMENT OF PUBLIC DEBT REDUCTION PAYMENT ACCOUNT.

(a) IN GENERAL.—Subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end the following new section:

''§ 3114. Public Debt Reduction Payment Account

''(a) There is established in the Treasury of the United States an account to be known as the Public Debt Reduction Payment Account (hereinafter in this section referred to as the 'account').

''(b) The Secretary of the Treasury shall use amounts in the account to pay at maturity, or to redeem or buy before maturity, any obligation of the Government held by the public and included in the public debt. Any obligation which is paid, redeemed, or bought with amounts from the account shall be canceled and retired and may not be reissued. Amounts deposited in the account are appropriated and may only be expended to carry out this section.

''(c) There shall be deposited in the account any amounts which are received by the Secretary of the Treasury pursuant to section 137 of the Emergency Economic Stabilization Act of 2008. The funds deposited to this account shall remain available until expended.

''(d) The Secretary of the Treasury and the Director of the Office of Management and Budget shall each take such actions as may be necessary to promptly carry out this section in accordance with sound debt management policies.

''(e) Reducing the debt pursuant to this section shall not interfere with the debt management policies or goals of the Secretary of the Treasury.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 31 of title 31, United States Code, is amended by inserting after the item relating to section 3113 the following:

''3114. Public debt reduction payment account''.

SEC. 25. REDUCTION OF STATUTORY LIMIT ON THE PUBLIC DEBT.

Section 3101(b) of title 31, United States Code, is amended by inserting ''minus the aggregate amounts deposited into the Public Debt Reduction Payment Account pursuant to section 3114(c)'' before '', outstanding at one time''.

SEC. 26. OFF-BUDGET STATUS OF PUBLIC DEBT REDUCTION PAYMENT ACCOUNT.

Notwithstanding any other provision of law, the receipts and disbursements of the Public Debt Reduction Payment Account established by section 3114 of title 31, United States Code, shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 27. REMOVING PUBLIC DEBT REDUCTION PAYMENT ACCOUNT FROM BUDGET PRONOUNCEMENTS.

(a) IN GENERAL.—Any official statement issued by the Office of Management and Budget, the Congressional Budget Office, or any other agency or instrumentality of the Federal Government of surplus or deficit totals of the budget of the United States Government as submitted by the President or of the surplus or deficit totals of the congressional budget, and any description of, or reference to, such totals in any official publication or material issued by either of such Offices or any other such agency or instrumentality, shall exclude the outlays and receipts of the Public Debt Reduction Payment Account established by section 3114 of title 31, United States Code.

(b) SEPARATE PUBLIC DEBT REDUCTION PAYMENT ACCOUNT BUDGET DOCUMENTS.—The excluded outlays and receipts of the Public Debt Reduction Payment Account established by section 3114 of title 31, United States Code, shall be submitted in separate budget documents.

Mr. THUNE. Madam President, on October 7, 2008, Congress passed the Troubled Asset Relief Program as part of the Emergency Economic Stabilization Act—or TARP—and allocated $700 billion for the purchase of toxic assets from banks with the goal of restoring liquidity to the financial sector and restarting the flow of credit in our markets.

The Department of Treasury, without consultation from Congress, changed the purpose of the TARP and began injecting capital into financial institutions through a program called the Capital Purchase Program rather than purchasing toxic assets.

Financial lending was not increased with the implementation of CPP, and the expenditure of $218 billion of TARP funds disputes the goal of the program. Those receiving funding through the CPP are now faced with additional restrictions related to accepting that funding.

A number of community banks and large financial institutions have expressed their desire to return their CPP funds to the Department of Treasury, and Treasury has begun the process of accepting receipt of those funds. However, because of the financial stress test Treasury is currently conducting, it is possible that Treasury will restrict banks from returning funds they received from the CPP.

In his testimony before the TARP Congressional Oversight Panel on April 21, 2009, earlier this week, Secretary Geithner stated that Treasury estimates $134.6 billion of TARP funds are still available. What is important about that figure is he includes $25 billion which they expect to receive back from banks under CPP. Geithner also stated that he believed $25 billion is a conservative number, and private analysts predict more will be returned.

Section 120 of the Emergency Stabilization Act terminated the authority for TARP funds on December 31, 2009, and the Secretary can request an extension to the deadline not later than 2 years after enactment. Keep in mind that this restriction only applies to Treasury's issuance of new loans and does not cover the reuse of previously issued assistance that was returned to the Treasury.

Essentially, to summarize what my amendment does, it requires Treasury to use any of the funds that are recovered through TARP to reduce the national debt. Basically, this amendment prevents the Treasury from reallocating money for other purposes. The amendment establishes the public debt reduction payment account and requires Treasury to deposit any amounts received from repayment of financial assistance through TARP into this account. The Secretary of the Treasury must use the money in the public debt reduction payment account to pay, redeem, or buy any Government obligation included in the public debt. The obligations paid, redeemed, or bought are canceled and cannot be reissued. In addition, the statutory debt limit is automatically reduced by any amount equal to funds that are deposited in this account.

I think the amendment is very straightforward, and it really is directed at ensuring that the taxpayer dollars that were allocated for the TARP program, which, as I said before, was about $700 billion last fall, much of which has been expended but much of which now is in the process of being repaid, assuming, again, the mechanism is put in place to allow the Treasury to take receipt of funds that banks wish to repay, TARP funds which they wish to repay—with that money coming into the Treasury—and as I said before, Secretary Geithner earlier this week indicated that it would probably be about $25 billion, at least that we know of now, and there are predictions that it could be much more, that money comes back into the Treasury and could be recycled, reused—what we want to do and what my amendment does is it ensures that those TARP funds that are repaid by banks actually go to reduce the public debt.

We know we have incurred an enormous amount of debt. In fact, the inspector general, Neil Barofsky, stated in his quarterly report to Congress that 12 separate programs are being funded under TARP, involving up to $3 trillion of Government and public funds. Amazingly, that is equivalent to the size of the entire Federal budget. This is certainly not what I believe Congress intended or was told, for that matter, the funding would be used for. So Congress needs to have a role in this. If the administration wants additional authority under TARP, they should come here. Congress retains, under the Constitution, the power of the purse.

What this amendment simply does is directs those funds that come back in as a result of repayments by banks of TARP funds into the Federal Treasury, that those funds go toward reducing the Federal debt, which, as we all know, based on the budget that was passed a couple of weeks ago, is going to double in 5 years and triple in 10, at a rate of $1 trillion a year. The average deficit over the next 10 years, by the end of the 10-year period, will amount to $17 trillion. The very least we can do for the taxpayers of this country is ensure that TARP funds that are repaid by banks, the taxpayer dollars that were extended to help recapitalize the banks, when those are no longer necessary and banks give that money back to the Treasury, Treasury receives that, that those funds not be recycled, reused, go to some discretionary program to fund other programs of Government, but that they be used to reduce the Federal debt. I believe the taxpayers deserve that. This amendment, No. 1002, would do that. So I would hope my colleagues will support it and, in my view, make it very clear that tax dollars expended under TARP, when repaid, are going to go to debt reduction and not be used for some other Federal Government program.

That is what the amendment does. I would urge my colleagues to support it.

I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, I thank my friend from South Dakota for his courtesy in talking to me first about the amendment. As I pointed out to him, these are matters before the Banking Committee. The Judiciary Committee has really got nothing to do with it, the same as many of these. I will wait for Senator DODD and Senator SHELBY to respond; I will not.

I am going to make a unanimous consent request. I have notified both sides of this. There is a Boxer-Snowe amendment No. 1000. I ask unanimous consent that at 10:50—I realize it is going to be objected to, but I am trying to save both Republicans and Democrats from being here until 2 o'clock tomorrow morning because of the bill that comes up after this. I ask unanimous consent—and if this is objected to, I will repeat the request later on—that at 10:50 the pending business be set aside, the Boxer-Snowe amendment No. 1000 be brought up, there be 8 minutes of debate evenly divided before a vote, and that it then be in order to go to a rollcall vote on the amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DEMINT. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. LEAHY. I have been advised that there would be an objection because they have not heard from the Banking Committee, from Senator DODD and Senator SHELBY. I would urge them to come to the floor so we can move forward, as most of the amendments pending or about to be pending have absolutely nothing to do with the jurisdiction of the Judiciary Committee, have nothing to do with the jurisdiction of the bill on the floor, have everything to do with a bill that is coming up next week from the Banking Committee. So I would urge the Banking Committee to come to the floor and speak to the amendments that are all within the jurisdiction of their committee.

I mention this because if we don't, the other alternative is to accept everything and go immediately to final passage. I don't think that would be responsible because then the fraud bill that virtually everybody in this body, Republicans and Democrats, supports is going to die because it won't go past the other body. I realize every Senator has a right to offer any amendment he or she wants, but at some point we have to be realistic. If we are against the people who are committing fraud on the American taxpayers, something for which all of us have made speeches that we are in favor of stopping them—newspapers from the right to the left have editorialized in favor of stopping them—let's be honest and actually pass a bill that does it. The message amendments should wait until an appropriate bill that has something to do with them.

I am also trying to help Senators. We are going to complete this bill before we go to budget matters. We can complete it easily by noon. As Senators know, I have supported Republican amendments that came up yesterday. They have all been accepted, including an amendment by Senator GRASSLEY and myself. But we want to complete this legislation. I am perfectly willing to stay here all night long to finish this and the budget. But every hour we take on this is an hour longer on the budget. It is somewhat frustrating that Senators who have a concern can't find time to show up on the floor. Senators from both sides of the aisle don't have time to show up on the floor on a bill which we were notified 3 weeks ago was going to be on the floor at this time. I urge them to do so. Because as soon as these amendments are disposed of one way or the other, we will go to final passage.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. THUNE. I appreciate the observations of the Senator from Vermont. It is a bill that is broadly supported. I understand the objection he will raise with respect to his committee's jurisdiction and what the bill covers.

With regard to my amendment, there is a connection between the underlying bill and what we are trying to accomplish. I previously referenced the inspector general's report about 12 separate programs being funded under TARP that involve up to $3 trillion in government and public funds. Bear in mind, this report spans 247 pages. In that report, it says the very character of the bailout program makes it ''inherently vulnerable to fraud, waste, and abuse, including significant issues related to conflicts of interest facing fund managers, collusion between participants, and vulnerabilities to money laundering.''

I believe this amendment is related to the underlying bill which deals with fraud recovery. The inspector general's report bears that out.

Mr. LEAHY. Madam President, while the Senator from South Dakota is in the Chamber, if I may ask him a question, we also have amendment No. 982 offered by Senator COBURN which allows the unused TARP funds to pay for the Fraud Enforcement and Recovery Act. I ask the Senator if the Coburn amendment and his amendment are mutually exclusive?

Mr. THUNE. In response, Madam President, to the Senator from Vermont, my amendment would prevent funds from being reused, recycled, that were directed to debt reduction. I guess my short answer, without having reviewed the Coburn amendment carefully, would be, I suspect, that they are probably mutually exclusive.

Mr. LEAHY. I thank the Senator. I have read it carefully, and that was my conclusion. This is a matter more in line with the Banking Committee, and I will let them speak to it. This is unprecedented, that we have amendments on bills, whether this one or others, that are mutually exclusive. I did note that. I thank my friend from South Dakota for his comments.

I yield the floor.

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

AMENDMENT NO. 994

Mr. DEMINT. I ask unanimous consent to set aside the pending amendment and call up amendment No. 994.

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

The clerk will report.

The bill clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] proposes an amendment numbered 994.

Mr. DEMINT. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the use of Troubled Asset Relief Program funds for the purchase of common stock, and for other purposes)

At the appropriate place, insert the following:

SEC. ___. LIMITATION ON USE OF TARP FUNDS.

Notwithstanding any other provision of law, on and after April 22, 2009, no funds made available to carry out the Troubled Asset Relief Program may be used for the acquisition of ownership of the common stock of any financial institution assisted under title I of the Emergency Economic Stabilization Act of 2008, either directly or through a conversion of preferred stock or future direct capital purchases.

Mr. DEMINT. Madam President, our economy has shed 3.3 million jobs in the last 5 months. The Dow Jones is down 25 percent since September. When the bank bailout or TARP was conceived, it was conceived, ironically, to save the market. We had been told by both President Bush and President Obama that we needed this massive spending in order to get the financial markets working again and the economy moving. It has been 6 months since Congress gave away $700 billion to the Bush administration with essentially no strings attached. The Obama administration has, unfortunately, continued conducting massive and risky experiments in central planning since taking control of the TARP in January. We need to remember that we have yet to use this money the way it was promised.

We were told, when this money was requested during the last months of the Bush administration, that if we didn't have all this money to buy the toxic assets, the world financial market would collapse. I am afraid we were not told the truth. Clearly, the world financial market did not collapse, although it continues to have trouble. But we did not buy up any of the toxic assets, and the world financial market didn't collapse. The Bush administration—and now the Obama administration—set about figuring out different ways to use the money rather than admitting the ideas they had were not right.

Sixteen of the 19 banks that received the largest amounts of this TARP money are loaning less now than they did when the money was provided. We received a report this week that the design of the TARP was ripe for corruption, waste, and fraud. There are already a number of cases in the media that this is happening. Yet we continue to toy with this money in ways that are unprecedented. Now the Obama administration has announced President Obama is going to use the money in a totally different way. We need to look at what they are proposing.

What our economy needs now more than anything else is certainty, certainty that the Government will not undo contracts retroactively, which we are talking about doing here, certainty that spending will be brought under control to avoid future tax increases and runaway inflation, and certainty that failure will not be rewarded by a government bailout. Of course, there has been anything but certainty from our Government in the last several months. Government intervention has become the norm rather than the exception.

Now we understand the Treasury Department has concocted a new scheme to convert these loans, which are preferred stock in certain banks, into common equity in order to increase those banks' capital. This is only a paper change. We move it from a debt to an asset, and we say we have done something. The problem is, when the Government has common stock in banks, it owns banks. It would likely have positions on the board. The taxpayer, who is making this money available, is at risk. If a bank goes under, the common stock is gone. So we are taking what was some security for taxpayers and shifting it to another place. We are crossing a dangerous line where the Government owns and controls banks and insurance companies, auto companies, a line we have never crossed before as a country, a country based on free markets, not central planning by government.

The American people are starting to send us a signal that they are concerned, alarmed by the amount of spending, all these bailouts, the rewarding of failure, the debt we are creating. We saw about a million Americans last week in numerous tea parties across the country take to the streets, hold up their signs, express to their elected officials that we need to stop this out-of-control spending and waste going on in Washington. Loaning banks money temporarily is one thing. It is something I oppose because I have seen government operate long enough to know that it can't do it effectively. It can't do it without waste and fraud and corruption.

Our own Treasury Department has now told us that. We can't put this much money out there without bad things happening. We need to let the market work. If we have banks that are too sick to succeed, then we need to allow them to fail while we protect the depositors in that bank.

The amendment I offer focuses attention on the idea of government owning banks. It is pretty simple. It would prohibit the Government from converting TARP loans to common stock. We have heard of other amendments that would allow banks to give this money back and allow the money to go to paying down debt. This is not a slush fund that we created for politicians to play with, to scheme in different ways on how we could come up with new ways to spend money we don't have. It is all borrowed money. If it is not needed the way it was intended, it needs to come back to the taxpayer rather than what is happening now. The idea that we are going to have the Federal Government actually own stock in banks, insurance companies, and other private companies is an idea we need to stay away from.

I hope all of my colleagues will support this amendment that simply prohibits our Government from converting what was supposed to be loans, what was promised to be loans, what was promised to be used to buy bad assets so banks could loan again, it would prohibit this money from being used for common stock and ownership in the banking system.

I thank the Chair for the time and encourage my colleagues to support the amendment.

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

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

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 983

Mr. COBURN. Mr. President, I ask unanimous consent that the pending amendment be set aside and that amendment No. 983 be called up.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 983.

Mr. COBURN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require the Inspector General of the Federal Housing Finance Agency to investigate and report on the activities of Fannie Mae and Freddie Mac that may have contributed to the current mortgage crisis)

At the appropriate place, insert the following:

SEC. _____. IG REPORT ON ACTIVITIES OF FANNIE MAE AND FREDDIE MAC.

Not later than 18 months after the date of enactment of this Act, the Inspector General of the Federal Housing Finance Agency shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the following:

(1) When did the Federal National Mortgage Association (in this section referred to as ''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (in this section referred to as ''Freddie Mac'') begin buying large quantities of subprime and Alt-A mortgages? In what years did Fannie Mae and Freddie Mac purchase the largest number of subprime and Alt-A mortgages?

(2) To what extent were the purchase of subprime and Alt-A mortgages by Fannie Mae and Freddie Mac induced by Congressional action or Executive Order?

(3) To what extent were the purchase of large quantities of subprime and Alt-A mortgages by Fannie Mae and Freddie Mac induced by the Department of Housing and Urban Development affordable housing regulations issued in 1995?

(4) What actions by Fannie Mae and Freddie Mac contributed to the overvaluation of mortgage-backed securities?

(5) What political contributions were made by Fannie Mae and Freddie Mac on behalf of a political candidate or to a separate segregated legal fund described in section 316(b)(2)(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(2)(c)) between 1990 and 2008?

(6) What lobbying expenditures, as such term is defined in section 4911(c)(1) of the Internal Revenue Code of 1986, were made by Fannie Mae and Freddie Mac between 1990 and 2008?

(7) What contributions were made by Fannie Mae and Freddie Mac to any organization described under section 501(c) of the

Internal Revenue Code of 1986 between 1990 and 2008?

Mr. COBURN. Mr. President, I appreciate the chairman giving me this time to offer this amendment. We have adopted an Isakson amendment. We have a McCain-Dorgan amendment. This is a similar amendment, but I think it gets to the root of the problem. It does not cost very much, and it actually will tell us something we need to know.

The underlying assumption with the bill is that fraud is the primary, if not the sole, cause of this crisis. That may be true. We do not know that. But what we do not know is how much we as Members of Congress played and the extent to which we played a role in helping create this crisis. This is a fairly straightforward amendment that asks the IG to come give us information so we get the answers to the question about our own role in the evolution of the problems we find today.

What we do know is the GSEs undertook an unprecedented assumption of subprime and all-day loans, and those need to be investigated—the extent of them, the amount. We also know they invested more than $1 trillion in those loans. But what we do not know is the volume, the timing. What we do not know is the impact of the significant amount of lobbying by these GSEs and what effect that had on policies and procedures both within the administration and the Congress.

For example, when did Freddie and Fannie begin to purchase large quantities of subprime and all-day loans? In what years were those types of purchases the highest? To what extent were these purchases induced by congressional action or executive order? To what extent were those purchases induced by the Department of Housing and Urban Development affordable housing regulations issued in 1995? What actions by Fannie and Freddie contributed to the overvaluation of mortgage-backed securities?

The amendment also looks to the possibility that congressional action could have contributed to the risky changes in behavior of Fannie and Freddie. What we know is, between the 2000 and 2008 election cycles, GSEs and their employees contributed more than $14.6 million to the funds of both Senators and representatives. We also know Fannie spent $79.5 million in that period and Freddie spent $94.9 million in that period on lobbying Congress. Mr. President, $170 million was spent lobbying Congress making them the 20th and 13th largest lobbying spenders in the country.

This amendment will assure and ensure that some of the toughest questions are asked regarding the GSEs'—Fannie Mae's and Freddie Mac's—special relationships with Congress and whether any conflict created by those relationships influenced the GSEs' behavior, especially to the taxpayers' detriment.

It requires the inspector general to study what political contributions were made, what lobbying expenditures were made, what contributions were made to any other lobbying organization.

It is a compromise step. It is something we already have the people in place for. It is something they have the access to the numbers for. We ought to be able to get that.

We have a mess. Usually, as a physician when I have a mess, I start thinking back: What did I do before? And what caused part of the mess? Where was I wrong in my diagnosis of the signs, symptoms, and history? And then what do I do about it?

If we do not look through the IG at these things, then it is highly unlikely—no matter how many commissions we put together because commissions are going to ask for this anyway—but we are going to ask for it as a special report from the IG under this amendment.

There are a lot of additional considerations, and I will not take time on the floor at this time to do that. But if you want to have a transparent Congress, this is the first question we have to ask: How much were we involved? How effective were the lobbying efforts to change things that were detrimental? Maybe they were positive. But the fact is, we ought to know those things.

The idea is we will be transparent with the American people, both in terms of the lobbying efforts, the contributions they made, and the timing—not just for Congress but also the executive branch; where we look at the actions of both of those—so the American people can see the culpability. Where is it? I happen to believe it is right here in this body, us. We allowed this to happen. I think the onus of the blame needs to be here rather than pointing at other people.

That is not to distract from the idea that we ought to go after fraud. But the biggest fraud is to deny the fact that we had some culpability, and this amendment is designed to measure how much culpability we had by using the IG, the inspector general, to tell us this very specific information.

With that, I yield the floor.

Madam President, I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

Mr. LEAHY. Madam President, I was distracted in another conversation. Senator COBURN left the floor. I wished to speak to him about his amendment because it appears to have already been covered in the Isakson-Conrad amendment. I would like to ask if he also feels that way. I would hope he might come back to the floor so we could discuss that.

I also wish to notify the other side I am about to renew my unanimous consent request for a vote on the Boxer amendment. I will not until they have time to talk to the Republican side. There is no Republican on the floor right now. But in a few minutes, I will renew my request for a rollcall vote on that amendment.

In the meantime, Madam President, I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 986, 987, 988, AND 989

Mr. KYL. Madam President, I have an amendment pending—I believe the number is amendment No. 989—and I wish to speak to that amendment and three other amendments which differ only in the amount of a cap on recoveries. The amendments pending are amendments Nos. 989, 988, and 987. Madam President, 986 is the pending amendment. So we will get this straightened out.

Let me speak to the issue first generally, and then I will engage my colleague in a couple of unanimous consent requests that may resolve the issue. If not, then we can vote on the final one.

The point of these amendments is to limit the amount that can be deducted from the money that is due to the Government under the False Claims Act as compensation for what are called private realtors. A private realtor is a whistleblower or an investigator who goes to court with evidence that the Government has been defrauded and is entitled to money under the False Claims Act. In order to encourage these private parties to come forward, the False Claims Act not only entitles these private realtors to recover from the defendant their costs and expenses for investigating and pressing the claims but also allows the private realtor to receive a portion of the proceeds due to the United States.

I think we would all agree it is right and proper that the private realtors be compensated for exposing incidents for which the Federal Government has been defrauded. Such actions have saved the Government billions of dollars over the years.

Unfortunately, the formula for compensating private realtors uses a percentage range to award a portion of the Government's recovery to the realtor. The law allows the private realtor to collect up to 30 percent of the proceeds that are due to the Government.

Now, when this formula was first set back in 1986, I don't think any of us contemplated that the massive billion-dollar recoveries we have seen today would allow this kind of recovery to the private parties as well. So although

I think we all agree whistleblowers deserve to be compensated when they save the Government money, I would also think we could agree there has to be some limit; that they don't deserve to be grossly overcompensated, especially when that compensation comes at the expense of the Federal Treasury.

Let me note a few cases. I will put this entire statement in the RECORD which has a lot of other cases as well, but my colleagues will get the idea from just a few that I will mention.

Private realtors shared $95 million as their share of a $559 million civil settlement paid to the United States by TAP Pharmaceutical Products. Private realtors shared $78 million as their share of a $438 million Federal settlement paid to the United States by Eli Lilly. A private realtor will receive $47.8 million as his share of a recently announced $325 million settlement paid to the Government by Northrop. Another will share $46.4 million as their share of a $375 million settlement paid to the United States by Cephelon. There are several more of these cases, all in the $30-, $40-, $50 million range, for payments that have been made to the Government as a result of this law.

The point is, when they are sharing in that much of the proceeds, they are denying the taxpayers the benefit of the False Claims Act which was, of course, intended to benefit the Treasury and not to significantly benefit these private realtors.

So, again, it is fair to generously compensate them when they help expose malfeasance that has cost the Federal Government money. We want them to receive an incentive to blow the whistle on fraud or corruption. However, the amounts I have described—$95 million in just one case, for example—are wildly in excess of what is necessary to spur such whistleblowing. These amounts all come at the expense of the Treasury.

Let me indicate the kind of savings the Government could achieve under this amendment.

The first request I will make today would cap the private realtor recovery at either $5 million or 300 percent of the expenses and costs in investigating and proving fraud against the Government. In other words, it is sort of a triple damages: for the amount of money they put into it, there is, in effect, a 400-percent recovery; they get 100 percent of their expenses, plus another 300 percent above that. It seems to me this provides more than adequate incentive for the whistleblowers who become aware of fraud and therefore expose it.

In the eight cases I have described in my statement, five of which I mentioned, private realtors received more than $427 million at the expense of the Government. When just one case awards the private realtors $95 million, the numbers add up pretty quickly. So under this request I will make in just a moment, these same private realtors would still have received a grand total of at least $40 million from the Government. Under my amendment, the Government would have been able to keep an additional $387 million. So think about it. This amendment would have saved the Government $387 million.

So let me conclude at this point. I have been advised there are very few law firms—but some law firms—that specialize in these cases. Obviously, they are fighting the amendment because quite a little cottage industry has grown. But I would note to my colleagues if my recommendation is not accepted—if my colleagues conclude that $5 million is not enough for the Government to pay a whistleblower—then what I would suggest is we make that amount higher, and I will offer subsequent requests to support a higher amount.

I wish to note as well there will inevitably be new cases in which outsized awards are paid at the expense of the Government's recovery. For example, just last week, a False Claims Act suit against Quest Diagnostics resulted in a $302 million recovery for the Federal Government, but out of that amount, the Government was forced to pay $45 million to the private realtor. Had my amendment been law, the private realtor would still have received at least $5 million for exposing the fraud, but the Treasury would have received, and therefore saved, an additional $40 million.

So let me ask, rather than having a vote on each of these four amendments—and I have discussed this with the chairman of the Judiciary Committee and we have had a genial discussion; and I suspect I know, at least the first couple of times, the fate of my unanimous consent requests. Nonetheless, amendment No. 989 would provide a $5 million cap.

I would therefore ask unanimous consent that amendment No. 989 be considered and that the Senate be on record as supporting amendment No. 989 with the $5 million cap.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. LEAHY. Madam President, I will object, and I will just take a moment to explain.

First off, I would note, as he typically does, the Senator from Arizona came and talked to me before and was very straightforward with what he was going to do.

This talks about recoveries available under the False Claims Act. I think the Senate expert on the False Claims Act is Senator GRASSLEY, a senior member of the Senate Judiciary Committee. Senator GRASSLEY opposes this, as do I. I know there are going to be other amounts the distinguished Republican leader is going to bring up, but my reason in opposing them—and he has explained each one of them to me ahead of time, so there is no surprise—but I will oppose them because I believe without whistleblowers, a lot of these billions of dollars in fraud that have been found wouldn't have been found. Without the whistleblowers, the Government—the American taxpayers—wouldn't recover so much.

The False Claims Act—and, again, Senator GRASSLEY and others were the leaders in putting that together—has brought back more than $22 billion into the U.S. Treasury.

Now, it has a balanced approach in providing incentives for said whistleblowers. They share in such recoveries if it is warranted and if it is approved by the judge. A judge has to approve it. It has worked out very well. Rather than there being an arbitrary cap, I would rather leave it to the judge to make the determination. Simply saying, well, we will limit it to three times the cost, then I worry about seeing a padding of expenses. I think it is very well balanced the way it is, including having a judge make the final decision.

I think one of the things we all agree upon—I am sure the Senator from Arizona and I agree—is that we have to find fraud, we have to root it out, and we have to bring those who commit fraud to justice. What I am thinking about, as Senator GRASSLEY has pointed out in the past, as have I, we have to give an incentive to the whistleblowers to bring the case. After all, we have seen all too often a whistleblower will alert us to the fraud, and the first thing that happens is they lose their job. They often risk retaliation. In fact, if they are turning in their coworkers or their supervisors and bringing out the fraud, this could be life-altering. It could actually change their professional career, often for the worse. They are looked at as the bad guys, but they are not the bad guys; they are the good guys. We ought to reward them.

I will vote against it in this case. I object to considering it. I know the Senator from Arizona is going to have further amendments, but I just want him to know—and I want my colleagues to know what I have told him privately. I commend him for—as we have always done in cases we have had—talking to me ahead of time, as I have with him when I have had amendments or matters that may involve him.

So I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The request has been made. Is there objection?

Mr. LEAHY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KYL. Mr. President, I appreciate the points made by the chairman of the Judiciary Committee. There does need to be a reward, and there is some subjective judgment in what kind of a cap is appropriate for the reasons that he pointed out. As a result, reasonable people could differ as to whether a $5 million cap would be too much.

For that reason, I indicated if the chairman thought it was too much, I would suggest doubling the amount to a $10 million cap which might be appropriate. That is actually encompassed in amendment No. 988.

So at this time I ask unanimous consent that amendment No. 988 be considered pending and be adopted by unanimous consent, setting a $10 million cap on these recoveries.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, as I indicated to my friend earlier, I would object to that, and I do object.

The PRESIDING OFFICER. Objection is heard.

The minority whip.

Mr. KYL. Mr. President, as I said, I think it is going to be a little harder to object to a $20 million cap, but at this time let me ask—again, this is subjective. How much of a reward is enough to cause people to come forward? Given that we have this cottage industry of firms that has found they can make a lot of money on these cases, it seems to me there is adequate reward for whistleblowers who usually—and I am sure the chairman would agree—usually come forward simply because they see something that is wrong and they have the moral courage to come forward and say: We don't think this practice is right. And they usually don't do it for the financial reward. The law firms that are involved do very well out of this.

So my last unanimous consent request would be to consider amendment No. 987 as pending, which would set a $20 million cap on these awards.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, reserving the right to object, I hate to try to fix something that I don't think is broken. The False Claims Act has worked very well for the U.S. taxpayers. It has worked well. I know the Senator from Iowa worked so hard in putting this together in the first place. It has brought more than $22 billion back into the Treasury. The awards to whistleblowers have to be approved by a judge. I don't want to fix something that is not broken, so, therefore, I will object, and I do object.

The PRESIDING OFFICER. Objection is heard.

The minority whip.

Mr. KYL. Mr. President, finally, amendment No. 986, which is pending, sets a $50 million cap.

I certainly agree with the chairman that you don't want to fix something that is not broken. I submit that back in 1986, a long time ago, these multibillion-dollar awards were not contemplated, and times have changed. In the 20 or 30 years' passage of time, we have seen this cottage industry of litigation grow, when the kinds of awards that can be recovered—for example, a $97 million award—are simply beyond the pale. They were not contemplated. So it is broken to the extent that we have no upper limit in a case such as that.

AMENDMENT NO. 986

Therefore, I call up amendment 986, which is pending, and I request the yeas and nays on that amendment. If the chairman wishes to respond, I will withhold calling for the vote until he has responded.

The PRESIDING OFFICER. Does the Senator ask for the regular order on his amendment?

Mr. KYL. That is correct, yes.

The PRESIDING OFFICER. The amendment is now pending.

Mr. LEAHY. Mr. President, I know the distinguished Senator from Iowa wishes to speak on this amendment, and we will soon have a rollcall vote. I ask the Senator from Arizona and the Senator from Iowa if we could withhold for 2 minutes in order for the Senator from Wisconsin to speak on an amendment of his, and then we will go back to the amendment of the Senator from Arizona.

Mr. KYL. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Wisconsin is recognized.

AMENDMENT NO. 990

Mr. KOHL. Mr. President, I call up my amendment No. 990.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The clerk will report.

The bill clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] proposes an amendment numbered 990.

Mr. KOHL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To protect older Americans from misleading and fraudulent marketing practices, with the goal of increasing retirement security)

At the appropriate place, insert the following:

SEC. ___. GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLEAD BY FALSE DESIGNATIONS.

(a) FINDINGS.—Congress finds that—

(1) many seniors are targeted by salespersons and advisers using misleading certifications and professional designations;

(2) many certifications and professional designations used by salespersons and advisers represent limited training or expertise, and may in fact be of no value with respect to advising seniors on financial and estate planning matters, and far too often, such designations are obtained simply by attending a weekend seminar and passing an open book, multiple choice test;

(3) many seniors have lost their life savings because salespersons and advisers holding a misleading designation have steered them toward products that were unsuitable for them, given their retirement needs and life expectancies;

(4) seniors have a right to clearly know whether they are working with a qualified adviser who understands the products and is working in their best interest or a self-interested salesperson or adviser advocating particular products; and

(5) many existing State laws and enforcement measures addressing the use of certifications, professional designations, and suitability standards in selling financial products to seniors are inadequate to protect senior investors from salespersons and advisers using such designations.

(b) DEFINITIONS.—As used in this section—

(1) the term ''misleading designation''—

(A) means the use of a purported certification, professional designation, or other credential, that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include any legitimate certification, professional designation, license, or other credential, if—

(i) it has been offered by an academic institution having regional accreditation; or

(ii) it meets the standards for certifications, licenses, and professional designations outlined by the North American Securities Administrators Association (in this section referred to as the ''NASAA'') Model Rule on the Use of Senior-Specific Certifications and Professional Designations, or it was issued by or obtained from any State;

(2) the term ''financial product'' means securities, insurance products (including insurance products which pay a return, whether fixed or variable), and bank and loan products;

(3) the term ''misleading or fraudulent marketing'' means the use of a misleading designation in selling or advising a senior in the sale of a financial product;

(4) the term ''senior'' means any individual who has attained the age of 62 or older; and

(5) the term ''State'' means each of the 50 States, the District of Columbia, and the unincorporated territories of Puerto Rico and the U.S. Virgin Islands.

(c) GRANT PROGRAM.—The Attorney General of the United States (in this section referred to as the ''Attorney General'')—

(1) shall establish a program in accordance with this section to provide grants to States—

(A) to investigate and prosecute misleading and fraudulent marketing practices; or

(B) to develop educational materials and training aimed at reducing misleading and fraudulent marketing of financial products toward seniors; and

(2) may establish such performance objectives, reporting requirements, and application procedures for States and State agencies receiving grants under this section as the Attorney General determines are necessary to carry out and assess the effectiveness of the program under this section.

(d) USE OF GRANT AMOUNTS.—A grant under this section may be used (including through subgrants) by the State or the appropriate State agency designated by the State—

(1) to fund additional staff to identify, investigate, and prosecute cases involving misleading or fraudulent marketing of financial products to seniors;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of those targeting seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers of financial products;

(5) to provide educational materials and training to seniors to increase their awareness and understanding of designations;

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

(7) to enhance provisions of State law that could offer additional protection for seniors

against misleading or fraudulent marketing of financial products.

(e) GRANT REQUIREMENTS.—

(1) MAXIMUM.—The amount of a grant under this section may not exceed $500,000 per fiscal year per State, if all requirements of paragraphs (2), (3), (4), and (5) are met. Such amount shall be limited to $100,000 per fiscal year per State in any case in which the State meets the requirements of—

(A) paragraphs (2) and (3), but not each of paragraphs (4) and (5); or

(B) paragraphs (4) and (5), but not each of paragraphs (2) and (3).

(2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall, to the extent practicable, conform to the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of enactment of this Act, or any successor thereto, as determined by the Attorney General.

(3) SUITABILITY RULES FOR SECURITIES.—A State shall have adopted standard rules on the suitability requirements in the sale of securities, which shall, to the extent practicable, conform to the minimum requirements on suitability imposed by self-regulatory organization rules under the securities laws (as defined in section 3 of the Securities Exchange Act of 1934), as determined by the Attorney General.

(4) STANDARD DESIGNATION RULES FOR INSURANCE PRODUCTS.—A State shall have adopted standard rules on the appropriate use of designations in the sale of insurance products, which shall, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as in effect on the date of enactment of this Act, or any successor thereto, as determined by the Attorney General.

(5) SUITABILITY RULES FOR INSURANCE PRODUCTS.—A State shall have adopted suitability standards for the sale of annuity products, under which, at a minimum (as determined by the Attorney General)—

(A) insurers shall be responsible and liable for ensuring that sales of their annuity products meet their suitability requirements;

(B) insurers shall have an obligation to ensure that the prospective senior purchaser has sufficient information for making an informed decision about a purchase of an annuity product;

(C) the prospective senior purchaser shall be informed of the total fees, costs, and commissions associated with establishing the annuity transaction, as well as the total fees, costs, commissions, and penalties associated with the termination of the transaction or agreement; and

(D) insurers and their agents are prohibited from recommending the sale of an annuity product to a senior, if the agent fails to obtain sufficient information in order to satisfy the insurer and the agent that the transaction is suitable for the senior.

(f) APPLICATION.—To be eligible for a grant under this section, the State or appropriate State agency shall submit to the Attorney General a proposal to use the grant money to protect seniors from misleading or fraudulent marketing techniques in the offer and sale of financial products, which application shall—

(1) identify the scope of the problem;

(2) describe how the proposed program will help to protect seniors from misleading or fraudulent marketing in the sale of financial products, including, at a minimum—

(A) by proactively identifying senior victims of misleading and fraudulent marketing in the offer and sale of financial products;

(B) how the proposed program can assist in the investigation and prosecution of those using misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(C) how the proposed program can help discourage and reduce future cases of misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(3) describe how the proposed program is to be integrated with other existing State efforts.

(g) LENGTH OF PARTICIPATION.—A State receiving a grant under this section shall be provided assistance funds for a period of 3 years, after which the State may reapply for additional funding.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $8,000,000 for each of the fiscal years 2010 through 2014.

Mr. KOHL. Mr. President, I speak today in support of an amendment that would protect older Americans from unscrupulous financial advisers.

In these tough economic times, seniors are discovering that their life savings have lost so much value they may not be able to fund their retirement. Desperate for advice, they look toward investment advisers for strategies to ride out this economic storm. Unfortunately, we have learned that some are placing their trust in so-called ''senior investment advisers,'' who in many cases are one step above scam artists. These individuals often have limited or no education or training though they claim titles with legitimate-sounding names.

We know that an attorney must go to school for 3 years and pass a State bar exam. A CPA must have a college degree, an additional year of study, and must pass a national exam. Neither can offer their professional services without those credentials. Seniors should be able to trust the people who invest their money. They should not be worried that the title after their adviser's name is scarcely more than a marketing ploy.

This amendment would create a new grant program to assist States in their efforts to protect seniors from misleading financial adviser designations by encouraging them to adopt provisions outlined in the North American Securities Administrators Association's and the National Association of Insurance Commissioners' model rules on the use of senior designations.

I strongly encourage my colleagues to cosponsor this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. 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. GRASSLEY. Mr. President, the first point I wish to make is that with the false claims provisions in the Leahy-Grassley bill, which deals with other provisions as well, but the False Claims Act is essential to accomplishing the overall purposes of the bill, along with other tools to do it—to get rid of fraud. We are trying to just, in this bill, in a very rifle shot way, correct some court opinions that have been detrimental and weaken the False Claims Act. That is all we are trying to accomplish in this bill that deals with bigger things as well.

What Senator KYL is bringing up is a legitimate subject of discussion because it has been brought up at other times since passage of the False Claims Act 22 years ago. I don't say it is not legitimate to discuss it. But there is broader false claims legislation in the Judiciary, and it ought to be discussed at a time when we have hearings on this subject. There have been no hearings on this.

These amendments should be reviewed by the full committee under the regular order process. That is the first point I wish to make to Senator KYL about why not to consider this amendment right now.

The second one is the point he made on how big of an award is big enough to incentivize people to turn in fraud.

Mr. LEAHY. Will the Senator yield for a unanimous consent request?

Mr. GRASSLEY. Yes.

Mr. LEAHY. Mr. President, I ask unanimous consent that the vote on the Kyl amendment, now pending, occur at 11:45 but that there be 2 minutes equally divided immediately preceding the vote. First, I make that request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I also ask unanimous consent that there not be any amendments to that amendment.

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

Mr. GRASSLEY. Mr. President, the second point I wish to make before I get to my formal remarks is on the question the Senator from Arizona raised about how big of an incentive is enough to get reported. That is a legitimate question.

Here is my experience with 22 years of the False Claims Act, dealing with whistleblowers, Government agencies listening to whistleblowers or not, the Justice Department taking a case or not taking a case, or whether the whistleblower initiates the case on their own. What I have found is that the False Claims Act does not come up early in anybody's thought process—about initiating a thought process that there might be fraud out there and somebody ought to be investigating and get to the bottom of it. Usually,

the whistleblower has ample evidence of that or they wouldn't be doing it in the first place. They jeopardize their profession and their job in Government. That isn't right, but whistleblowers who want to do the patriotic thing actually jeopardize their professional future. What I have found is they don't even know about the False Claims Act or about getting a percentage of it. They don't even know about whistleblower protection laws. They want to do the patriotic thing. They want to report fraud.

So to talk about the award being the incentive to come forward, I don't want to say that in some cases that may not be the case, but in most cases these are patriotic people knowing about the fraudulent use of taxpayer money, they think it is wrong and ought to stop, and they think it ought to stop within the agency. They don't get anywhere with the agency, so they come to other people, and eventually along the line, probably, somebody says: You need to take this to court, and you can get something out of this if you win and if you have a case. Probably the majority of them don't win. So they get nothing out of it. But they are trying to be patriotic citizens.

I think that bringing up the issue of how much of an award is big enough to get this information out should not even be a part of the debate. It is still something because we are talking about taxpayer money and what is an incentive to do this, but it ought to be discussed in a thoughtful way, not on an amendment to a bill that is trying to correct a few bad court decisions to get the False Claims Act back to its original purpose.

I thank the Senator from Vermont for letting me cooperate with him on this issue. The Senator from Vermont also recognizes that the False Claims Act is a very useful tool against fraud, which is the overall purpose of the rest of Senator LEAHY's and my bill.

The other thing you have to remember is that this has brought in $22 billion. Senator LEAHY made that very clear. There are so many court cases I can tell you about where the Government, through the Justice Department, came in and tried to belittle the whistleblower, the claimant, to reduce, or even eliminate, any access to an award; how many times judges have had to berate people in the Justice Department. I am not talking about Presidents Obama, Bush, Reagan, Bush 1, or Clinton; I am talking about several of them where you wouldn't even have a case—in other words, saying to the prosecutor and the Justice Department: Do you realize you would not even have had a case without this patriotic whistleblower coming forward?

More recently, there has been a case where the Justice Department asked not to proceed forward. The judge stepped in and said: We are going to go forward; there is something wrong here, and we are going to get to the bottom of it.

So we have $22 billion back because of patriotic Americans. Do you know what. Just because the False Claims Act has been out there, it has been a preventive to fraud, like all the other tools Senator LEAHY has in this bill that will not only help with prosecution, but the possibility of prosecution is going to be a preventive factor.

So I feel strongly that if the issue of an award limit comes up, it ought to be discussed thoroughly and thoughtfully in a tool—the False Claims Act—which has proven its worth by $22 billion and a lot of unknown preventable fraud out there. We ought to think through it thoughtfully.

I want this amendment defeated. The False Claims Act is the No. 1 tool for recovering taxpayer dollars lost to waste, fraud, and abuse. Whistleblowers who bring fraud cases on behalf of the Government, known as qui tam relators, often risk everything to uncover truth.

Currently, the False Claims Act provides a reward to whistleblowers who come forward with good-faith allegations of fraud, waste, or abuse of Government dollars.

They are allowed to file a lawsuit on behalf of the Federal Government, and the case remains under judicial seal in Federal court. The Justice Department then decides to join a case or not join a case. If the Justice Department joins a case and the case is successful, a whistleblower can recover 15 to 25 percent of the funds recovered. If the Justice Department does not join—then it is going to be a much more difficult process for the whistleblower and his or her counsel—the whistleblower can go forward with the case and if they are successful, they can recover more, somewhere between 25 and 30 percent, depending upon the judge.

While some are arguing that this represents a windfall for whistleblowers, the statistics paint a different picture.

In fact, in cases where the Department of Justice joins the whistleblower, the average share for the whistleblower is not 25 percent or 30 percent, it is 16 percent. Compare that 16 percent with the percentage it takes to administer Government generally, throughout Government—about 12 percent. Do you, Mr. President, think there are enough people in the Justice Department, enough FBI people to know where all the skeletons are buried, where all the frauds are being committed? No. This average award is not too far out of line with the average administrative costs of Government.

There have been 6,197 qui tam complaints filed since 1986 which have resulted in $13.7 billion in recoveries to the Federal Government. That averages about $2.2 million recovered for complaint filed.

In these 6,197 cases, the Government has paid qui tam whistleblowers $2.2 billion in awards. That means the average share award for a qui tam whistleblower is about $350,000. This is hardly a windfall that one would seek, particularly if one is ruining their professional career by being a whistleblower, coming forth to do what is patriotic, to do what is right. It is, in fact, an incentive that helps fuel complaints coming in.

However, if we start adding new caps to the already existing whistleblower caps, we could reduce the incentive for whistleblowers to proceed through the cases—or coming forward in the first place—that would help us then recover billions of dollars.

I wish to share the story of Tina Gonter who was a qui tam whistleblower who testified before the Judiciary Committee last year. Ms. Gonter worked closely with the Government and went undercover at the company for months collecting documents and evidence of a fraud against the Navy. She even wore a wire for the Federal agents of the Defense Department.

Ultimately, a couple of individuals went to jail as a result of Ms. Gonter's work. But the Government refused to sue the contractor for fraud. Believe that, the Government refused to sue with obvious evidence. Ms. Gonter filed a false claims case against the company, and it was not joined by our own Justice Department. The judge in that case even scolded the Justice Department and the Navy for not joining the case.

Ultimately, Ms. Gonter prevailed, and the contractor paid over $13 million to the Federal Government. Ms. Gonter received a share of that money, but had she not brought this case, the Justice Department and the Defense Department would have been satisfied with simply putting two people in jail and allowing the contractor to walk away with the money it received for providing fraudulent product to the Navy. And it is not just a case of fraudulent product to the Navy. It is a serious safety matter for the people in the military who put their lives on the line in the defense of our freedom.

That is only one example out of 6,197 that the False Claims Act provides power to get fraudulent activity under control. It is a check on the power of the Government bureaucracy to look the other way—that is what the Justice Department did in this case—and pretend that fraud did not happen on their watch. However, it is fueled by courageous whistleblowers, such as Tina Gonter, and without sufficient financial incentives to come forward and fight these cases for 5 to 10 years they can take in court, we may lose this valuable tool against fraud.

It is about recovering money, taxpayers' money. I find it ironic—I hope people are listening now because there is a conflict here between maybe people on my side of the aisle who think this is a good idea—I find it very ironic that those outside groups supporting this amendment were in staunch opposition to the idea of the Senate imposing any caps on executive compensation at companies receiving bailout funds. Now instead, they want to cap

the recovery of good-faith whistleblowers to come forward with claims of fraud at companies that are ripping off American taxpayers.

The False Claims Act works and will continue to work if we do not cut the incentives for relators to go to court. The law already has a cap for whistleblower recoveries. I urge my colleagues to oppose this amendment which is based on a couple of extreme examples from outlier cases that are not the norm.

We have $22 billion coming in under this act. Early on, we fought the defense industry to get this bill passed, and the defense industry tried to gut it after it was passed. When they could not because they did not have the proper prestige, they came to the American hospital industry to fight a front for them. That did not happen. I don't know exactly what groups are out there now backing all this. But when are you ever going to realize that in this country, the taxpayers deserve some respect? And if there is fraud in your industry, it is no holds barred on the recovery and the preventing of fraud.

I yield the floor.

Mr. LEAHY. Mr. President, I understand the senior Senator from New York has an amendment. While the senior Senator from Iowa is on the floor, I ask unanimous consent that it be in order for the Senator from New York to bring up his amendment—that the pending amendment be set aside for 5 minutes—speak on it, and if there are no objections to it, it then be accepted, and we go back to the Kyl amendment so as not to interfere with the unanimous consent agreement to have a vote on the Kyl amendment at 11:45 a.m. I make that request.

The PRESIDING OFFICER. Is there objection?

Mr. ENSIGN. Reserving the right to object, will the Senator repeat the unanimous consent request?

Mr. LEAHY. If I can get the attention of the senior Republican, my request is that the Senator from New York be allowed to bring up his amendment for 5 minutes, and at the conclusion of the 5 minutes, unless more time is requested by unanimous consent, that the matter, if it can be disposed of, be disposed of, but in any event, at the end of that time, we go back to the Kyl amendment on which there is a unanimous consent agreement for a rollcall vote at a quarter of 12.

Mr. ENSIGN. Mr. President, can I modify the request that I be recognized to call up an amendment, not to have action on it, call up an amendment, spend 5 minutes on it following the Senator from New York to get my amendment pending?

Mr. LEAHY. I so modify it. That would still leave the amount of time Senator KYL has requested prior to a vote on his amendment.

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

The Senator from New York.

AMENDMENT NO. 1006

Mr. SCHUMER. Mr. President, I thank you for recognizing me. I thank our chairman of the Judiciary Committee, Senator LEAHY, and one of our senior Republican Members, Senator GRASSLEY, for not only managing this bill but for introducing it. I am a cosponsor of the underlying bill, the Fraud Enforcement and Recovery Act, because it provides much needed tools to go after fraudsters, crooks, and thieves, and other common criminals who have taken advantage of a bad economy to rob unsuspecting Americans of their savings.

I thank Senators LEAHY, GRASSLEY, KAUFMAN, and SPECTER, and all the other cosponsors of the bill for their hard work and making sure we finally do something about financial crime.

From the beginning, however, I have been of the view that there was one major omission—a glaring omission—from this bill. The bill would authorize $165 million a year for the Department of Justice, including $75 million more for FBI agents, as well as money for prosecutors and fraud lawyers.

That is all to the good. It would also provide $30 million to the Postal Inspection Service, $30 million to the IG of the Department of HUD, $20 million for the Secret Service, all to investigate financial and mortgage fraud. But if one reads the list, one thing is missing, and that is the Securities and Exchange Commission.

Thanks to the hard work of many, including my cosponsor of this amendment, Senator SHELBY, and Senator GRASSLEY, the lead Republican sponsor of the bill, we have come up with a compromise provision. Initially, on the amendment we were going to offer, Senator GRASSLEY raised some very valid points, and we have been working in the last 2 days to come to an agreement, and I am proud to say we have.

This amendment provides $20 million for SEC enforcement. It would also give an additional $1 million to the SEC's Office of Inspector General. I am pleased to have played a role in putting together this package which will ultimately benefit the American public through safer markets and better policing of our financial system.

The authorization to the SEC is necessary for fighting exactly the kind of fraud that is covered by this bill. Leaving the SEC out of this bill is a little like fighting a war without the marines. The SEC is often the first line of enforcement before the criminal authorities get involved.

The SEC staffing decreased by 10 percent from 2005 to 2007. The agency has only begun to recover from these decreases. It is understaffed by more than 115 employees.

Shockingly, the SEC's technology budget, the budget that determines the agency's ability to analyze what went wrong in the markets and who caused it, is still only 50 percent of what it was in 2005.

We need to pass this bill now, and we need to adopt this amendment now. Literally, every day there is a new story about a new fraud that robbed guileless consumers of millions, sometimes billions, of dollars. Our authorizations for prosecutions after the S&L crisis, which I played a role in when I was in the House of Representatives, resulted from around 600 convictions and $130 million in ordered restitution between 1991 and 1995.

So far, even while the FBI is working on 2,000 mortgage fraud cases and while the SEC has opened more than three dozen investigations into subprime-backed securities, we have not provided law enforcement with the additional funds to put the bad guys before the courts and in jail, even though white-collar enforcement by the Federal Government has been dangerously depleted.

I want to point perhaps to one of the most high profile fraud cases in the history of our country—a case that was not brought soon enough—to explain why the SEC needs help, even though it also deserves criticism and even outrage for their previous actions. This is, of course, the case of Bernard Madoff and the tens of billions of dollars he stole from sophisticated and unsophisticated investors alike.

We don't know all the facts yet, but all signs point to some kind of dereliction of duty at the SEC. When we find out what went so horribly wrong, we will figure out how to fix it. But this much we know: The SEC receives hundreds of thousands of tips a year about investment fraud. We don't know why the SEC didn't catch on to the complaints of at least one brave whistleblower, Harry Markopolos, and none of us here would ever excuse it. We can acknowledge, though, that the SEC does not have sufficient technical and human resources to assess sophisticated trading patterns, complex financial instruments, and risk factors in the marketplace. When a complaint comes in, even a detailed complaint, such as the one received from Mr. Markopolos, they did not effectively triage it.

The SEC's budget has barely kept up with inflation and cost of living adjustments. It is not clear whether budget cuts caused them to let Madoff fall through the cracks, but certainly budget increases wisely spent—and I have faith that the new Chair will certainly do that—will help prevent future Madoffs from happening.

One of the things the SEC wants to do with the money we provide here is to hire people with specialized industry skills, develop systems for nationwide data centers——

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. SCHUMER. I ask unanimous consent for 2 more minutes.

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

Mr. SCHUMER. One of the things the SEC wants to do with this money is to hire people with specialized industry skills, develop systems for nationwide

data searches based on tips and complaints, and include their risk modeling involving market data and intelligence.

It is incredible the chief regulator of the most sophisticated economy in the world does not have this capability. Let's help get the right cops on Wall Street and then get them the resources they need to fight crime. Everyone has to do more with less these days, but I am not in favor of less resulting in letting bad guys go free.

I thank my colleague, Senator GRASSLEY. As I said, the compromise we have come up with I think is fair because it both beefs up the SEC and deals with Senator GRASSLEY's concerns related to the inspector general. I hope that at some point—we are still awaiting a letter from the SEC—we can ask unanimous consent to move this amendment forward. It has bipartisan support.

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

Mr. KAUFMAN. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER], for himself, Mr. SHELBY, Mr. DODD, Mrs. FEINSTEIN, and Mr. GRAHAM, proposes an amendment numbered 1006.

Mr. SCHUMER. I ask unanimous consent that the amendment be considered as read.

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

The amendment is as follows:

(Purpose: To provide additional funding to the SEC to use in enforcement proceedings)

At the appropriate place in section 3, insert the following:

(—) ADDITIONAL APPROPRIATIONS FOR THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—There is authorized to be appropriated to the Securities and Exchange Commission, $20,000,000 for each of the fiscal years 2010 and 2011 for investigations and enforcement proceedings involving financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(2) INSPECTOR GENERAL.—There is authorized to be appropriated to the Securities and Exchange Commission, $1,000,000 for each of the fiscal years 2010 and 2011 for the salaries and expenses of the Office of the Inspector General of the Securities and Exchange Commission.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, are we now back on the Kyl amendment?

The PRESIDING OFFICER. We are, but the Senator from Nevada is to be recognized.

Mr. LEAHY. Before that happens, I thank the Senator from New York and the Senator from Iowa. They have been meeting with me and my staff for weeks on this amendment. I am glad they were able to reach agreement on the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the pending amendment be set aside, I call for regular order with regard to the Boxer amendment, and that I be allowed to call up a second-degree amendment, No. 1003.

Mr. LEAHY. Wait a minute. Reserving the right to object, would the Senator repeat that? That is not my understanding of what he was to do. Would the Senator repeat the unanimous consent request?

Mr. ENSIGN. For the Chamber's edification, I have an amendment filed as a first-degree and I also have a second-degree. I was going to call up the second-degree amendment.

Mr. LEAHY. That was not my understanding of what the Senator was asking, so I would object.

AMENDMENT NO. 1004

Mr. ENSIGN. Mr. President, I ask unanimous consent that the pending amendment be set aside and I call up amendment No. 1004, which is the first-degree amendment.

Mr. LEAHY. Reserving the right to object, and I shall not object, it is my understanding that we now have about 7 minutes or 8 minutes. Then we will go off this and go back to the Kyl amendment. I want to protect the Senator from Arizona on his amendment. Even though it is one I disagree with, I want to protect his right to have that.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 1004.

Mr. ENSIGN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To impose certain requirements on public-private investment fund programs, and for other purposes)

At the end of the bill, add the following:

SEC. 5. PUBLIC-PRIVATE INVESTMENT PROGRAM.

(a) IN GENERAL.—Any program established by the Secretary of the Treasury or the Board of Directors of the Federal Deposit Insurance Corporation that does any of the following shall meet the requirements of subsection (b):

(1) Creates a public-private investment fund.

(2) Makes available any funds from the Troubled Asset Relief Program established under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) or the Federal Deposit Insurance Corporation for—

(A) a public-private investment fund; or

(B) a loan to a private investor to fund the purchase of a mortgage-backed security or an asset-backed security.

(3) Employs or contracts with a private sector partner to manage assets for a public-private investment program.

(4) Guarantees any debt or asset for purposes of a public-private investment program.

(b) REQUIREMENTS.—Any program described in subsection (a) shall—

(1) impose strict conflict of interest rules on managers of public-private investment funds that—

(A) specifically describe the extent, if any, to which such managers may—

(i) invest the assets of a public-private investment fund in assets that are held or managed by such managers or the clients of such managers; and

(ii) conduct transactions involving a public-private investment fund and an entity in which such manager or a client of such manager has invested;

(B) take into consideration that there is a trade off between hiring a manager with significant experience as an asset manager that has complex conflicts of interest, and hiring a manager with less expertise that has no conflicts of interest; and

(C) acknowledge that the types of entities that are permitted to make investment decisions for a public-private investment fund may need to be limited to mitigate conflicts of interest;

(2) require the disclosure of information regarding participation in and management of public-private investment funds, including any transaction undertaken in a public-private investment fund;

(3) require each public-private investment fund to make a certified report to the Secretary of the Treasury that describes each transaction of such fund and the current value of any assets held by such fund, which report shall be publicly disclosed by the Secretary of the Treasury;

(4) require each manager of a public-private investment fund to report to the Secretary of the Treasury any holding or transaction by such manager or a client of such manager in the same type of asset that is held by the public-private investment fund;

(5) allow the Special Inspector General of the Troubled Asset Relief Program, access to all books and records of a public-private investment fund;

(6) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(7) allow the Special Inspector General of the Troubled Asset Relief Program, the Secretary of the Treasury, and any other Federal agency with oversight responsibilities access to—

(A) the books, documents, records, and employees of each manager of a public-private investment fund; and

(B) the books, documents, and records of each private investor in a public-private investment fund that relate to the public-private investment fund;

(8) require each manager of a public-private investment fund to give such public-private investment fund terms that are at least as favorable as those given to any other person for whom such manager manages a fund;

(9) require each manager of a public-private investment fund to acknowledge a fiduciary duty to the public and private investors in such fund;

(10) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(11) require stringent investor screening procedures for public-private investment funds that include know your customer requirements at least as rigorous as those of a commercial bank or retail brokerage operation;

(12) require each manager of a public-private investment fund to identify for the Secretary of the Treasury each beneficial owner of a private interest in such fund; and

(13) require the Secretary of the Treasury to ensure that all investors in a public-private investment fund are legitimate.

(c) REPORT.—Not later than 45 days after the date of the establishment of a program

described in subsection (a), the Special Inspector General of the Troubled Asset Relief Program shall submit to Congress a report on the implementation of this section.

(d) DEFINITION.—In this section, the term ''public-private investment fund'' means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

Mr. ENSIGN. Mr. President, taxpayers and politicians alike have been too long in the dark about how the Treasury has been implementing this so-called TARP program—or as most people in the country know it, the bank bailout program. The President has proposed and Treasury Secretary Geithner has proposed a new toxic asset plan that could put hundreds of billions of dollars of the taxpayers' money at risk, so we need to do this right.

The special inspector general for TARP has stated that this new toxic asset buy-back program—called the Public-Private Investment Program—is ''inherently vulnerable to fraud, waste, and abuse.'' The special IG's report outlined a number of good recommendations that are necessary to protect the taxpayers and to ensure the integrity of this new program.

My amendment would simply require that the Treasury Department implement the recommendations from this special inspector general before allocating money under this new program known as the Public-Private Investment Program.

These requirements include, very simply, No. 1, imposing strict conflict of interest rules to prevent PPIP fund managers from inappropriately using the program to benefit themselves or their clients. Common sense. Makes sense. No. 2, mandate complete transparency of this program, including public disclosure of all transactions and the current valuation of all assets. And No. 3, requiring that the fund managers who manage this program have stringent investor screening procedures, at least as rigorous as typical know-your-customer procedures found at commercial banks or retail brokerage firms to ensure investors are legitimate.

Let's put these safeguards in place. These are common sense. We are all talking about a bill in front of us that eliminates fraud and abuse. Well, there is no bigger program that we have right now than the TARP program. We need to eliminate fraud and abuse. And when the special inspector general has said this new program is ripe with fraud and abuse, we ought to protect the taxpayers.

I urge my colleagues to adopt this amendment so that the Treasury Department fulfills President Obama's promise of bringing in transparency and open government. That is what he promised upon coming in. This particular amendment will help ensure that the American people have transparency and that their interests are protected, especially their dollars are protected with this new program that literally could run into the hundreds of billions of dollars.

With that, Mr. President, I yield the floor, and I urge all of my colleagues to support this amendment. Hopefully, we won't get blocked on having a vote on this amendment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I assume the Banking Committee will talk about the amendment of the Senator from Nevada.

If I could have the attention of the Senator from Nevada, if his staff would allow me to have the attention of the Senator from Nevada for a moment, I realize we are merely constitutional impediments to the staff. I hate to interfere.

Again, this is one of a series of amendments that is not at all within the jurisdiction of the Judiciary Committee. I find it an interesting amendment, but it is within the jurisdiction of the Banking Committee. I was hoping, since there is going to be a banking bill next week, that some of these banking amendments would actually go on the Banking bill and have Judiciary amendments on the Judiciary bill. And I would assume that the discussion will be carried out by Senators DODD and SHELBY of the Banking Committee, in that there is no relationship at all to the Judiciary Committee bill.

I would add to that, of course, that the Senator from Nevada has an absolute right to bring up anything. Someone can bring up something on agriculture and price supports, I suppose. But I wish we could keep it to Judiciary matters.

Mr. President, am I correct we are now back on the Kyl amendment?

The PRESIDING OFFICER. The Senate is on the Kyl amendment.

Mr. LEAHY. I thank the Chair, and I suggest the absence of a quorum.

Mr. ENSIGN addressed the Chair.

Mr. LEAHY. I withhold that request for the Senator from Nevada.

AMENDMENT NO. 1000

Mr. ENSIGN. Mr. President, I call for regular order on the Boxer amendment.

The PRESIDING OFFICER. The amendment is pending.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I thought the Kyl amendment was pending by unanimous consent.

The PRESIDING OFFICER. The Kyl amendment was pending, but the Senator has called for regular order.

Mr. ENSIGN. Mr. President, do I have the floor?

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 1003 TO AMENDMENT NO. 1000

Mr. ENSIGN. Mr. President, I call up as my second-degree amendment No. 1003.

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

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

Mr. ENSIGN. I call up amendment No. 1003.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum. Will the Senator give up the floor?

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 1003 to amendment No. 1000.

The amendment is as follows:

(Purpose: To impose certain requirements on public-private investment fund programs, and for other purposes)

After page 2, line 20, add the following:

(f) PUBLIC-PRIVATE INVESTMENT PROGRAM.—

(1) IN GENERAL.—Any program established by the Secretary of the Treasury or the Board of Directors of the Federal Deposit Insurance Corporation that does any of the following shall meet the requirements of paragraph (2):

(A) Creates a public-private investment fund.

(B) Makes available any funds from the Troubled Asset Relief Program established under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) or the Federal Deposit Insurance Corporation for—

(i) a public-private investment fund; or

(ii) a loan to a private investor to fund the purchase of a mortgage-backed security or an asset-backed security.

(C) Employs or contracts with a private sector partner to manage assets for a public-private investment program.

(D) Guarantees any debt or asset for purposes of a public-private investment program.

(2) REQUIREMENTS.—Any program described in paragraph (1) shall—

(A) impose strict conflict of interest rules on managers of public-private investment funds that—

(i) specifically describe the extent, if any, to which such managers may—

(I) invest the assets of a public-private investment fund in assets that are held or managed by such managers or the clients of such managers; and

(II) conduct transactions involving a public-private investment fund and an entity in which such manager or a client of such manager has invested;

(ii) take into consideration that there is a trade off between hiring a manager with significant experience as an asset manager that has complex conflicts of interest, and hiring a manager with less expertise that has no conflicts of interest; and

(iii) acknowledge that the types of entities that are permitted to make investment decisions for a public-private investment fund may need to be limited to mitigate conflicts of interest;

(B) require the disclosure of information regarding participation in and management of public-private investment funds, including any transaction undertaken in a public-private investment fund;

(C) require each public-private investment fund to make a certified report to the Secretary of the Treasury that describes each transaction of such fund and the current value of any assets held by such fund, which report shall be publicly disclosed by the Secretary of the Treasury

(D) require each manager of a public-private investment fund to report to the Secretary of the Treasury any holding or transaction by such manager or a client of such manager in the same type of asset that is held by the public-private investment fund;

(E) allow the Special Inspector General of the Troubled Asset Relief Program, access to all books and records of a public-private investment fund;

(F) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(G) allow the Special Inspector General of the Troubled Asset Relief Program, the Secretary of the Treasury, and any other Federal agency with oversight responsibilities access to—

(i) the books, documents, records, and employees of each manager of a public-private investment fund; and

(ii) the books, documents, and records of each private investor in a public-private investment fund that relate to the public-private investment fund;

(H) require each manager of a public-private investment fund to give such public-private investment fund terms that are at least as favorable as those given to any other person for whom such manager manages a fund;

(I) require each manager of a public-private investment fund to acknowledge a fiduciary duty to the public and private investors in such fund;

(J) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(K) require stringent investor screening procedures for public-private investment funds that include know your customer requirements at least as rigorous as those of a commercial bank or retail brokerage operation;

(L) require each manager of a public-private investment fund to identify for the Secretary of the Treasury each beneficial owner of a private interest in such fund; and

(M) require the Secretary of the Treasury to ensure that all investors in a public-private investment fund are legitimate.

(3) REPORT.—Not later than 45 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General of the Troubled Asset Relief Program shall submit to Congress a report on the implementation of this section.

(4) DEFINITION.—In this subsection, the term ''public-private investment fund'' means a financial vehicle that is—

(A) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(B) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 986

Mr. LEAHY. Mr. President, I understand that the Senator from Arizona and I have 2 minutes equally divided between us before the vote?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I know Senator KYL is on the way. I will say what I said before, when he was standing on the floor. I, along with Senator GRASSLEY, strongly oppose his amendment because the False Claims Act is so well put together, has a balanced approach of providing incentives for whistleblowers, and has recovered more than $22 billion for the Treasury. That is why Senator GRASSLEY and I oppose the amendment by the Senator from Arizona. Awards to whistleblowers have to be approved by judges, so there is a mechanism to handle excessive awards.

When we have something like the False Claims Act that is working as well as it is—as I said, it is one of the few things that has made money for the Federal Government. So far it has made $22 billion for the U.S. taxpayers. I hate to interfere with something that is working.

My time is up. The Senator from Arizona is on the Senate floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, the purpose of this amendment is to provide a limitation of $50 million for the recovery of the whistleblowers who bring actions that result in recovery for the Government of money that otherwise would have been lost due to fraud. There needs to be a reward, and most of these whistleblowers, frankly, are not looking for money. But it seems to me, from 1986 when we did this, we never contemplated these multibillion-dollar settlements or awards, and to provide up to 30 percent of that to the people who bring the action is too much. We could save the Federal Government a lot of money if we put in a modest limitation. I would argue a $50 million award per case is a pretty liberal award. My amendment would cap the award at $50 million, and I ask my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I ask unanimous consent for 15 seconds.

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

Mr. GRASSLEY. Mr. President, I would like to point out, as I did in my debate, that we have a much larger False Claims Act bill pending in the Judiciary Committee. I think what the Senator from Arizona brought up is a legitimate subject for discussion, but it ought to be discussed in the wider global issue of the False Claims Act and not in a fraud bill where we are just trying to make some very short changes in the False Claims Act.

I ask my colleagues to vote against the Kyl amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been previously ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Illinois (Mr. DURBIN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Kansas (Mr. ROBERTS).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted: ''yea.''

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

The result was announced—yeas 31, nays 61, as follows:

[Rollcall Vote No. 162 Leg.]

YEAS—31

Barrasso	Cornyn	McCain
Bennett	DeMint	McConnell
Bingaman	Ensign	Murkowski
Bond	Enzi	Sessions
Brownback	Gregg	Shelby
Bunning	Hatch	Specter
Burr	Hutchison	Thune
Chambliss	Inhofe	Vitter
Coburn	Isakson	Wicker
Cochran	Kyl	
Corker	Lugar	

NAYS—61

Akaka	Graham	Nelson (NE)
Baucus	Grassley	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Boxer	Johanns	Risch
Brown	Johnson	Sanders
Burris	Kaufman	Schumer
Byrd	Kerry	Shaheen
Cantwell	Klobuchar	Snowe
Cardin	Kohl	Stabenow
Carper	Landrieu	Tester
Casey	Leahy	Udall (CO)
Collins	Levin	Udall (NM)
Conrad	Lincoln	Voinovich
Crapo	Martinez	Warner
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Gillibrand	Murray	

NOT VOTING—7

Alexander	Lautenberg	Rockefeller
Durbin	Lieberman	
Kennedy	Roberts	

The amendment was rejected.

Mr. LEAHY. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE EXPLANATION

Mr. DURBIN. Mr. President, on vote No. 162, I was unavoidably detained due to my representation of the Senate at the annual Day of Remembrance Ceremony.

Had I been present for the vote, I would have voted ''nay'' on Kyl amendment No. 986 to the Fraud Enforcement and Recovery Act of 2009.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DORGAN. Will the Senator yield?

Mr. DODD. I will.

Mr. DORGAN. I ask unanimous consent to be recognized following the remarks of the Senator from Connecticut.

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

Mr. LEAHY. Madam President, if the Senator will yield for a moment, this bill would have been easily finished last night, but I understand, under the Senate schedule, we were unable to continue at that time. I hope we will finish soon so that we don't have to spend a great deal more time. We have had a large number of amendments that are basically Banking Committee amendments, and other committees, not the Judiciary Committee. We should come back to realizing that this is a Judiciary bill. Every one of us says we are against those who are stealing life savings and money set aside for kids' colleges and stealing people's homes. We all say we would love to put them in jail. We will not do it until we get the bill through.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. HATCH. Madam President, if the Senator will yield for a unanimous consent request.

Mr. DODD. I will.

Mr. HATCH. I ask unanimous consent that I be permitted to call up an amendment following the remarks of Senators DODD and DORGAN.

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

Mr. DODD. Madam President, the Fraud Enforcement and Recovery Act of 2009 comes out of the Judiciary Committee. Senators LEAHY and GRASSLEY and their colleagues have worked hard to put together a strong bipartisan bill to deal with fraud. In fact, I am told that for every dollar we invest in this effort, there is roughly $15 that would accrue to the benefit of American taxpayers. I commend them for their efforts on this important piece of legislation.

However, this Judiciary Committee bill is sort of turning into a Banking Committee bill as most of the amendments being offered are within the jurisdiction of the Banking Committee. I understand the appetite of my colleagues to address some of these questions. Some of them are very good ideas, ones that I will mention in a moment and that I can support. Others are very complicated and have are technical issues, but they also could do great damage to the effort we are all principally engaged in and desirous of achieving, and that is to restore confidence and optimism in order to get our economic system back on its feet.

I thought it might be valuable, as chairman of the Banking Committee, to run through the amendments that affect the jurisdiction of the Banking Committee and to share some of my observations on ones I would be willing to support, which means we could possibly have voice votes on them and accept them as part of this bill, and others which are of concern to me and which I would oppose for reasons I will briefly explain.

On a positive note, Senator COBURN has offered amendment No. 983. This amendment would require the examination of what happened with the GSEs, Fannie Mae, Freddie Mac, the Federal Home Loan Banks.

Yesterday, we adopted a proposal, offered by Senators ISAKSON, CONRAD, and myself, to establish a commission to examine thoroughly how we got into the situation we find ourselves in. There has been a debate about whether we ought to do that with an outside commission or within the Congress. There is a legitimate debate about that. My colleague from North Dakota proposed a select committee, which was adopted last evening. Whether we adopt the select committee approach or an outside commission, in either case, the GSEs would be a part of that examination.

I make the case that the amendment of the Senator from Oklahoma may be duplicative or unnecessary. But rather than have an extended debate about that, I recommend we accept the amendment. The issues surrounding the GSEs are clearly going to be a part of the look-back. So rather than have extended debate about that, let's just accept the amendment and move on. Then the commission or the select committee can make those specific determinations. I urge that a voice vote be acceptable on that issue.

Senator KOHL has offered amendment No. 990. That amendment is designed to offer additional protections to older Americans from misleading and fraudulent marketing practices within the financial area. I commend my colleague for his amendment. We all know elderly Americans are some of the most—if not the most—vulnerable to the marketing scams that go on, either through direct mail operations or telemarketing operations. People who are alone and vulnerable in many ways are incredibly susceptible to some egregious marketing techniques. The Senator has offered an amendment that would provide additional security for those in retirement, and we can all applaud him for that effort. The amendment has been endorsed by the North American Securities Administrators, financial planners, the Consumer Federation of America, and many others. I commend Senator KOHL for that amendment and again urge my colleagues to accept it, if that is acceptable to the Senator from Wisconsin.

Senator SCHUMER has offered amendment No. 1006 which would add $20 million of authorization to the Securities and Exchange Commission in funding for 2010 and 2011. All of us can appreciate the need for additional support for the Enforcement Division. Americans are painfully aware of the Madoff scandal as well as the Stanford Ponzi schemes. We have had these agencies before our Banking Committee with hearings on how that happened, whether or not people were doing their jobs. Senator SCHUMER has suggested we provide additional resources.

Earlier this year, I requested, along with members of my committee, a billion dollars a year for the SEC in 2010, a level which we still will not reach with this additional $20 million. Many of us agree that the Securities and Exchange Commission has to have the tools and the staff to do the job. There are an awful lot of scams going on. We don't want to hear about Americans being victimized by them any longer. While there is no guarantee that with additional resources and personnel we will stop all of them, we certainly know that with additional resources and tools, we can minimize the problems that emerged with the Madoff and Stanford scandals. Senator SCHUMER has offered a very good amendment, and I urge that it be accepted.

Those three amendments are ones we can accept, and hopefully we will in order to assist our colleague from Vermont and others in moving this bill along.

Let me mention a couple of amendments with which I have some difficulty.

First, the Coburn amendment No. 982. This amendment would authorize the use of TARP funds to cover the cost of this bill. I have many problems with this amendment. First, there is a point of order against this amendment. But aside from the point of order, the purpose of TARP, which Congress passed last year, was to provide assistance to unlock our frozen financial markets in order to provide credit for small businesses; to purchase securities backed by loans from small businesses; to provide capital to banks so they can continue to make loans, although not many of them are doing so, but that was the idea behind the program; and to fund the Making Home Affordable Programs, which modifies mortgage loans, either reducing principal or interest, so that we can mitigate the 10,000 people a day who are entering into foreclosure and for whom modifying those loans is critically important. If we start going around and deciding we will use TARP funds for every idea and every bill that comes to the floor we will deprive the Treasury and others of the tools necessary to get our economy moving again. If we start spreading TARP resources in areas that have little or nothing to do with the underlying economic crisis we will be taking a step in the wrong direction. I urge my colleagues to vote against amendment No. 982 for those reasons. If we start down this path, it will be more and more difficult to get our economy back on its feet again. I know that many of my colleagues disagreed with the TARP, but that is what Congress adopted. There were those who objected to using TARP money for the auto industry and believed that was wrong. There may be other areas where some have disagreed with the use of

TARP funds. But to have it become a funding mechanism for every bill that comes along would undermine the very purpose of those programs.

The next two amendments I urge my colleagues to pay attention to and I believe are matters of concern are the amendments from our colleague from Louisiana, Senator VITTER, No. 991, and Senator DEMINT from South Carolina, amendment No. 994. Let me explain both of the amendments and why I have concerns about each of them.

The Vitter amendment has to do with the issue of warrants. It is a complicated subject matter, but let me briefly explain it. What would be the effect of this amendment? This amendment is basically a favor to banks and minimizes help for taxpayers. That is what it comes down to. This amendment would take away the discretion of regulators and the Treasury to impose additional capital requirements or any other requirements on a TARP recipient that could benefit taxpayers or protect the financial system. Under this amendment, the financial institutions would have the discretion to act on their own in areas where they currently can not. It is quite clear that when they receive, in many cases, billions of dollars in taxpayer money to shore up their position, to salvage these institutions, that to then turn around and allow them unilaterally to make decisions which could harm the taxpayer and cause even further delay of financial system recovery is exactly the wrong direction in which we ought to be going.

The amendment would allow the TARP recipient, rather than Treasury, to determine when its warrants would be repurchased. The amendment would not permit Treasury's discretion to determine when warrants may be executed and would allow the recipient to indefinitely defer exercise of the warrants. In addition, it could harm the taxpayers by eliminating the requirement that Treasury pay market price for these warrants.

So under this amendment, we are reducing the power of the regulators at the very critical moment we want them to exercise that influence rather than allow the recipients themselves to allow what is in their best interest. They are the ones who have received billions of taxpayer money. It seems to me having a leash on all that and allowing the best decision to be made on behalf of the overall economy is what we ought to be doing.

The amendment would empower the banks, which may act in their individual interests—and I understand that—but having received so much taxpayer money, it seems to me we ought to make sure we are not going to allow that unilateral self-interest to trump the interests of the larger concern; and that is the American taxpayer and the overall restoration of our economic well-being.

So I say respectfully to my colleague, and a member of our committee, Senator VITTER, this amendment, I think no matter how good his intentions, may actually do a lot more damage and harm if it were to be adopted at this critical moment when we see that glimmer of light that our economy is beginning to show some signs of recovery. This amendment could set us back at the very moment we may be heading in the right direction.

The last amendment I will address at this moment is one offered by our colleague from South Carolina, Senator DEMINT. I am not in any way disparaging the intentions of my colleagues here. I have great respect for all whom I serve with, and their intentions, I am sure, are motivated by their own framework of how they see these issues. But this amendment concerns me as well in a similar vein. It is a different subject matter, but a similar approach.

Here is what I mean by that. The DeMint amendment also allows a lot of discretion to be left in the hands of the financial institutions, the institutions which have received, of course, tremendous support from the American taxpayer. This amendment would deprive the Treasury of the ability to convert preferred stock to common stock. That conversion could allow banks to basically shore up their balance sheets. That is what some are considering to do. This would limit their ability to do that. It would say you could not do that. You could not have that kind of conversion.

If we limit that ability to make that kind of a discretionary decision, then this could mean that more small business lending would be curtailed, more mortgage lending would be curtailed, more lending for commercial real estate, all of which may be absolutely critical in the coming weeks.

Preferred stock does not increase bank capital in a similar manner as common shares do. The Senator's amendment could lead to the very real consequence that lending is constricted significantly more than we see currently. That would mean more businesses closing for lack of capital, which means more job losses across our country. It means more foreclosures of homes. Madam President, as I mentioned earlier, 10,000 homes a day is a staggering number already. I cannot imagine watching that number increase further. Yet the adoption of that amendment could achieve that result. It could also mean foreclosed homes staying on the market longer, another result that we do not want to see.

In short, the amendment means a lot more economic hardship. Some TARP recipients may not be able to pay a dividend in connection with preferred shares. It would be counterproductive to deprive the Treasury of their discretion to convert its preferred shares to common shares under those circumstances. At a very time you want to shore up balance sheets by allowing for that conversion, this amendment would prohibit that conversion. It seems to me to constrict that kind of action is exactly the wrong direction to be going in at this very moment. The Government's upside potential could be much greater with common shares in some instances, and to deny the ability of our Treasury and others to make that kind of conversion I think could be harmful.

Allowing conversion from preferred shares to common shares would permit the Treasury to provide additional flexibility and assistance to financial institutions and, maybe most importantly, would limit the use of additional taxpayer funds. Let me emphasize that point. I think we are all painfully aware that with about $100 billion left of TARP funds, if you restrict the ability to move from preferred shares to common shares, you increase the likelihood of having to come back here. I do not know of a single Member of this body who welcomes coming back here seeking additional TARP funds. That may very well occur, but it will occur a lot more rapidly if you adopt the DeMint amendment.

So while, again, I respect my colleague from South Carolina, a member of our committee—and I do not question at all his motivations in all of this—I say in this case as well, as with the Vitter amendment, you are restricting the ability of the people we have charged with managing this. If we end up having Congress—535 Members of Congress—deciding on a daily basis how to micromanage this program, and with all due respect to my colleagues, this is above our pay grade in many ways. We in Congress do a lot of things well. Micromanaging this program, such as these two amendments suggest, I think sends us in the wrong direction.

Again, I urge my colleagues on both sides of the aisle to please look at these two amendments and understand the potential danger were they to be adopted. It would certainly curtail our ability, in my view, to engage in exactly the activities that need to be at the top of our agenda: loosening up that credit market; getting a hold of the foreclosure issue, and trying to go in the opposite direction of where it is going today; making it possible for small businesses to get back on their feet; and allowing banks to start lending again in this country. If you adopt these two amendments you achieve the opposite result.

So I urge, on both the Vitter amendment and the DeMint amendment, they be rejected. And for the reasons I offered on, the second Coburn amendment, that are that we cannot turn the TARP program into a slush fund for every program that comes through here, as it was specifically designed to deal with the economic crisis, and that ought to be the purpose for which these funds are used. I urge my colleagues to reject that amendment as well.

Unfortunately, Senator LEAHY, the chairman of the Judiciary Committee, has had his bill turn into a Banking Committee bill with all of these

amendments. So I felt obligated in some sense to come over and share with my colleagues at least my observations on these amendments: the ones I think we can accept—and I applaud my colleagues who have offered amendments that I think are significant and can contribute; even the first Coburn amendment, which I disagree with because you do not need it as a result of the earlier amendments which we adopted cover the issues of his amendment. But I think all of us recognize that the GSES issues have to be part of that look-back, so I would find it difficult to oppose his amendment. Therefore, I urge my colleagues to support that amendment, along with the Kohl amendment and the Schumer amendment that have been offered.

With that, I see my colleagues from North Dakota and Utah who are anxious to speak. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I thank my colleague from Connecticut. I also thank my colleague from Utah for his forbearance so that I might make a few comments. I appreciate the courtesy of Senator HATCH.

Madam President, I ask unanimous consent that my statement be printed in the morning business section of today's RECORD.

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

(The remarks of Mr. DORGAN are printed in today's RECORD under ''Morning Business.'')

AMENDMENT NO. 1007

Mr. HATCH. Madam President, I ask unanimous consent that the pending amendment be set aside and I call up amendment No. 1007.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1007.

Mr. HATCH. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the Department of Labor from expending Federal funds to withdraw a rule pertaining to the filing by labor organizations of an annual financial report required by the Labor-Management Reporting and Disclosure Act of 1959)

At the end, insert the following:

SEC. ___. TRANSPARENCY IN ANNUAL FINANCIAL REPORTS.

(a) FINDINGS.—Congress finds the following:

(1) The American workers who contribute union dues deserve to have transparency and accountability in the management of their unions.

(2) Since 2001, investigations of union fraud have resulted in more than 1,000 indictments, 929 convictions, and restitution in excess of $93,000,000.

(3) A new rule (referred to in this subsection as the ''transparency rule'') to require union management to disclose more information about sales and purchases of assets, and disbursements to officers and employees, among other things, was set to take effect on April 21, 2009, after a previous delay affording reporting entities more time to prepare to comply.

(4) The Obama Administration has set a goal for itself to be the most open and transparent administration in the history of the Nation.

(5) On April 21, 2009, the Department of Labor issued—

(A) a final rule providing for a further delay of the transparency rule; and

(B) a proposed rule to withdraw the transparency rule.

(6) The transparency rule would have been a key tool in the battle against fraud, discouraging embezzlement of the money of union members and making money harder to hide, and would have provided great sunlight and transparency to allow members to know how their dues were being spent.

(7) The Department of Labor's actions are in direct contradiction to everything the Obama Administration purports to stand for.

(b) PROHIBITION.—The Secretary of Labor may not expend Federal funds to withdraw the rule issued by the Secretary of Labor entitled ''Labor Organization Annual Financial Reports'', 74 Fed. Reg. 3678 (January 21, 2009).

Mr. HATCH. Madam President, I rise to propose an amendment that will ensure transparency and prevent egregious cases of fraud against American workers. My amendment is very simple, and I think it is compelling. All it does is prevent the administration from rescinding current regulations that require transparency in the way that union management chooses to spend the hard-earned dues collected from their members. This amendment is specifically directed at preventing the weakening of the Department of Labor's Office of Labor-Management Standards—or OLMS it is called—which is the sole Federal agency tasked with protecting the interests of American workers who pay union dues.

Under current Federal law, the OLMS requires financial reporting that ensures the transparency of how labor union management spends labor union dues in the area of compensation of labor leaders, the purchasing of union assets, and additional information regarding various union receipts. This law requires union leaders to disclose how members' money is spent and provides protection from fraud, waste, and abuse.

Public opinion and our Nation's dire economic conditions have driven us to require banks, corporations, and even Presidential administrations to do business in the light of day—in full transparency. Therefore, the same expectation of transparency should apply to labor unions. The previous administration took steps to do that in 2003 by updating reporting requirements and forms. These updates allowed the electronic filing of disclosures on the Internet. The Office of Labor-Management Standards—OLMS—was about to implement a second update that would require information about compensation to union officers. This revision also would have required the disclosure of transactions involving union assets.

Unfortunately, as was reported this year in the April 21 Federal Register, the Labor Department and Labor Secretary Hilda Solis have delayed the effective date of these revisions. Furthermore, on this same date, the Labor Department has published a notice that seeks to withdraw the rule entirely. By doing this, Secretary Solis has effectively neutralized OLMS in its mission to ensure the transparency in the way labor unions spend the hard-earned money of their Members. Ironically, this is being done by an administration that has told the American public that transparency and change has returned to Washington. It would appear to me that the Labor Department did not get that memo. I feel confident President Obama would be on my side on this, that he would want the transparency. It is in the best interests of union workers. It protects them from fraud. It protects their dues as they put them in there. Unions can run the unions just as businesses run businesses, but they ought to do it honestly. That is why these regulations are so important. That is why this amendment is so important.

There should not be any debate as to the effectiveness of the OLMS. From 2001 through 2007, OLMS investigations resulted in 1,000 indictments. The Office of Labor-Management Standards fraud investigations between 2001 and 2007 resulted in 1,000 indictments and convictions of 929 of those indicted. The funds recovered that were illegally taken amounted to $93 million. Think about that: $93 million in restitution was paid back to the victims of those crimes. I am sure I need not remind any Member of this body that union dues are seldom voluntarily given. Men and women who join these unions are often compelled to pay as part of their employment agreement. Union funds are also comprised of pension funds, which have occasionally been targeted by organized crime and used to underwrite mob activities. I know. I was a member of the AFL–CIO. I went through a formal apprenticeship. I paid dues, and I became a journeyman metal lather, a skilled trade, back in those years when I was working in construction.

Union funds, as I say, are also comprised of pension funds, which sometimes are targeted by organized crime and used to underwrite mob activities. When I was chairman of the Labor Committee, we did a lot to try and overcome these things, but it has never been done better than between 2001 and 2007. From October 2000 through May 2007, in the State of New York alone, the OLMS conducted 334 audits and obtained 87 indictments, resulting in 82 convictions. That is a high constriction rate, showing this is not some little itty, bitty problem. This, in turn, resulted in the recovery and restitution of $39.6 million. In Illinois, the OLMS indicted 44 persons in connection with fraudulent activity involving union funds, resulting in 42 convictions.

These are statistics we can all be proud of. OLMS investigations produced 1,000 indictments and obtained 929 constrictions—a 92.9-percent conviction rate.

We are debating legislation that provides more investigators and remedies to prevent fraud and enforce Federal laws. The OLMS enforces the Labor Management Reporting Disclosure Act, a bipartisan law with roots back to another former Senator who was young, inspiring, and went on to become President: John F. Kennedy. It was then-Senator Kennedy who inserted into this act the union members' bill of rights. It is the union members who are entitled to transparency. The whole world is entitled to transparency in these instances as well. It is the mission of the OLMS to ensure that union business is conducted in the light of day, with its members'—and that is plural—interests at heart.

It is for this reason that I have risen to propose this amendment and I ask my colleagues for their support and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second at this time.

Mr. HATCH. Well, then I will ask for the yeas and nays at the appropriate time.

Mr. REID. Madam President, I ask unanimous consent that the call of the quorum be terminated.

The PRESIDING OFFICER. The Senate is not in a quorum call.

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

The PRESIDING OFFICER. Is there a sufficient second? This time there is a sufficient second.

The yeas and nays are ordered.

Mr. HATCH. I thank the majority leader for his kindness and, of course, we are willing to have this come up whenever the majority leader and the minority leader determine.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1006

Mr. SCHUMER. I ask unanimous consent that my amendment No. 1006 be called up.

The PRESIDING OFFICER. The amendment is pending.

Mr. SCHUMER. Madam President, I ask unanimous consent that the amendment be passed.

The PRESIDING OFFICER. Is there any further debate on this issue?

If not, the question is on agreeing to the amendment.

The amendment (No. 1006) was agreed to.

Mr. SCHUMER. Madam President, I wish to note to the body that this is the SEC amendment that adds $20 million for new SEC staff and investigators and another $1 million for the IG within the SEC. This was the one part of this very fine piece of legislation that wasn't included. Of course, if you are looking at financial fraud—the kind Bernie Madoff and so many others did—beefing up the SEC and making sure they are much tougher and more focused, as the technology parts of this amendment will allow, is what we need.

Senator GRASSLEY wanted to make sure the SEC avoided past mistakes under its old leadership and made some very useful suggestions. That is why the SEC wasn't included originally. We agreed on those. I wish to thank him, Senator LEAHY, as well as Senator SHELBY, who has been my cosponsor for passing this legislation.

I also wish to thank our new chair at the SEC, Chair Schapiro. Mary Schapiro is a breath of fresh air within the SEC. She is trying to shake it up and focus on the kinds of mistakes we have seen in the past where the whistleblower came before the SEC and gave them the goods on Madoff and they passed it by. It won't happen again. This amendment should help make that happen and strengthen this fine legislation.

I yield the floor.

EXECUTIVE POWER

Mr. SPECTER. Madam President, I ask unanimous consent to proceed for up to 10 minutes as in morning business.

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

Mr. SPECTER. I have sought recognition to introduce three bills relating to limiting Executive power. Because of the past period of time since 9/11, we have seen enormous expansion of Executive power. We have seen the President, during President George W. Bush's administration, use signing statements extensively. We have seen President Obama use a signing statement already in his short tenure, which, in effect, nullifies what the Congress has done.

The Constitution is plain that there is a presentment of legislation to the President and he either signs it or vetoes it. What we have found is that Presidents are now cherry-picking the parts they like and the parts they don't like. So I am submitting legislation on Presidential signing statements.

The second issue of concern involves the immunity for the telephone companies which would deprive Federal jurisdiction for some 40 cases. I believe telephone companies have been good citizens in providing very important information. I believe there is a way to maintain the jurisdiction of the Federal courts and still not subject the telephone companies to litigation or possible damages by having the Government substituted as the party defendant. I am introducing legislation on that subject.

Third, I am introducing legislation that would establish a requirement that the Supreme Court of the United States take jurisdiction on all appeals involving the terrorist surveillance program. That program has caused a great deal of controversy because of the issue as to whether the President has authority under article II to ignore the explicit provisions of the Foreign Intelligence Surveillance Act. The terrorist surveillance program, was declared unconstitutional by a Federal court in Detroit. An appeal taken to the Sixth Circuit was dismissed for reasons of lack of standing. The forceful dissenting opinion in that case showed that there was sufficient basis for standing—a very flexible judicial doctrine.

The Supreme Court of the United States denied certiorari, so at this point, we don't know whether the President's exercise of authority there under article II of the Constitution is correct. Certainly, if the President has that constitutional authority, it supercedes the statute. But that is a matter which should have been decided a long time ago by the Supreme Court, and the Supreme Court has avoided moving on that subject.

Today, I have an article I have offered on executive power. It appears today in the New York review of books, where I outline my intent to introduce these pieces of legislation. The article comes from a longer floor statement I had prepared. It has been reduced somewhat in size.

In the 7½ years since September 11, the United States has witnessed one of the greatest expansions of executive authority in its history, in derogation of the constitutionally mandated separation of powers. President Obama, as only the third sitting senator to be elected president in American history, and the first since John F. Kennedy, may be more likely to respect the separation of powers than President Bush was. But rather than put my faith in any president to restrain the executive branch, I intend to take several concrete steps, which I hope the new President will support.

First, I intend to introduce legislation that will mandate Supreme Court review of lower court decisions in suits brought by the ACLU and others that challenge the constitutionality of the warrantless wiretapping program authorized by President Bush after September 11. While the Supreme Court generally exercises discretion as to whether it will review a case, there are precedents for Congress to direct Supreme Court review on constitutional issues—including the statutes forbidding flag burning and requiring Congress to abide by Federal employment laws—and I will follow those.

Second, I will reintroduce legislation to keep the courts open to suits filed against several major telephone companies that allegedly facilitated the Bush administration's warrantless wiretapping program. Although Congress granted immunity to the telephone companies in July 2008, this

issue may yet be successfully revisited since the courts have not yet ruled on the legality of the immunity provision. My legislation would substitute the government as defendant in place of the telephone companies. This would allow the cases to go forward, with the government footing the bill for any damages awarded.

Further, I will reintroduce my legislation from 2006 and 2007—the Presidential Signing Statements Act—to prohibit courts from relying on, or deferring to, Presidential signing statements when determining the meaning of any act of Congress. These statements, sometimes issued when the President signs a bill into law, have too often been used to undermine congressional intent. Earlier versions of my legislation went nowhere because of the obvious impossibility of obtaining two-thirds majorities in each House to override an expected veto by President Bush. Nevertheless, in the new Congress, my legislation has a better chance of mustering a majority vote and being signed into law by President Obama.

To understand why these steps are so important, one must appreciate an imbalance in our ''checks and balances'' that has become increasingly evident in recent years. I witnessed firsthand, during many of the battles over administration policy since September 11, how difficult it can be for Congress and the courts to rally their members against an overzealous executive.

THE TERRORIST SURVEILLANCE PROGRAM—ACT I

As chairman of the Senate Judiciary Committee from 2005 to 2007, I led the effort to reauthorize and improve the 2001 USA PATRIOT Act, which was originally set to expire at the end of 2005. Indeed, after intensive bipartisan negotiations, the Judiciary Committee succeeded—to the surprise of most observers—in approving a revised bill by unanimous vote. The full Senate then approved the bill by unanimous consent, but the conference report negotiated with the House of Representatives faced stiffer opposition. Nevertheless, after days of floor debate, I awoke on December 16, 2005, fully expecting to finish Senate action on the long-delayed reauthorization.

So, I was startled—really shocked—to read the lead story in the New York Times that morning, titled ''Bush Lets US Spy on Callers Without Courts,'' which revealed that our intelligence agencies had been engaged in warrantless wiretapping since shortly after September 11, in flat violation of the Foreign Intelligence Surveillance Act—FISA—of 1978. This is James Risen and Eric Lichtblau, ''Bush Lets U.S. Spy on Callers Without Courts,'' the New York Times, December 16, 2005. The news caused the Senate to delay passage of the PATRIOT Act reauthorization for months. Senator CHARLES SCHUMER expressed the sentiments of many: ''I went to bed last night unsure of how to vote on this legislation. . . . Today's revelation that the Government listened in on thousands of phone conversations without getting a warrant is shocking and has greatly influenced my vote.'' More importantly, the disclosure in the Times launched a fierce debate about the extent of Presidential authority in the war on terror that has yet to be fully resolved.

That day, I assured my colleagues the reports would be a ''matter for oversight by the Judiciary Committee . . . a very high priority item.'' When Congress reconvened in January 2006, I made good on my promise: I held multiple hearings into the program the Times revealed, later dubbed the Terrorist Surveillance Program. As acknowledged by President Bush, this highly classified program launched in the weeks after September 11 purported to authorize the National Security Agency to intercept phone calls between terror suspects overseas and persons inside the United States. Critics like me argued that the President's program violated FISA. After all, the law declared the procedures set up by FISA to be the ''exclusive means'' by which such surveillance of telephone calls and other communications could be conducted. FISA also made criminal all domestic electronic surveillance designed to obtain foreign intelligence ''except as authorized by statute.'' Although the law defined limited exceptions in emergencies, reports in the press made it clear that none of them applied to the warrantless wiretapping that was done in the Terrorist Surveillance Program.

I recognized that, as administration supporters argued, the President might have inherent power to disregard FISA and to conduct unfettered foreign intelligence surveillance under article II of the Constitution, the section that defines his authority as Commander in Chief. I was not, however, sympathetic to the administration's further argument that Congress had implicitly authorized the President to carry out programs such as the Terrorist Surveillance Program when it authorized the use of military force against terrorists in September 2001.

I was also convinced that President Bush's failure to notify Congress of the secret program violated provisions of the National Security Act of 1947. That statute requires the President to ''ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States.'' But the administration informed only eight legislators of the Terrorist Surveillance Program: the chairman and ranking members of the Senate and House Intelligence Committees, and the two top leaders in the majority and minority of both Houses, leaving out both me and Senator PATRICK LEAHY as chair and ranking member of the Judiciary Committee, despite the fact that when FISA was enacted in 1978, it went through both the Intelligence and Judiciary Committees. While the law explicitly permits notice to this limited ''Gang of 8'' for certain covert operations—such as efforts to influence political conditions abroad without disclosing the U.S. role—the Terrorist Surveillance Program did not fit this exception.

Indeed, those notified were very uneasy about the arrangement. Senator JAY ROCKEFELLER, then ranking member on the Intelligence Committee, sent a secret handwritten letter to the Vice President saying the administration's surveillance activities ''raised profound oversight issues'' on which, owing to the arrangement, ROCKEFELLER could not ''consult staff or counsel.'' A sealed copy of the letter had to be stored in a classified Senate area for over 2 years until knowledge of the Terrorist Surveillance Program became public. Once the story broke, Representative JANE HARMAN, who as ranking member of the House Intelligence Committee was another Gang of 8 member, informed President Bush that she believed ''the practice of briefing only certain Members of the intelligence committees violates the specific requirements of the National Security Act of 1947.''

I raised this issue in a January 24, 2006, letter sent to Attorney General Alberto Gonzales in advance of the first Judiciary Committee hearing on the Terrorist Surveillance Program. Gonzales replied:

> ''It has for decades been the practice of both Democratic and Republican administrations to inform only the Chair and Ranking Members of the intelligence committees about certain exceptionally sensitive matters.

The attorney general added that, according to the Congressional Research Service, the leaders of the intelligence committees had acquiesced in this practice. In my view, Gonzales's argument could appeal only to those unacquainted with the ways the executive branch has, in practice, dealt with the intelligence committees. Administrations of both parties have sometimes told the chair and ranking member that they have important information to disclose, but insisted that they will reveal this information only to some group within the committee and the top congressional leadership, such as the ''Gang of 8.'' In many cases, the offer is accepted as the only way of getting the information—at least in a timely manner.

To the extent the administration relied on such precedents to justify notifying only the ''Gang of 8,'' it should have informed me and Senator LEAHY as well. Indeed, administration officials briefed both of us on the Terrorist Surveillance Program when they later sought comprehensive FISA reform. It is quite glaring, then, that they neglected to brief us in 2005, even as we were considering reauthorization of the PATRIOT Act, which was central to the administration's counterterrorism efforts.

In the spring of 2006, new allegations about the government's surveillance

activities surfaced—not at congressional hearings, but again through leaks to the press. On May 11, 2006, USA Today reported that the National Security Agency had been ''secretly collecting the phone call records of tens of millions of Americans, using data provided by AT&T, Verizon and BellSouth.'' This is Leslie Cauley, ''NSA Has Massive Database of American's Phone Calls,'' USA Today, June 11, 2006. Although the records reportedly included only data like telephone numbers, rather than the contents of calls, the revelations stirred new controversy.

One month later, on June 22, the Chicago Sun-Times reported that AT&T had changed its privacy policy to make customer data a ''business record the company owns,'' one that ''can be disclosed to [the] government. . . .'' This is Associated Press, AT&T Says it Can Disclose Account Data on Net, TV Clients, Chicago Sun Times, June 22, 2006, at 25. I was very interested in the legal basis for this assertion of ownership and what relationship it had, if any, to the reported disclosures of communications data to the government. As luck would have it, that very day, the Judiciary Committee's Antitrust Subcommittee was holding an unrelated hearing on the proposed merger of AT&T and BellSouth, featuring the firms' respective CEOs, Edward Whitacre Jr. and Duane Ackerman. I could not let the presence of these CEOs pass without confronting them on the surveillance program.

I asked Mr. Whitacre whether his ''company provide[d] information to the Federal Government.'' He kept repeating that they ''follow the law''—a comment that I told him was ''contemptuous of this committee,'' because I was asking a factual question and he was offering a legal conclusion. Mr. Whitacre defended his answer on the grounds that he had spoken to a number of attorneys who advised him he could say nothing more.

The episode did not go unnoticed. For example, under the headline ''Privacy flap engulfs hearing,'' the Atlanta Journal-Constitution detailed that ''a Senate hearing Thursday intended to explore the consumer impact of a proposed AT&T-BellSouth merger instead turned into a contentious face-off over phone privacy.'' (see Marilyn Geewax, AT&T Bellsouth Merger; Privacy Flap Engulfs Hearing; Panel Wonders About Use of Phone Records, Atlanta Journal-Constitution, June 23, 2006, at 4G.

In truth, the matter merited its own hearing, but my efforts to hold one were thwarted by Vice President Cheney. Soon after the story broke, I announced my intention to schedule a hearing with the CEOs of the named carriers. I planned to either subpoena the companies or arrange a hearing closed to the public, which the telephone companies had agreed to attend without receiving a subpoena. Unfortunately, Vice President Cheney went behind my back to persuade all of the other Republicans on the committee not to support the subpoena and to boycott the session I had called to discuss a possible private hearing. In the face of this opposition, I had little choice but to agree to a proposal by Senator ORRIN HATCH for a brief delay to give him an opportunity to solicit the administration's views on my bill to permit court oversight of the Terrorist Surveillance Program. When I announced this course of action at the executive session, a highly contentious debate ensued.

Senator LEAHY, long at odds with the Vice President, opined that since we were not going to ''find out independently'' what the government sought from the telecoms and instead wait ''for Dick Cheney to tell us what we should know'' that we might as well ''just recess for the rest of the year.'' On the other hand, Senator DIANNE FEINSTEIN reported that she would not vote for the subpoenas because the ''telephone companies who are trying to be a good citizen should not be held out to dry.'' As a member of both the Judiciary and Intelligence Committees, she added that ''it is very difficult for this committee to legislate without knowing the program'' and therefore the Intelligence Committee was the appropriate venue for legislation on the matter. Senator DICK DURBIN, noting the absence of many Republicans, complained, ''I thought there would be a conversation about this, but apparently there will not be.'' He continued that the ''fortitude and strength [I] had shown in this committee, leading up through the month of May has ended in a June swoon.''

When this uncomfortable meeting—and the accompanying slings—concluded, I drafted what I refer to as a ''lawyer's letter'' to the Vice President. I wrote:

> I was surprised, to say the least, that you sought to influence, really determine, the action of the Committee without calling me first, or at least calling me at some point. This was especially perplexing since we both attended the Republican Senators caucus lunch yesterday and I walked directly in front of you on at least two occasions en route from the buffet to my table.

I concluded with a solemn warning:

> If an accommodation cannot be reached with the administration, the Judiciary Committee will consider confronting the issue with subpoenas and enforcement.

This spat proved great fodder for the editors. The lurid details were splashed across the pages of national newspapers around the country. The Los Angeles Times confided that the ''unusually public rupture between a senior GOP lawmaker and the White House'' provided ''a rare public glimpse of the tactics employed by a vice president who prefers to operate behind the scenes.'' It said I ''lashed out'' in a letter in an ''unusually harsh attack.'' This is Gregg Miller, Specter Says Cheney Tried to Derail Hearings, Los Angeles Times, June 8, 2006, at A6. The front page headline of The Hill screamed ''Specter Rebukes Cheney,'' and the Washington Post averred that the ''simmering tensions'' over the ''administrations tight-lipped position on the programs'' had finally ''boiled over.'' see Alexander Bolton, Specter Rebukes Cheney, The Hill, June 8, 2006, at 1; Michael A. Fletcher, Cheney Plays Down Dispute With Specter, Washington Post, June 9, 2006, at A4.

Someone in Cheney's office must have been up all night, because I had my reply by mid-morning the next day. The White House, he said, was willing to negotiate in good faith. Extensive discussions culminated with a compromise bill and a July 11, 2006, meeting with President Bush in the Oval Office. The President agreed to submit the surveillance program to judicial review, but was insistent that the Senate not alter the agreed-upon terms. Usually, after securing such an agreement, one walks out of the Oval Office to the cameras and advertises it, but I chose to make the announcement at the committee's next executive session on July 13.

My bill of 2006 to expand and revise FISA gave jurisdiction to the Foreign Intelligence Surveillance Court—the Intelligence Court—which was set up by the original FISA law to rule on surveillance requests by Federal agencies—to review the legality of the Terrorist Surveillance Program. Determining the constitutionality of the program would turn upon submissions to the Intelligence Court by the attorney general about its function and procedures, with particular attention to safeguards to ensure that the Terrorist Surveillance Program targeted suspected terrorists and not innocent Americans. The bill further required the attorney general to inform the House and Senate Intelligence Committees of all surveillance programs and created a new criminal offense for misuse of intercepted information. In return, the government was given additional flexibility with respect to the issuance and duration of emergency warrants. And in a nod to the administration, the bill also acknowledged that the president, as commander in chief, retains certain authority inherent in article II of the Constitution, although it left decisions about the scope of that authority to the courts.

Some complained that I had ''sold out'' in making this deal. See, e.g., Jonathan Mahler, After the Imperial Presidency, N.Y. Times, November 9, 2008, Magazine, at MM42. These critics fail to appreciate the disadvantage Congress faces in resisting expansions of executive power. The Terrorist Surveillance Program was put into effect when President Bush signed a secret order in 2001. He did not need to hold any hearings or convince any colleagues. Vice President Cheney could rely on the fractious nature of the Senate, and the great influence of the executive, to easily kill the prospects for my planned subpoenas of the telephone companies. The administration's damage control, like the initial action, was

swift and unilateral. By contrast, on the legislative side, we could not begin to act until we established a factual record through a series of hearings and secured consensus on a path forward.

As committee chairman, I was battered by Senators on both sides in my efforts for oversight. On the right, there were members who touted Article II and party loyalty. They were inclined, at a minimum, to accept the strained arguments that the Authorization for Use of Military Force had authorized the Terrorist Surveillance Program, and that the failure to notify the full intelligence committees did not actually violate the National Security Act. On the left, there was genuine outrage at some administration tactics, but they were also in no hurry for compromise, no matter how favorable the terms. They were very cognizant of the fact that the longer they let the friction between the branches drag on, the worse it looked for Republicans and the better for them and their allies. For example, as the New York Sun reported in June 2006, ''[f]ear of government excess in the war on terror ha[d] driven membership rolls'' in the ACLU ''to more than 550,000 from less than 300,000,'' and the group's fundraising had ''surged.'' See Josh Gerstein, For ACLU's Anthony Romero, These Should Be Best Times, New York Sun, June 27, 2006.

Ultimately, the Judiciary Committee approved my FISA reform bill on September 13, 2006, but in contrast to the bipartisan vote on the PATRIOT Act reauthorization a year earlier, there was a 10–8 party-line vote. A final vote on the Senate floor was never taken, largely because the House had settled on a different approach to the Terrorist Surveillance Program that did not authorize court review of the program. Once again, the inherent constraints on the bicameral legislative branch served to benefit the executive, as the President's surveillance program continued unabated throughout our internal debates.

The courts fared no better at reining in the Terrorist Surveillance Program. In August 2006, Judge Anna Diggs Taylor of the U.S. District Court for the Eastern District of Michigan issued an opinion in ACLU v. NSA, finding the program unconstitutional. Almost a year later, in July 2007, the U.S. Court of Appeals for the Sixth Circuit overturned her decision. On a 2–1 vote, it declined to rule on the legality of the program, finding that the plaintiffs lacked standing to bring the suit. The Supreme Court then declined to hear the case, even though the doctrine of standing has enough flexibility for the Court to have acted. My bill to mandate Supreme Court review of this and other cases therefore seems all the more necessary to resolve the question.

With the Supreme Court abstaining, another lone district judge took a stand. In In re National Security Agency Telecommunications Records Litigation, Chief Judge Vaughn Walker in the Northern District of California considered a case brought by an Islamic charity that claims to have been a subject of the surveillance program. In a 56–page opinion he wrote:

> Congress appears clearly to have intended to—and did—establish the exclusive means for foreign intelligence surveillance activities to be conducted. Whatever power the executive may otherwise have had in this regard, FISA limits the power of the executive branch to conduct such activities.
>
> As detailed further below, the hurdles faced by the few judges willing to examine the Terrorist Surveillance Program, and the snails' pace of appellate review, make my bill to mandate Supreme Court review of this and other cases all the more necessary to resolve the question.

SHORTCOMINGS OF THE LEGISLATIVE AND JUDICIAL BRANCHES AS CHECKS ON EXECUTIVE POWER.

The courts, including the Supreme Court, have admittedly been more effective than Congress in restraining executive excesses, but both have been too slow. This failure is exemplified by the judicial and legislative efforts to address the administration's treatment of detainees in the war on terror.

In Hamdi v. Rumsfeld, decided on June 28, 2004, nearly 3 years after September 11, the Supreme Court ruled that a U.S. citizen being held as an enemy combatant must be given an opportunity to contest the factual basis for his detention before a neutral magistrate. In a stern rebuke of executive overreaching, Justice O'Connor's opinion declared, ''We have long since made clear that a state of war is not a blank check for the president when it comes to the rights of the Nation's citizens.'' The same day, the Court held in Rasul v. Bush that detainees at Guantánamo Bay were entitled to challenge their detention by filing habeas corpus petitions—the time honored legal action used to contest the basis for government confinement. Two years later, on June 29, 2006, the Court announced in Hamdan v. Rumsfeld that the President could not conduct military commission trials under procedures that had not been authorized by Congress and that failed to satisfy the obligations of the Geneva Conventions' Common article III and the Uniform Code of Military Justice.

Instead of fully embracing these decisions, however, Congress responded with the Detainee Treatment Act and the Military Commissions Act of 2006, both of which eliminated detainees' right to habeas corpus review on grounds that foreign terrorist suspects did not have the same rights as others in U.S. custody.

During debate on the Military Commissions Act, I offered an amendment that would have guaranteed habeas corpus for detainees. In the face of sharp criticism from my own party, I argued that I was not speaking ''in favor of enemy combatants.'' Rather, I was ''trying to establish . . . a course of judicial procedure'' to determine whether the accused were in fact enemy combatants. I pointed out that my fight to preserve habeas rights was, in essence, a struggle to defend ''the jurisdiction of the federal courts to maintain the rule of law.'' I concluded with a plea for the Senate not to deny ''the habeas corpus right which would take us back some 900 years and deny the fundamental principle of the Magna Charta imposed on King John at Runnymede.'' Despite these entreaties, my amendment narrowly lost on a 48–51 vote.

I had lost the battle, but was not prepared to surrender. On January 18, 2007, Attorney General Gonzales testified before the Judiciary Committee and argued that proposals to restore habeas corpus, such as a bill Senator LEAHY and I had introduced, were ''ill-advised and frankly defy common sense.'' I was astounded at his claim that ''there is no express grant of habeas in the Constitution.'' I asked him: ''The constitution says you can't take it away except in case of rebellion or invasion. Doesn't that mean you have the right of habeas corpus unless there is an invasion or rebellion?'' He replied, ''The constitution does not say every individual in the United States or every citizen is hereby granted or assured the right to habeas. . . . It simply says the right of habeas corpus shall not be suspended.'' I protested, ''You may be treading on your interdiction and violating common sense, Mr. Attorney General.''

This exchange received notice in a number of papers, as my position gained momentum. The Detroit Free Press, for example, editorialized:

> The moment when Alberto Gonzales proved he was just wrong for the job of U.S. attorney general came . . . after Sen. Arlen Specter, R–Pa., asked him about the constitutional guarantee of criminal due process, known as habeas corpus.

See Editorial, Gonzales Twisted Rule of Law Too Well, Detroit Free Press, August 28, 2007.

That September, I made a second attempt to restore habeas corpus jurisdiction with an amendment to the Defense Department's authorization bill. This time, a majority of Senators voted for it, including seven Republicans. Unfortunately, the 56–43 majority was insufficient because, in the face of a filibuster threat, Senate procedure required sixty votes to pass. Ironically, a procedural tool that protects Senate minorities had become a shield for the executive branch.

Thus, yet again, it was left to the Supreme Court to beat back the encroachment of executive power, which it finally did on June 12, 2008. In Boumediene v. Bush, the Court held that detainees held at Guantanamo Bay ''are entitled to the privilege of habeas corpus to challenge the legality of their detention.'' Because the Combatant Status Review Tribunals established by the Defense Department in 2004, following the Hamdi and Rasul decisions, and the limited procedural review permitted before the DC Circuit

failed to constitute an adequate and effective substitute for habeas corpus, the Court held that the Military Commissions Act had effected ''an unconstitutional suspension of the writ.''

As satisfying as it was to be vindicated, I was frustrated that Congress had left the task of reining in the executive to slow-paced and incomplete judicial review. While the Boumediene decision ensured habeas rights for detainees, it took 7 years; and even then the Court almost failed to take on the case. All along, the Court's rulings were piecemeal and avoided taking strong stands on controversial constitutional questions. The result was a protracted process that delayed justice for detainees and left important areas of constitutional law murky.

Indeed, the Supreme Court actually denied Boumediene's initial petition for review on April 2, 2007. Then, on June 29, in a highly unusual move, the Court reconsidered and agreed to hear the case. The justices gave no reason for the reversal, but some speculate that they were moved by intervening disclosures concerning the military commissions. In particular, a military officer and lawyer who had been involved in overseeing the tribunals said that the process was flawed and that prosecutors had been pressured to label detainees as enemy combatants.

As much time as it took in these cases, at least the Supreme Court eventually ruled on the merits in Boumediene. The same cannot be said for Supreme Court review, or even substantive appellate review, of President Bush's warrantless wiretapping program. Thus far, only individual judges in the district courts of Michigan and California have been willing to take a strong stand on the Terrorist Surveillance Program.

Like many in the legislature, it appears the courts are reluctant to act. They do not want the responsibility. Only after significant time has passed, and it is relatively safe, do they finally consider such issues on the merits. I have proposed legislation in the past to require expedited review of certain important cases, including the challenges by civil liberties organizations and other plaintiffs to the Terrorist Surveillance Program, and I will do so again in the new Congress.

SIGNING STATEMENTS

Even where Congress manages to negotiate its internal checks and to act decisively against expansions of executive power, presidents have used signing statements that override the legislative language and defy congressional intent.

There was an explosion in the use of signing statements during the Bush administration. The Boston Globe reported in 2006 that President Bush ''has used signing statements to claim the authority to disobey more than 750 statutes—more laws than all previous presidents combined.'' This is Charlie Savage, In Proposed Iran Deal, Bush Might Have to Waive Law: '05 Statute Forbids Providing Reactor, Boston Globe, June 8, 2006.

Two prominent examples make the point. As detailed earlier, I spearheaded the delicate negotiations on the PATRIOT Act Reauthorization which included months of painstaking efforts to balance national security and civil liberties, disrupted by the dramatic disclosure of the Terrorist Surveillance Program. The final version of the bill to reauthorize the PATRIOT Act featured a carefully crafted compromise, which was necessary to secure its passage in 2006. Among other things, it included several oversight provisions designed to ensure that the FBI did not abuse special terrorism-related powers permitting it to make secret demands for business records. President Bush signed the measure into law, only to enter a signing statement insisting that he could withhold from Congress any information required by the oversight provisions if he decided that disclosure would ''impair foreign relations, national security, the deliberative process of the executive, or the performance of the executive's constitutional duties.''

The second example arose in 2005. Congress overwhelmingly passed Senator JOHN MCCAIN's amendment to ban all U.S. personnel from inflicting ''cruel, inhuman or degrading'' treatment on any prisoner held by the United States. There was no ambiguity in Congress's intent; in fact, the Senate approved the proposal 90–9. However, after signing the bill into law, the President quietly issued a signing statement asserting that his administration would construe it ''in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power.''

Many understood this signing statement to undermine the legislation. In a January 4, 2006, article titled ''Bush Could Bypass New Torture Ban: Waiver Right Is Reserved,'' the Boston Globe cited an anonymous ''senior administration official,'' according to whom ''the president intended to reserve the right to use harsher methods in special situations involving national security.''

These signing statements are outrageous, intruding on the Constitution's delegation of ''all legislative powers'' to Congress, but it is even more outrageous that Congress has done nothing to protect its constitutional powers. The legislation I introduced in 2006 would have given Congress standing to challenge the constitutionality of these signing statements, but has until now failed to muster the veto-proof majority it would surely require. The executive branch operates free of such internal dissent. Although JOHN MCCAIN promised to drop signing statements altogether, Barack Obama, while deploring Bush's practice, said during the campaign that ''no one doubts that it is appropriate to use signing statements to protect a president's constitutional prerogatives.''

Here again, the President does not need to convince any colleagues to issue a signing statement, he needs only put pen to paper. Indeed, 2 days after criticizing President Bush's signing statements, President Obama issued one of his own regarding the Omnibus Appropriations Act of 2009. Citing among others his ''commander in chief'' and ''foreign affairs'' powers, he refused to be bound by at least 11 specific provisions of the bill including one longstanding rider to appropriations bills designed to aid congressional oversight. As I told the Wall Street Journal, ''We're having a repeat of what Democrats bitterly complained about under President Bush,'' and if President Obama ''wants to pick a fight, Congress has plenty of authority to retaliate.''

THE TERRORIST SURVEILLANCE PROGRAM—ACT II

Many of the issues surrounding the Terrorist Surveillance Program and executive authority resurfaced in 2008. FISA reform legislation, which began making its way through the Senate in February of last year, included a controversial provision giving retroactive immunity to the telecommunications companies for their alleged cooperation with the Terrorist Surveillance Program.

Throughout, my chief concern was to keep the way to the courts open as a means to check executive excesses. I offered an amendment, both in committee and on the floor, to substitute the U.S. Government for the telephone companies facing lawsuits related to the Terrorist Surveillance Program. Instead of immunity, my amendment would have put the government in the place of the companies, so the cases could go forward without posing a legal threat to the companies themselves.

When this proposal was defeated, I proposed yet another amendment, which would have required a federal district court to determine that the surveillance itself was constitutional before granting immunity. I also cosponsored an amendment that would have delayed the retroactive immunity for the telephone companies until a mandatory inspector general's report on the Terrorist Surveillance Program had been issued.

I tried to impress upon my colleagues the importance of our actions:

> We are dealing here with a matter that is of historic importance. I believe that years from now, historians will look back on this period from 9/11 to the present as the greatest expansion of Executive authority in history—unchecked expansion of authority . . . The Supreme Court of the United States has gone absent without leave on the issue, in my legal opinion. When the Detroit Federal judge found the terrorist surveillance program unconstitutional, it was [reversed] by the Sixth Circuit on a 2-to-1 opinion on grounds of lack of standing. Then the Supreme Court refused to review the case. But

the very formidable dissenting opinion laid out all of the grounds where there was ample basis to grant standing. Now we have Chief Judge Walker declaring the act unconstitutional. The Congress ought to let the courts fulfill their constitutional function. . . . Although I am prepared to stomach this bill, if I must, I am not yet ready to concede that the debate is over. Contrary to the conventional wisdom, I don't believe it is too late to make this bill better.

The date was July 7 and the Senate had just returned from recess, which allowed me to close with a flourish:

Perhaps the Fourth of July holiday will inspire the Senate to exercise its independence from the executive branch now that we have returned to Washington.

Despite my fight to keep the courts open, in the end all my amendments were defeated. Nevertheless, as I said I would, I ultimately voted for the FISA reform bill. I chose not to reject the entire package—which had the support of nearly seventy senators, including both presidential candidates—not only because my classified briefings on the surveillance program convinced me of its value, but also because of the important oversight provisions it imposed on future surveillance programs.

The FISA reform bill required prior court review of the government's procedures for surveillance of foreign targets, except in exigent circumstances. It also required that the Intelligence Court determine whether procedures for foreign targeting satisfy fourth amendment protections against unreasonable searches. In addition, before monitoring U.S. citizens outside the country, it required individualized court orders based on probable cause. Finally, the bill mandated a comprehensive review of the Terrorist Surveillance Program by several inspectors general. Indeed, the final bill had many elements in common with my earliest efforts to place the Terrorist Surveillance Program under FISA—it just took years to get there. And Congress and the courts may yet need to correct its flaws.

A PLAN FOR THE FUTURE

These experiences have crystallized for me the need for Congress and the courts to reassert themselves in our system of checks and balances. The bills I have outlined are important steps in that process. Equally important is vigorous congressional oversight of the executive branch. This oversight must extend well beyond the national security arena, especially as we cede more and more authority over our economy to government officials.''

As for curbing executive branch excesses from within, I hope President Obama lives up to his campaign promise of change. His recent signing statements have not been encouraging. Adding to the feeling of déjà vu is the Washington Post's report that the new administration has reasserted the ''state secrets'' privilege to block lawsuits challenging controversial policies like warrantless wiretapping: ''Obama has not only maintained the Bush administration approach, but [in one such case] the dispute has intensified.'' Government lawyers are now asserting that the trial court lacks authority to compel disclosure of secret documents, and ''warning'' that the government might ''spirit away'' the material before the court can release it to the litigants. This is Carrie Johnson, ''Handling of 'State Secrets' at Issue: Like Predecessor, New Justice Dept. Claiming Privilege,'' The Washington Post, March 25, 2009. As the article notes, I have reintroduced legislation this year with Senators LEAHY and KENNEDY to reform the state secrets privilege. I doubt that the Democratic majority, which was so eager to decry expansions of executive authority under President Bush, will still be as interested in the problem with a Democratic president in office. I will continue the fight whatever happens.

(The further remarks of Mr. SPECTER pertaining to the introduction of S. 875, S. 876 and S. 877 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, I ask unanimous consent that the Senator from Arkansas be given 5 minutes as in morning business and then that we return to me and go back on the bill.

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

The Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I thank the Chair and my friend from Oklahoma. I appreciate the collegiality and certainly his friendship.

HEALTH CARE

I rise today like many Arkansans because I am very troubled about the rising health care costs and the barriers many Arkansans face accessing an affordable and quality health plan. Nearly half a million Arkansans are uninsured, including 66,000 Arkansas children. The cost in both human and financial terms is felt by everybody. That is why, during this work period, I traveled the State on a 2-week tour to ''take the pulse'' of Arkansans and of health care in our communities and across our State. I met with patients, providers, advocacy groups, and all of the other health care professionals in every corner of our State. We discussed the challenges we face delivering and accessing quality and affordable health care in rural Arkansas. It was a wonderful tour, very open. People were frustrated, concerned, and they had good ideas. They were very much interested in being able to help us in Washington move forward on this issue. I felt as if the will, and certainly the desire, was there among Arkansans to fix this problem.

My first stop was in Clinton, AR, located in Van Buren County, where 26 percent of the residents there are uninsured, and many are on Medicare or Medicaid. A local pharmacist raised concerns with the burden of paperwork, regulations, and fees required by CMS for pharmacists to supply medical equipment and supplies. A nurse practitioner talked about ways to fill gaps in our primary care workforce and how it was in areas like that. Others stressed the need to address the preventive health needs in our State, such as smoking cessation and prevention of obesity and related health conditions.

Next, I went to Augusta, AR, in our row cropland, and I heard from Arkansans who said that high-deductible plans are not meeting their needs. As a result, these patients often miss out on very important primary and preventive care because they cannot afford their plans' expensive copays and deductibles; therefore, they end up being more costly to the system without that preventive or primary care because they end up in more acute-care situations.

In Lake Village, AR, on the eastern side of the State, people talked about the need to improve dental coverage within Medicare and in private insurance. I also heard from veterans who are forced to drive long distances to receive care and expressed the real need for more rural VA clinics and not only how much better quality of life it would provide them but the cost savings it could provide as well to the VA and the whole implementation of health care delivery to our veterans.

Across the State in Nashville, AR, I spoke with a provider about the difficulty in recruiting specialists in rural Arkansas. Health technologies, such as remote patient monitoring and mobile imaging, may help to provide special access to those rural areas, where it may not be efficient for each rural community to have a multitude of specialists located in their communities. At least they can serve there and provide their services with equipment that is much needed.

My final stop was in Springdale, northwest Arkansas, close to the Oklahoma border. I heard from seniors who have had trouble finding a provider that will accept Medicare.

We must build our primary care workforce and address reimbursement inequities in these rural areas in order to help Arkansans on Medicare gain access to the care they need. We had a long discussion about the need for more primary care professionals, physicians, and certainly the fact that it is not just the reimbursement, it is also the quality of life in these rural areas. Making sure we can grow our own primary care physicians in these rural areas does an awful lot in making sure we have those providers in the areas who can serve those individuals.

In all of these places, good Arkansas neighbors working to take care of their neighbors were always present, whether it was community health centers, which are working desperately hard to use the money from the recovery package to increase their ability to cover more of the uninsured, or whether it was the nonprofits or religious-based

clinics that were doing a tremendous job partnering with our hospitals to keep people out of the emergency room and getting some of their lab work done by the hospitals but still being able to provide care in those clinics.

So all in all, it was a great opportunity for me. I love traveling Arkansas anyway, visiting with the great people in our State, but it really showed the concerns we talk about here in Washington, and you get to see them face to face.

I think these stories help illustrate how critical it is for residents of Arkansas and other rural areas to have easy, affordable access to health care. I was grateful to meet with so many Arkansans and to be able to share their stories with my colleagues here, and as we move forward in this debate, it makes a big difference. My staff was there, as always, because there are so many issues. Sometimes people don't know where to go. Having our staff be able to talk to them and direct them in those ways is very valuable. Remembering the educational component in health care and how we make sure information is going to be available to people is a critical part of it.

This week, in the Senate Finance Committee, we launched its first of three roundtable discussions in advance of drafting a health care bill. I strongly believe Congress must craft health reform legislation that lowers costs, improves quality, and provides access to coverage for all Americans. I compliment Chairman BAUCUS and Senator GRASSLEY for the great way they have approached this—last year having multiple hearings and coming again this year with more hearings and a roundtable situation. We had a summit last summer. These things have been very beneficial to the debate in a bipartisan way.

From my seat on the Senate Finance Committee, I will work to ensure we have guaranteed coverage for people with preexisting conditions; continuity of coverage for people between jobs, which we see oftentimes and particularly in this economic setting; maintain affordability for people who are privately insured; and have Medicaid eligibility for every uninsured American living in poverty.

Mr. President, one of the things I noticed that was so positive out there with Arkansans is that, although they are frustrated and concerned about where we are going and what we are going to do, their will to do this now is there. The American people feel it is a must-do situation for us in this economy for the quality of life we want to have. I think that in this body we have an opportunity not only to do it but to do it correctly.

We are very proud of the incredible medical professionals who are in this country, folks such as my colleague from Oklahoma, who is tremendous in his own profession as a physician. We are proud of that. We want to make sure we correct the insufficiencies for those individuals and be able to provide the services at a cost people can afford and have an accessibility that leaves nobody out, whether you live in a major city or in a rural area. I believe this is one of the most urgent issues facing our Nation, and it is time for action. We need to move forward on health care reform.

I very much appreciate the opportunity I have had to visit with Arkansans. I look forward to working with my colleagues in the Finance Committee in a bipartisan way to move the health care reform initiative forward, and also with the rest of the Senators here, to come up with a proposal the American people will be proud of. They know it won't be a work of art, necessarily, but a work in progress as we move ourselves from a health care system that has been focused on acute care into something that is certainly more focused on chronic conditions, multiple chronic conditions, and making sure we make those manageable using preventive health care and certainly the primary care that will keep us healthier longer.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BROWN. Madam President, I ask unanimous consent to speak as in morning business.

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

TRADE POLICY

Mr. BROWN. Madam President, I have heard lots of discussion in the newspapers in the last 48 hours or so, that there is a move afoot to begin to continue to bring legislation to the House and Senate floors to continue Bush trade policy. There have been statements by some in both parties that we might consider passing the trade agreement, the so-called free trade agreement with Panama, the free trade agreement with Colombia, and the free trade agreement with South Korea.

I think that is a mistake. When you look at what has happened in States such as Ohio, and particularly in a State like that of the Presiding Officer—in Buffalo and Rochester and Syracuse and the upstate cities in her State, you can see the kind of incredible job loss, not only from this most recent recession since October but look at the job loss in manufacturing that we have seen through the entire Bush years while this Government has moved forward on Bush trade policies.

Look at the original North American Free Trade Agreement negotiated by the first President Bush, unfortunately the finishing touches put on by President Clinton, and then the Central American Trade Agreement passed by the House and Senate in the midpart of this decade, and now considering again trade agreements negotiated by Bush trade negotiators with Panama, Colombia, and South Korea. Unfortunately what we have seen is a huge spike—more than a spike because it is more long term and fundamental than that—we see the huge growth in our trade deficit. We have today a trade deficit of $2 billion just for today, and $2 billion for tomorrow, and $2 billion for Saturday, and $2 billion for Sunday. Every day it's a $2 billion trade deficit. George Bush the first said a $1 billion surplus or deficit translates into some 13,000 jobs, so a trade deficit of $2 billion, according to President Bush the first, translates into 26,000 lost jobs; a $2 billion trade surplus would be 26,000 gained jobs. In this country, we haven't seen a trade surplus since 1973. What that says is this trade policy leads to persistent trade deficits. This trade policy leads to persistent job loss. And this trade policy leads to families who are hurt and communities which are destroyed.

I can take you to lot of places in my State and you can look at the havoc wreaked by U.S. trade policy. I do not blame all of manufacture's decline, all of job loss, on trade policy, to be sure. But there is no question when you have a $2 billion-a-day trade deficit over the course of a year, between $700 and $800 billion trade deficit for a year, you know that is a problem.

My point is not to debate trade policy today. It is only to say to the administration and my friends on both sides of the aisle and the crowd at the end of the hall here in the House of Representatives, we should not be bringing up more trade agreements until we look at what our trade policy does. I can point not just to job loss; I can also point to what happened as an outgrowth of the Permanent Normal Trade Relations with China, our trade policy with China, when I believe seven people in Toledo, OH, and dozens around the country died from the taking of the blood thinner heparin, ingredients of which came from China and those ingredients were contaminated. Or you can look at toys. In an experiment, a class assignment by Professor Jeff Weidenheimer at Ashland University, not far from where I grew up, he sent out first-year chemistry students to stores to buy toys at Halloween and Christmas and Easter and found lead-based paint, which is toxic for children, on many of these toys, again coming from China—United States corporations outsourcing jobs, then hiring subcontractors in China. So we are not just importing goods, we are also importing lead-based paint, also importing contaminated ingredients in heparin, also in vitamins, in dog food and other products.

My point is let's do a dispassionate, nonideological, nonpartisan study before we do more trade agreements.

Let's do a nonpartisan, nonideological, unbiased study of how NAFTA has worked, how CAFTA has worked, how our relations with China with PNTR and currency, how all that has worked before we move ahead.

In these turbulent economic times, first, we have plenty to do, on health care, education, climate change, housing, particularly on the banking system, and all of that. We have plenty to do, but that is not even the point. The point is before we do more trade agreements, let's look at how they worked. Let's look at what has happened, especially rather than following the Bush trade agenda which we know simply has not served this country well.

I yield the floor.

I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

Mrs. MCCASKILL. Madam President, once upon a time, someone had a good idea about trying to open the mortgage market to as many people as possible. Between that moment and now, we have seen a giant economic crisis that has mushroomed out of control. We have sat around for months now trying to figure out how did it happen and why did it happen.

One of the reasons it happened is, using common sense, we said to people: You can go make money by talking people into borrowing money, and you do not have to worry about whether they pay it back. Let me go through that one more time. We said to a market, the mortgage market: If you go talk people into borrowing more money than they can afford, it does not matter if they can pay it back, you do not need to worry about that because you are going to make your money anyway.

In other words, the people closing their loans had no skin in the game. They were not a partner to the risk. So that is how we got people qualifying for loans by wearing a special costume and photograph. That is how you got these ''liars loans.'' They were called ''liars loans.'' Everybody knew people were lying to get these loans, but no one was doing anything about it because the people who were making the loans were making the money and had no risk.

You would think with this occurring, we would now be on hyper alert for the exact same set of circumstances, but we are not. Because it is going on today as we speak. If you turn on any cable channel almost anywhere in America, before midnight you are going to see an ad that says to seniors: You need to take advantage of a great Government program, a Government benefit. You can be paid cash for the value of your house without any risk. They are called reverse mortgages.

It is a type of home loan that converts the value in your home you have acquired over a lifetime and converts it to cash. Now, in and of itself, this is not a bad concept. People ought to be able to borrow against the value of their homes. We do it with home equity loans.

Here is the problem. We have the people closing these loans who have no skin in the game. Guess who is insuring all these loans. We are. The taxpayers. There is no risk to those people paying for those ads on cable TV, no risk. Reward. No risk. We are taking the risk.

If, in fact, the housing markets go down and the value of someone's property goes down and it is time for that loan, the value of that loan to be recovered when the house is sold, if it does not sell for enough money, guess who is left holding the bag.

Hello. Subprime mortgages chapter two. We are back. We have the same issue we had with the subprime. Since we began this program in 1990, HUD has endorsed and insured 500,000 loans. But, wait, we took the cap off it recently. We anticipate that HUD will, in fact, insure 200,000 of these loans this year alone. We have done 500,000 loans since 1990, and we are going to do 200,000 loans this year. We are talking about a huge growth in the potential liability to the American taxpayer.

These are complex and expensive loans. For many elderly, the equity they have in their home is it. With the economic circumstances we have right now, there is going to be a lot of pressure on the elderly to enter into one of these reverse mortgages, maybe to help other family members who have lost a job.

It is important we fix this program. It is embarrassing that we let the subprime mess go for as long as we did, without anybody saying: Whoa, hold on. It will be doubly embarrassing if we allow this reverse mortgage situation to go down the exact same path.

With these loans, as they increase dramatically in number and value, we are also seeing an increase in fraud. The HUD inspector general has been working in the reverse mortgage field, and all the other inspectors general in our country have done a great job of beginning to find problems of a specific nature as it relates to fraud.

Some of it is where we have inflated appraisals. Some of it is where you have shoddy repairs being done, which decrease the value of the home, which increase the risk to the taxpayer. Some of it is people continuing to collect the proceeds on the home past the time they should, past perhaps the death or the moving out of the senior who did the loan in the first place.

Why is the fraud increasing? I have a theory why the fraud is increasing. All the bad actors over there in subprime, they are looking for a new stream of money so they are all sliding over and saying: Hey, let us start making these reverse mortgages to seniors.

OK. We have to do something about this now. I filed an amendment to the legislation that is in front of the Senate that will do some important things in terms of fraud prevention and detection and enforcement provisions: We are going to require the borrower to certify they reside in the property; to report the termination of the residence to HUD; require that in the case of a property that is purchased with the proceeds of a reverse mortgage, the property is owned and occupied for at least 180 days, so we do not have the flipping we have seen in the subprime market; require these properties be appraised by certified appraisers, HUD-certified appraisers; we have to verify the purchase price to ensure the appraised value is not inflated and make sure the appraised value is not too high in relation to comparable properties—you can imagine how important this is right now since our housing market values are in such flux—to require the counselors to report suspected fraud or abuse to HUD's inspector general and to inform prospective borrowers how they can report suspected fraud and consumer abuse; require that the lenders and consumers maintain a system to ensure compliance; explicitly state that the HUD inspector general has the authority to conduct independent audits and inspections of the lender.

Would it not have been nice had we done that back when we started having the problems with subprimes? Conduct independent audits and inspections of reverse mortgage lenders to make sure they are in compliance with the requirements; and to compare the reverse borrower's record against the Social Security's death master file for early indications for when payouts should end because payouts under these reverse mortgages stop at the death of the recipient of the reverse mortgage; provide that any limitation on when criminal charges can be brought against fraud perpetrators in this area be calculated on when we find out about the criminal activity, not when it occurred. Because, in many instances, we may not find out about the fraud until the elderly person dies, and then they find out that maybe they thought they still had value in their home, but they were lied to.

This is an important one: Provide that advertising for reverse mortgages cannot be false or misleading and must present a fair and balanced portrayal of the risks and the benefits of the product.

The fraud is the first step. Going after fraud is the first step, but we have to do more. It is very important that we protect our seniors from predatory lenders. When you see these ads on TV, it sounds too good to be true. ''Government benefit,'' ''No risk.'' But there is a huge risk. There is a risk of a senior paying more than they should for a product that does not work for them and a very big risk for the taxpayers of this country.

I look forward to working with the Senate Judiciary and Banking Committees as well as HUD and the HUD inspector general and GAO to get the things done we must do to clean up this problem. If we do not learn from our mistakes, we are doomed to repeat them. I urge all my colleagues to become knowledgeable about this reverse mortgage area, get word to their constituents to be careful about these reverse mortgages. They are very dangerous.

At the end of the day, if someone is making money off you and they do not care whether you can pay it back, it is a dangerous combination.

The ACTING PRESIDENT pro tempore. The senior Senator from Vermont.

Mr. LEAHY. Madam President, I wish to thank the Senator from Missouri for her statement. I hope people listen to what she had to say because it is a warning to many. Again, I would reiterate that one of the reasons we are trying to move this fraud bill through, everybody will be against fraud and everybody is against crime, but as the Senator from Missouri knows so well, you have to have some laws on the book to go after fraud and go after crime. I wish to speak further on that, but I see my dear friend and distinguished colleague from Vermont on the floor.

I will yield the floor so he can also speak on a matter.

The ACTING PRESIDENT pro tempore. The junior Senator from Vermont.

Mr. SANDERS. I thank my colleague from Vermont. I wish to congratulate him for bringing forth a very important piece of legislation.

Clearly, if we are going to begin to address the crisis in our financial institutions, we need the manpower to go out there and do the investigations. We do not have it and this legislation does that.

I wished to say a few words in the midst of this debate on an issue. I am not bringing forth an amendment, but I did wish to say a few words on that; that is, in my office—I suspect in every Senate office—we are being deluged with e-mails and letters and telephone calls expressing outrage at the high interest rates people all across this country are being forced to pay by these very same financial institutions we are in the process of bailing out.

What is going on now is that while we spend hundreds of billions of dollars bailing out our friends on Wall Street, and while they receive zero interest loans from the Fed, what they are saying to the American people is: Thanks very much for the bailout. We are going to raise your interest rates from 15 to 20, to 25, to 30 percent. Pure and simply, that is called usury within Biblical terms. In fact, that is immoral. That is the type of action we should be eliminating right now.

I have introduced legislation which is very similar to the type of legislation that regulates credit unions right now. We would have a maximum interest rate of 15 percent, with some exceptions going to 18 percent, so the American people who are now on under great financial stress, who are buying groceries with their credit cards, who are buying clothes for their kids with credit cards, who are paying for college expenses with their credit cards, are not forced to pay 25 or 30 percent interest rates.

What I would like to do, rather than relate what I believe, is read a few of the e-mails I have received from the constituents. We are receiving a lot of them. Let me read one that comes from the northern part of our State. It says:

I, like so many others, am appalled at the hikes in credit card rates. Everywhere in our small town of Montgomery everybody is talking about the latest surge in interest rates. People who are never late in payments have seen their rates climb overnight. I, for one, used to overpay on my payments but can't afford to now. In addition, I am a founding member of a small agricultural co-op and we have a shop and studio. Today we found out that the charge for using credit cards has increased. How are people supposed to buy things when small businesses can't afford to process credit cards and people can't afford the interest rates if they use cards? No one has any money for anything anymore. The outrage, which I am sure doesn't surprise you, is building. Doesn't anyone get it?

Well, doesn't anyone in the Senate get it? I hope we do.

Here is another one that comes from the largest city in our State, Burlington:

I signed up with MBNA (at the time) for a credit card with an interest rate of 7.9 for the life of the credit card (as long as I adhered to terms such as paying on time, not going over limit, etc.) I received a notice yesterday that the interest rate is going to 13% on May 1. I called them and they said it had nothing to do with my credit. Bank of America, due to the economic situation, is raising its rates ''for business reasons only.'' One option they gave me is to pay down my balance at 7.9 but not use it on any future purchases. I now appreciate more than ever your fight against this sort of action. Basically they can do whatever they want.

That is quite right. They can do whatever they want.

Another one:

Dear Senator Sanders, we just received a note from Bank of America in which they tell us that they are raising our credit rate: 15.74 percent on new and outstanding purchases . . . using a variable rate formula. I know you have been working on a cap for credit cards and are very concerned about big banks profiting so highly at the expense of consumers.

Here is another one:

Senator Sanders, there is a lot of news this week on how the credit card companies are trying to recoup their losses by raising interest rates on our credit cards. That is what my husband and I have just experienced. Two months ago I ran my husband's credit report, and between three credit bureaus we ranked around a 800 credit score. We have never been late on a payment and have been married 41 years.

Then she talks about the impact these high credit rates are going to have on her.

Another one:

Dear Bernie, yesterday in the mail I received notification from Bank of America that they were hiking up the interest on my Visa card from 7% to over 12%. This seems arbitrary and in a time when I am extremely worried about my ability to pay my bills because my workload has gone way down. I am furious and scared.

The bottom line is, I am receiving dozens of e-mails from people in my State and from all over the country. They want to see whether the Congress has the guts to stand up to the financial institutions which have poured $5 billion in lobbying and campaign contributions into Washington in the last 10 years.

What the American people are saying is that 30-percent interest rates—arbitrary and huge increases in interest rates for people who have always paid their bills on time—is not only unfair, it is immoral. People should not have to pay 30 percent to borrow money in the United States.

I hope very much the time will come, sooner rather than later, when we will pass a national usury law that will put a cap on interest rates for large financial institutions similar to what exists for credit unions, which is 15 percent with some exceptions.

I yield the floor and look forward to working with the senior Senator from Vermont in passing this legislation.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Madam President, with the vote and disposition of the Kyl amendment today and the Kyl amendment and the Leahy-Grassley amendment yesterday, we have basically completed work on the underlying bill. Those were the only amendments that affected the underlying bipartisan fraud enforcement bill. A number of other amendments have come in, but they, of course, have nothing to do with this bill. They are not within the jurisdiction of the Judiciary Committee. They are, in large part, extraneous to the fraud enforcement bill. Many if not all are within the jurisdiction of the Banking Committee. I haven't seen one yet that should be in Agriculture, but hope springs eternal. Today, a Senator offered an amendment drawn from the HELP Committee jurisdiction. In a way, it is a compliment that so few people have suggested changes that they wanted to make to the Judiciary Committee bill. I guess Senators are anxious in case they are not around here next week when we have a Banking bill.

I would like to conclude consideration of the bill that actually is before the Senate. We will soon have a list of

amendments on which both sides will agree to have votes. I don't think any of them really have anything to do with the Judiciary bill, but every Senator has a right to offer whatever amendments he or she wants, whether germane to the bill or not, and to get a vote on them. If they are all going to require rollcall votes, we should be done certainly sometime before midnight. Then we can pick up the next piece of legislation, which I understand we should have done by Saturday. Of course, the only amendments really involving this bill could have been done yesterday. We could have finished this bill yesterday.

I would like to speak briefly about the bipartisan Fraud Enforcement and Recovery Act. This bill has received overwhelming support. Almost everyone recognizes the importance of strengthening the Federal Government's capacity to investigate and prosecute the kinds of financial frauds that have undermined our economy. The legislation has strong bipartisan support. I applaud Senator GRASSLEY, who is the lead cosponsor. He worked with me to write this bill. He has been a leader on this issue.

Senators SPECTER and SNOWE have joined as cosponsors. Many different law enforcement and good government organizations are supporting this bill as well, including the Fraternal Order of Police, the Federal Law Enforcement Officers Association, the National Association of Assistant United States Attorneys, the Association of Certified Tax Examiners, and Taxpayers Against Fraud.

Now let me address the authorizations in the bill. I have rarely seen such detailed justification with regard to an authorization. I mention this because this is not an appropriations bill. It is authorizing legislation. It still has to go through the appropriations process. Every agency authorized to receive money in the bill has set out in detail exactly what it would do with that money if it is authorized and appropriated. The detail includes the number of agents, prosecutors, and other key personnel who would be hired, and each agency has explained why the added resources are needed. Those detailed justifications have been shared with anyone interested in reviewing them.

In total, the bill authorizes $245 million a year over the next 2 years to hire more than 300 Federal agents, more than 200 prosecutors, and another 200 forensic analysts and support staff to rebuild our Nation's fraud enforcement efforts. We have broken those numbers down agency by agency.

These resources for additional agents, analysts, and prosecutors are desperately needed. The number of fraud cases is now skyrocketing, but resources were shifted away from fraud investigations after 9/11. Today, the ranks of fraud investigators and prosecutors are drastically understocked, and thousands of fraud allegations go unexamined each month.

Reports of mortgage fraud are up nearly 50 percent from a year ago and have increased tenfold over the past 7 years. In the last 3 years, the number of criminal mortgage fraud investigations opened by the Federal Bureau of Investigation, FBI, has more than doubled, and the FBI anticipates that number may double yet again. Despite this increase, the FBI currently has fewer than 250 special agents nationwide assigned to financial fraud cases, which is only a quarter of the number the Bureau had more than a decade ago at the time of the savings and loan crisis. At current levels, the FBI cannot even begin to investigate the more than 5000 mortgage fraud allegations the Treasury Department refers each month. Other agencies have documented similar crises in their ability to keep up with the rising pace of new cases.

We all know that fraud enforcement simply can't be adequately covered with funds allocated in the recently passed recovery legislation for State and local law enforcement. As someone who pushed strongly for recovery legislation that included State and local law enforcement, I know the purpose behind those funds and what they are dedicated to. It is intended to ensure that State and local law enforcement agencies and crime prevention programs could avoid layoffs, make new hires, and reinforce their work to prevent the increased crime so often associated with economic downturns. In so doing, these funds would reinforce and revitalize those neighborhoods that have experienced economic development and that could so easily backslide. State and local law enforcement fund are urgently needed for those vital purposes. They should not be diverted from State and local law enforcement needs to fund Federal fraud investigations.

Moreover, while states have done admirable work cracking down on mortgage fraud, the Federal Government must play a substantial role in this area. Mortgage fraud schemes and other financial fraud schemes often cover many States and jurisdictions, which hampers the ability of any State or local investigators and prosecutors to reach them. These schemes also are often extremely complex and labor-intensive to unravel, requiring the expertise and resources of the Federal Government and the mortgage fraud task forces in which Federal and State law enforcement officers work closely together. We simply cannot ask States to solve this enormous and complex problem on their own. I believe that we need to be good law enforcement partners and that the Federal Government needs to do its share. To fulfill those responsibilities these additional funds need to be authorized.

I agree that the $10 million in additional funding to the FBI for mortgage fraud enforcement in the omnibus appropriations bill is a good start, but it is just a small start to what is needed. I wish the economic recovery had been able to include an additional $50 million for the FBI that the Senate initially was willing to include, but that additional funding was stripped away. Unfortunately, to achieve bipartisan support and passage of the economic recovery package, those funds were eliminated. The funds currently being provided are insufficient to tackle the magnitude of this problem. I refer all Senators to the testimony before the Judiciary Committee by the Director of the FBI and the Deputy Director of the FBI and to the detailed justifications the FBI and other law enforcement agencies have provided.

I believe authorizing and funding fraud enforcement will save the government money. That is what the Justice Department has found. That is what Taxpayers Against Fraud has found. That is what the administration indicates in its Statement of Administration Policy in strong support of this bill. As the administration says: ''These additional resources will provide a return on investment through additional fines, penalties, restitution, damages, and forfeitures.'' I would add that strong fraud enforcement will also save money by deterring fraudulent conduct.

According to recent data provided by the Justice Department, the government recovers on average $32 for every dollar spent on criminal fraud litigation. Similarly, the nonpartisan group Taxpayers Against Fraud has found that the Government recovers $15 for every dollar spent in civil fraud cases. Just last year, the Justice Department recovered nearly $2 billion in civil false claims settlements, and, in criminal cases, courts ordered nearly $3 billion in restitution and forfeiture. Strengthening criminal and civil fraud enforcement is a sound investment, and this legislation will not only pay for itself, but should bring in money for the Federal Government.

If fraud goes unprosecuted and unpunished, then victims across America lose money. In many cases, American taxpayers take the loss directly. For example, in the case of many mortgage frauds, the Federal Government has guaranteed the loans, and when the fraud is uncovered, American taxpayers, as well as the victim, lose out. More directly, with the billions of dollars of Federal funds now going out through the recovery legislation, the Troubled Assets Relief Program, and other bailout programs, we should all recognize that enforcement will be essential to protect those recovery funds from fraud and to recover any money that is fraudulently taken. If we do not take action to investigate and prosecute this kind of fraud, Americans will lose far more money than this bill costs.

The only organizations that have opposed this legislation are the Heritage Foundation and the National Association of Criminal Defense Lawyers. They have argued that the legal fixes

in this bill constitute overreaching by the Federal Government. In fact, this bill does not overfederalize or overcriminalize.

Senator GRASSLEY and I took great care in crafting it to avoid those kinds of excesses. The bill creates no new statutes and no new sentences. Instead, it focuses on modernizing existing statutes to reach unregulated conduct and on addressing flawed court decisions interpreting those laws. This is exactly the kind of Federal criminal legislation that these critics should appreciate. Rather than gratuitously adding new laws or expanding Federal jurisdiction, it acts in a targeted way to fill in gaps identified by investigators and prosecutors to make it easier for them to reach the conduct most relevant to the current financial crisis.

The bill amends the definition of ''financial institution'' in the criminal code in order to extend Federal fraud laws to mortgage lending businesses that are not directly regulated or insured by the Federal Government. These companies were responsible for nearly half the residential mortgage market before the economic collapse, yet they remain largely unregulated and outside the scope of traditional Federal fraud statutes. This change will finally apply the Federal fraud laws to private mortgage businesses like Countrywide Home Loans and GMAC Mortgage.

The bill would also amend the major fraud statute to protect funds expended under the Troubled Assets Relief Program and the economic stimulus package, including any government purchases of preferred stock in financial institutions. The U.S. Government has provided extraordinary economic support to our banking system, and we need to make sure that none of those funds are subject to fraud or abuse. This change will give Federal prosecutors and investigators the explicit authority they need to protect taxpayer funds.

This bill will also strengthen one of the core offenses in so many fraud cases—money laundering—which was significantly weakened by a recent Supreme Court case. In United States v. Santos, the Supreme Court misinterpreted the money laundering statutes, limiting their scope to only the ''profits'' of crimes, rather than the ''proceeds'' of the offenses. The Court's mistaken decision was contrary to congressional intent and will lead to financial criminals escaping culpability simply by claiming their illegal scams did not make a profit. Indeed, Ponzi schemes like the $65 billion fraud perpetrated by Bernard Madoff, which by definition turn no profit, are exempt from money laundering charges under this formulation. This erroneous decision must be corrected immediately, as dozens of money laundering cases have already been dismissed.

None of these changes constitute overcriminalization. Rather, they reach fraudulent conduct at the center of our ongoing economic crisis. Americans are rightly demanding accountability for this fraud, and we cannot have full accountability without the participation of Federal investigators and prosecutors armed with the tools and resources they need.

We can delay no further in taking decisive action to strengthen fraud enforcement and doing everything we can to fight the scourge of fraud that has contributed to our economic crisis. There is simply no good reason for us not to act. The administration ''strongly supports enactment'' of this bill. The Justice Department supports it, the FBI supports it, the Secret Service supports it, the TARP inspector general supports it, the HUD inspector general supports it, Federal and State law enforcement officers support it.

The bottom line, Madam President—before I lose my voice entirely—is, this legislation is to stop people who have been robbing the retirement savings of Americans, who have been robbing their homes from under them, who have been robbing the money they have set aside for their kids' college education and getting away with it under some of the elaborate mortgage fraud schemes. They get away with it because there is no real ability to go after them. There is neither the money nor the personnel. This legislation gives both money and personnel but also gives teeth to the law.

I have said on this floor several times, if you have somebody who sets up a $100 million fraud scheme, they do not care what happens to the people in their way. They do not care if they ruin the lives of the people they are going after. They do not care if the people lose their homes because they figure if they get caught, they might have to give a little bit of the money back in a fine or otherwise. They are not deterred. They, obviously, do not have a sense of conscience or morality. They do not care if people lose their life savings. They do not care if people lose their retirement. They do not care if people lose their hope for the future. All they want is the money.

Madam President, I tell you right now, if these same people think they are going to go to prison for what they are doing, if they think they will spend time behind bars for years and years, then maybe—maybe—some Americans may be able to keep their homes, some Americans may be able to keep their dreams, some Americans may be able to keep their retirement, some Americans may be able to keep sending their children to college.

People are now losing that dream. That is why there is strong bipartisan support for this bill. That is why I must admit I am somewhat frustrated that many have come here to try to bring amendments that have absolutely no place in this bill, and, if anything, would slow up the ability to protect Americans. But they have the right to do this.

We will soon have a list of amendments, we will set the list in, and we will set a time for final passage. And maybe—maybe—within a few weeks the President will be able to sign this legislation and people will be a lot more protected than they are now.

Madam President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1000

Mrs. BOXER. Madam President, I ask unanimous consent that amendment No. 1000 be the pending business so I might modify it.

The ACTING PRESIDENT pro tempore. Is there an objection?

Without objection, it is so ordered.

AMENDMENT NO. 1000, AS MODIFIED

Mrs. BOXER. Madam President, I ask that my amendment be modified with the changes that are already at the desk and ask unanimous consent that Senators WEBB and WYDEN be added as cosponsors of the amendment.

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

The amendment is so modified.

The amendment, as modified, is as follows:

On page 20, between lines 11 and 12, insert the following:

''(e) ADDITIONAL FUNDING FOR THE SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM.—

''(1) IN GENERAL.—Of the amounts of authority made available pursuant to section 115(a) of the Emergency Economic Stabilization Act of 2008 (P.L. 110–343), an additional $15,000,000 shall be made available to the Special Inspector General of the Troubled Asset Relief Program (in this subsection referred to as the Special Inspector General).

''(2) PRIORITIES.—In utilizing funds made available under this subsection, the Special Inspector General shall prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made by the Secretary of the Treasury or the Board of Governors of the Federal Reserve System, to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. Such audits or investigations shall determine the existence of any collusion between the loan recipient and the seller or originator of the asset used as loan collateral, or any other conflict of interest that may have led the loan recipient to deliberately overstate the value of the asset used as loan collateral.''.

Mrs. BOXER. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

Ms. SNOWE. Mr. President, I rise today to express my strong support for the Fraud Enforcement and Recovery Act of 2009 currently before the Senate. This legislation, which is long overdue, will take critical strides toward enabling the Justice Department and Federal Bureau of Investigation to investigate and prosecute the mortgage and securities fraud that have played such a large role in bringing our economy to the brink of collapse. I would like to commend Senators LEAHY, GRASSLEY, and KAUFMAN for introducing this bill that I am proud to cosponsor and hope that the Senate will pass it as quickly as possible.

The fact is that the current recession stands apart from others we have experienced since the end of World War II, and not just because it is the longest and deepest. Although many downturns are the result of a decline in the business cycle, this recession was in significant part brought about by two factors that could well have been avoided had mortgage brokers and their associates and financiers set aside greed and outsized profits in favor of responsible lending, financial practices, and sustainable, but nonetheless healthy, rates of return.

First, during the most recent housing boom, as are all aware, many homebuyers were placed into predatory, subprime loans that they could not be reasonably expected to repay. Indeed, while unscrupulous lenders, including private mortgage brokers and lending businesses that were not subject to the type of oversight and regulations that have traditionally prevented fraud, profited from a quick short-term fee in exchange for underwriting an irresponsible mortgage with little due diligence, homebuyers were left with loans that began with low interest rates and affordable payment but that morphed into significantly higher interest rates and payments. In other cases, the New York Times has reported that circles of appraisers delivered inflated appraisals on demand, while lawyers paid by the seller, but holding themselves out as representing the buyer, and mortgage brokers conspired to persuade buyers to take on overpriced and often dilapidated homes. And the scams continue to this day. The Times reports that deed thieves are currently approaching distressed owners and offering to ameliorate financial difficulties by temporarily taking over deeds. Then they refinance and flee with the owners' equity in tow.

The result of the fraudulent loans and scams has been nothing short of a disaster that has devastated communities nationwide. RealtyTrac, the leading online marketplace for foreclosure properties, in January reported that Americans received 3.2 million foreclosure filings on 2.3 million properties during 2008. That represents a staggering 81-percent increase in total properties from 2007 and a 225 percent increase in total properties from 2006.

Unfortunately, mortgage brokers and related parties are not solely to blame for the economic calamity that has befallen the nation. Large Wall Street investment banks thought they saw a profit opportunity and decided to package and sell risky subprime mortgages in largely unregulated markets. They believed that they could reduce risk by placing mortgage securities into such bundles but were in many cases dishonest with themselves and investors about the potential for losses. Although paper profits soared so long as housing prices increased, once they began to tumble, the value of these securities did as well.

It is now estimated that in the past year, U.S. banks and financial institutions lost more than $500 billion as a result of their investments in subprime mortgages. Some of this Nation's most recognizable companies, including Bear Stearns and Lehman Brothers have been wiped away due to collapse of the mortgage-backed securities market, while Fannie Mae and Freddie Mac have been taken over by the Federal Government.

While other financial institutions have not shuttered their doors, they have absorbed significant losses. This has caused banks to all but cease to lend, which has led to untold difficulties for businesses and individuals seeking credit. Consumers could not obtain car and student loans, and business owners, and small business owners in particular, could not acquire capital to expand operations or, in many cases, make payroll. In short, the staggering 5.1 million job losses we have witnessed since the onset of the recession in December 2007 are in large part attributable to the collapse of housing and financial markets.

To ameliorate the situation, Congress was last October forced to pass the $700 billion Emergency Economic Stabilization Act that created the Troubled Asset Relief Program, TARP, to rescue financial markets. Combined with other actions taken by the Federal Reserve Board, Federal Deposit Insurance Corporation, and the Treasury Department, the Congressional Oversight Panel on April 7 reported that the total value of all direct spending, loans and guarantees provided in conjunction with the federal government's financial stability efforts now exceeds $4 trillion. In addition to this unprecedented exposure, Congress also passed the $787 billion American Recovery and Reinvestment Act in February to assist those displaced by the recession and sow the seeds for recovery.

Notably, as Congress passed the $700 billion financial rescue package last October, I insisted that our obligation did not stop with the enactment of that legislation. Indeed, I called on Congress to demand accountability for the massive malfeasance that has been perpetrated on the American people and specifically made the point that those responsible for our Nation's economic meltdown must be investigated and subsequently prosecuted to the fullest extent of the law. Frankly, it would be inconceivable to me to devote anything less than 100 percent of our resources to investigating those responsible for this crisis.

It is for these reasons that on February 25, I, joined by Senator WHITEHOUSE, introduced the FBI Priorities Act of 2009, S. 481, to augment FBI investigations of financial crimes. Turning to specifics, this bill authorizes $150 million for each of the fiscal years 2010 through 2014 to fund approximately 1,000 Federal Bureau of Investigation field agents in addition to the number of field agents serving on the date of enactment. This extra manpower will help enable the FBI to develop and fully investigate, as well as bring responsible parties to justice.

There is simply no question that this additional manpower is an absolute necessity to combat fraud given rising caseloads and a wholly inadequate level of resources. Consider the following facts: In the last 6 years, suspicious activity reports alleging mortgage fraud that have been filed with the Treasury Department have increased nearly tenfold to 62,000 in 2008. In the last 3 years, the number of criminal mortgage fraud investigations opened up by the FBI has more than doubled to exceed 1,800 at the end of 2008. Moreover, the FBI anticipates a new wave of cases that could double that number yet again in coming years. Finally, despite increases in caseloads, the FBI currently has fewer than 250 special agents nationwide assigned to these financial fraud cases. At current levels, these agents cannot individually review, much less thoroughly investigate, the more than 5,000 fraud allegations received by the Treasury Department each month.

Although the details of the legislation I have introduced differ from those in the measure currently before the Senate, I believe the impact on the government's ability to root out and prosecute fraud would be similar. In particular, the legislation now under consideration authorizes $165 million a year for hiring fraud prosecutors and investigators at the Justice Department in 2010 and 2011. This includes $75 million in 2010 and $65 million in 2011 for the FBI to hire 190 additional special agents and more than 200 professional staff and forensic analysts to nearly double the size of its mortgage and financial fraud program. With this funding, the FBI can expand the number of its mortgage fraud task forces nationwide from 26 to more than 50.

Notably, the funding authorized in the bill also includes $50 million a year for U.S. Attorneys' Offices to staff those fraud task forces and $40 million for the criminal, civil, and tax divisions at the Justice Department to provide special litigation and investigative support in those efforts. In addition, the bill authorizes $80 million a year for 2010 and 2011 for investigators and analysts at the U.S. Postal Inspection Service, the U.S. Secret Service, and the Department of Housing and

Urban Development's Office of Inspector General to combat fraud in Federal assistance programs and financial institutions.

In addition to adding critical funds necessary to identify and prosecute fraud, this legislation makes several vital improvements to fraud and money laundering statutes to strengthen prosecutors' ability to combat a growing wave of fraud. Specifically, the bill amends the definition of ''financial institution'' in the criminal code to extend Federal fraud law to mortgage lending businesses that are not directly regulated or insured by the Federal Government. Responsible for nearly half the residential mortgage market prior to the economic collapse, these companies inexplicably remain largely unregulated and outside the scope of traditional Federal fraud statutes. This provision would apply the Federal fraud laws to private mortgage businesses, just as they pertain to federally insured and regulated banks.

Furthermore, this legislation amends the false statements in mortgage applications statute to make it a crime to make a materially false statement or to willfully overvalue a property to influence any action by a mortgage lending business. Currently, these strictures apply only to Federal agencies, banks, and credit associations and do not necessarily extend to private mortgage lending businesses. This provision would ensure that private mortgage brokers and companies are held fully accountable under this Federal fraud provision.

Finally, I would like to point out that this bill would modify Federal law to protect funds expended under TARP and the economic stimulus package. Specifically, the legislation would amend the Federal major fraud statute to include funds flowing pursuant to TARP and the stimulus package. The change will give Federal prosecutors and investigators the explicit authority they require to protect taxpayer funds, which could not be more critical with $4 trillion at risk as part of TARP and related programs and $787 billion at stake as part of the stimulus package. It is absolutely vital that every dollar we have put at stake go toward economic stabilization and revitalization and not to line the pockets of those who seek to defraud taxpayers.

Mr. FEINGOLD. Mr. President, I will vote for the Fraud Enforcement and Recovery Act of 2009, S. 386. This bill improves enforcement and recovery mechanisms for mortgage, securities, financial institution and other frauds. In the context of today's global financial crisis, it is a very important piece of legislation, and I commend its authors.

The current economic downturn has many causes. But certainly fraud—in mortgage lending and in the mortgage-backed securities and derivatives markets—played a significant role. The Fraud Enforcement and Recovery Act of 2009 does a number of things to help deter and uncover fraud, and compensate its victims. First, it authorizes significant new resources for the FBI, the Department of Justice, the Department of Housing and Urban Development, and other agencies to investigate and prosecute these kinds of cases.

In addition, the bill extends Federal fraud laws to the mortgage lending business, just as they apply to federally insured banks. Similarly, it makes sure that Federal prohibitions against false statements apply to statements made to influence mortgage lending decisions. Very importantly, because the taxpayers have now put extraordinary sums of money into propping up the financial sector, the bill makes clear that fraudulent activities in connection with the TARP program and the economic stimulus package can be prosecuted. The bill also reverses an erroneous Supreme Court interpretation of the Federal money laundering statute that was making it impossible to prosecute so-called Ponzi schemes. These simple and effective clarifications and expansions of current law will help protect the American people from these very damaging frauds.

I also strongly support Section 4 of the bill, which amends the False Claims Act—FCA. The FCA provisions clarify liability for making false or fraudulent claims to the federal government. A few concerns have been raised about this part of the legislation, which I would like to briefly address here.

One criticism is aimed at the bill's rejection of an ''intent'' requirement under the FCA. The Supreme Court recently held in the Allison Engine case that such a requirement exists. The bill simply returns the law to its original intent. The judicially manufactured requirement that the person making a false claim intend that the government itself pay the claim was giving subcontractors a way to avoid liability for fraud, which is inconsistent with the purpose of the act.

Another criticism alleges that the addition of a ''materiality'' requirement to the FCA is potentially broad and unclear. But ''material'' is defined in the bill in a way that is consistent with Supreme Court and other judicial precedents, so this claim is unconvincing.

The Fraud Enforcement and Recovery Act of 2009 is an important accomplishment. Those who perpetrate financial fraud, which is so harmful not only to the victims of the fraud but to the economy as a whole, must be discovered and prosecuted. This bill makes it easier to do that, so I am pleased to support it.

VOTE EXPLANATION

Mr. COBURN. Mr. President, earlier today amendment No. 1006 was passed by a voice vote. If there had been a rollcall vote, I would have opposed this amendment, as it added more than $40 million to a bill that already costs nearly half a billion dollars.

Mr. CONRAD. Mr. President, before we begin the debate on appointing conferees on the budget resolution, will the Parliamentarian inform us of the parliamentary status on the floor.

The PRESIDING OFFICER. The Senate is considering S. 386.

BUDGET RESOLUTION CONFERENCE

Mr. CONRAD. Mr. President, floor staff informs me they are working on an agreement that will allow us to go to the consideration of the conferees. At this point, we will open the discussion but will not turn to it. I will use this time to make my statement so that we are efficiently using the time of the Senate.

I remind my colleagues that some of the key elements in the Senate-passed budget resolution we will soon be taking to conference. The budget needs to be considered in the context of the very tough hand we have been dealt. This administration and this Congress have inherited a mess of truly staggering proportions. If we start with the deficit outlook, we can see that the previous administration inherited surpluses that they rapidly turned into record deficits, and then record deficits of a proportion that stagger the imagination. I don't think anybody could have anticipated we would have deficits approaching $2 trillion in a year.

We also saw in the previous administration a dramatic increase in the Federal debt—a more than doubling of the Federal debt in the period that the previous administration was responsible for.

The Obama administration inherited record deficits, a doubling of the debt, the worst recession since the Great Depression, financial market and housing crises unparalleled since the 1930s, and nearly 4 million jobs lost in the last 6 months alone. On top of it all, we have ongoing wars in Iraq and Afghanistan.

I often think what it must be like to be President Obama, who wakes up every morning with this heavy responsibility on his shoulders. In our caucus today, we had the Chairman of the Federal Reserve Board, Chairman Bernanke. I told him that I believe when the history of this period is written, he will go down as one of its heroes—somebody who helped rescue us from what could have been a financial collapse, not only here but around the country.

In the budget resolution that passed the Senate, which we will be taking to conference, we have tried to preserve the major priorities of the President: reducing our dependence on foreign energy; a focus on excellence in education; fundamental health care reform, because that is the 800-pound gorilla that can swamp the fiscal boat of the country; middle-class tax cuts; and cutting the deficit in half over the term of the budget.

The budget we produced reduced the deficit by more than half over the next 5 years. We have reduced the deficit by two-thirds. I am proud of that fact. We reached 3 percent of GDP a little less

than that—which all of the economists say is essential to stabilizing the debt.

At the same time, we have adhered to the President's intentions to make certain strategic investments—one of the most important in energy—to reduce our dependence on foreign energy, because that is an imperative for this country, a strategic imperative, a financial imperative, and a national security imperative.

The budget resolution that went through the Senate reduces our dependence on foreign energy, creates green jobs, preserves the environment, and helps with high home energy costs. It does it in the following ways: one, a reserve fund to accommodate legislation to invest in clean energy and address global climate change; second, providing the President's level of discretionary funding for the DOE; third, building on the economic recovery package to provide investments in renewable energy, efficiency, and conservation, as well as low carbon coal technology, and modernizing the electric grid.

I thank Chairman LEAHY once again for his incredible courtesy and graciousness in allowing us to interrupt his very important legislation so we can go to this matter of naming conferees, because we are under a tight deadline there. I thank the chairman of the Judiciary Committee for his incredible graciousness.

We also, in this budget, preserve the President's priority of a focus on excellence in education. If we are not the best educated, we are not going to be the most powerful country in the world for very long. So we adopt the priority of investments in education to generate economic growth and jobs, to prepare our workforce to compete in the global economy, to make college more affordable, and to improve student achievement. We do it, again, in three ways: a higher education reserve fund to facilitate the President's student aid increase; by extending the simplified college tax credit, providing up to $2,500 a year in tax credit—that is a dollar-for-dollar reduction in your tax liability; and, finally, by providing the President's requested level of $5,550 for Pell grants and fully funding his education priorities, such as early education.

When I am asked about the President's budget, I give it very high marks because I think it has the priorities exactly right—reducing our dependence on foreign energy, excellence in education, and health care reform, all in the context of dramatically reducing the deficit. So on health care, the budget resolution that previously passed the Senate, which we will take to the conference committee, bends the health care cost curve, reducing costs long term, improves health care outcomes, expands coverage, increases research, and promotes food and drug safety. Again, we do it in three different and very specific ways: No. 1, a reserve fund to accommodate the President's initiative to fundamentally reform the health care system. As many have said, we have a sickness system, not a wellness system. We have to make a transition. We also have a reserve fund to address Medicare physician payments, because we know that the doctors across the country who serve Medicare-eligible patients are due for major deep cuts—cuts of more than 10 percent. We are not going to let that happen. Third, it continues investment in key health care programs, such as the NIH and the FDA.

Not only have we preserved the President's key investment priorities, reducing our dependence on foreign oil, moving toward excellence in education, health care reform, but we also preserve his fourth key priority of cutting the deficit dramatically. In the budget resolution that previously passed the Senate, we reduce the deficit by two-thirds by 2014—that is in dollar terms we reduced it by two-thirds. Most economists say you ought to evaluate it as a percentage of the gross domestic product, that that is the best way to see what you are accomplishing. If we look at it in those terms, we are reducing the deficit by more than three-quarters, from 12.2 percent of GDP in 2009 down to less than 3 percent of GDP out in 2014.

I am especially proud of that trajectory on the deficit, because I think it is absolutely critical. I would be the first to say we need to do even more in the second 5 years, but this is a 5-year budget. The reason it is a 5-year budget is that, of the 34 budgets that Congress has done since the Budget Act was instituted, 30 of those 34 times we have done a 5-year budget. Why? Because the forecasts beyond 5 years are murky, at best, highly unreliable. So we have stuck to a 5-year budget, as has traditionally been the case.

With respect to the revenue side of the equation in this budget, the Congressional Budget Office, in looking at what we have done, would conclude that as a total, compared to current law, the budget resolution that passed the Senate reduces taxes. Let me emphasize that, because some want to put all the emphasis on the tax increases in this package; but if you take the tax increases and the tax reductions and put it all together, and you look at a net result, you find that we are cutting taxes over the 5 years by $825 billion. That is because we have extended the middle-class tax relief that is from the 2001 and 2003 acts, the 10-percent bracket, the childcare tax credit, the marriage penalty relief, and the education incentives. All of that is in this bill.

We also provide alternative minimum tax reform relief for 3 years to prevent 24 million people from being swept up in the alternative minimum tax.

We also have estate tax reform, $3.5 million an individual, $7 million a couple, indexed for inflation. That means 99.8 percent of estates in this country will pay zero; 99.8 percent of estates will pay zero.

We also have business tax provisions and the traditional tax extenders, such as the research credit, that are included in this budget, for a total of tax relief of $958 billion.

On the other side of the equation, we have loophole closures, such as codifying economic substance and international tax enforcement to go after these offshore tax havens, these abusive tax shelters. We raise $133 billion for a net tax reduction of $825 billion over the 5 years of this budget.

On the spending side of the house, domestic discretionary spending, again as a percentage of the gross domestic product—and the reason, of course, economists say that is what you should focus on rather than the dollar amounts is that this takes account of inflation. It gives a more fair comparison year by year.

We hear all this talk that this is a big spending budget. No, it is not. This budget reduces domestic discretionary spending as a percentage of gross domestic product from 4.3 percent in 2010 down to 3.2 percent in 2014. We are taking domestic discretionary spending down to one of its lowest levels in the last 50 years.

In fact, nondefense discretionary spending increases under this budget resolution an average 2.5 percent.

In addition, we have a series of budget enforcement tools that are in this resolution: discretionary caps for 2009 and 2010. Some have said we ought to have discretionary caps for 2011 too. Well, why? Well, why? We are going to be back here a year from now. We have discretionary caps for 2009 and 2010. Why do we need them for 2011, when we are going to be right back here, same place, same time 1 year from now?

We also maintain a strong pay-go rule. We provide a point of order against long-term deficit increases; a point of order against short-term deficit increases; we allow reconciliation for deficit reduction only in the resolution out of the Senate; and we provide a point of order against mandatory spending on an appropriations bill.

Let me address, very briefly, this last provision because what we found was some of our colleagues have gotten increasingly clever about finding new ways to spend money. We found they were increasing mandatory spending on appropriations bills. Mandatory spending is typically not done on an appropriations bill, as the Chair well knows. Appropriations bills are designed to deal with discretionary spending, not mandatory spending. Mandatory spending is things such as Social Security and Medicare, certain farm supports. Those are mandatory spending items. We found some of our colleagues have gotten very clever and started to increase mandatory spending on appropriations bills. We have created a point of order to try to short circuit that bad practice.

The budget resolution also attempts to address our long-term fiscal challenges. Let me be very clear. My colleague will momentarily speak, and he

will be highly critical of the budget resolution for not more fully addressing our long-term challenges. It may surprise listeners to hear me say that I agree with him. If there is a place this budget can be fairly criticized, it is that it does not do enough long term. I think we do a pretty good job in the first 5 years. But beyond that—this is only a 5-year budget—but beyond that, much more needs to be done.

The ranking Republican on the Budget Committee, Senator GREGG, and I have a proposal that I believe needs to be pursued. It is to have a task force given the responsibility to come up with a plan to get us back on a sounder, long-term fiscal track and to come to Congress for an assured vote if 12 of the 16 members of that group could agree.

Nonetheless, there are three important elements of this budget resolution that deal with our long-term fiscal circumstance. No. 1 is the health reform reserve fund. That, after all, is the biggest threat to our long-term fiscal security and stability. No. 2 is we have program integrity initiatives to crack down on waste, fraud, and abuse. We have five in this budget, and they are very important—Medicare, Social Security, defense, and others as well. I hope very much that these are pursued in the conference committee.

No. 3 is we have a long-term deficit increase point of order to require a 60-vote point of order against moves to increase long-term deficits.

Finally, let me say that on this question of the long term, the President has been very clear. At the fiscal responsibility summit on February 23, the President said this:

> Now, I want to be very clear. While we are making important progress towards fiscal responsibility this year, in this budget, this is just the beginning. In the coming years, we'll be forced to make more tough choices, and do much more to address our long-term challenges.

The President got it exactly right with that statement. We are going to have to do much more. But this budget is a good and responsible beginning.

Mr. President, with that, I will yield the floor. Let me say, momentarily we will have a unanimous consent request before us. I do not yet have it in my hands. I will say this before we begin this debate. This is an institution with Republicans, Democrats, and Independents. On the Budget Committee, we have all three represented.

I am chairman of the committee representing the Democratic Party. Senator GREGG is the ranking Republican. Senator GREGG is someone with whom we have strenuous debates and disagreements. You will see that in the coming hours. But I wish to make very clear that I have high regard for Senator GREGG. He is motivated by patriotism, by love of country, and by a fundamental understanding that we are on an unsustainable track, that we have to be much more serious about our long-term buildup of deficits and debt. He has not just talked about it, he has been prepared to act.

I wish to recognize him for his commitment to something I also believe in. I think it is abundantly clear we cannot stay on our current course. It is a course that will lead us to a much diminished standard of living for the future. While I believe this budget is a good beginning, I do not assert that this in any way solves our long-term problem. It does not. But it is a beginning, an important beginning, and we need to do more.

I also thank Senator GREGG for his unfailing courtesy and professionalism, not only in our public debates but in the workings of the Budget Committee. He has assembled a first-rate and professional staff. We have worked together well to do the business of the committee and the business of the country.

I thank Senator GREGG, once again, for all he has done to allow the budget resolution to be fully debated, fully discussed, to have our differences aired publicly and privately but also to do it in an air of civility and respect, something I certainly feel toward him.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, let me begin by saying I think it is terribly unsportsmanlike of the chairman of the committee to say such nice things about me, to disarm my ability to effectively attack his budget, but I wish to join his thoughts because he and his staff are very good to work with. He is a professional. They are committed. He genuinely believes, as I do, that this country's outyear fiscal situation is not a sustainable event. We are trying to work together to address that situation. We hope we can gather others to join us in this effort.

I respect he has water to carry around here, and he carries it extraordinarily well on behalf of his constituency, which is the Democratic caucus and the President of the United States. I congratulate him for the exceptional job he does.

That being said——

Mr. CONRAD addressed the Chair.

Mr. GREGG. Is the debate over?

Mr. CONRAD. Can we end the debate?

(Laughter.)

Mr. GREGG. That being said, let's begin where the chairman leaves off accurately and correctly in saying that the course we are on is unsustainable.

What does ''unsustainable'' mean? It is one of those terms of art we use around here. It means that by the time this budget runs its course—not necessarily the chairman's budget but the President's budget because the President's budget is a 10-year budget—by the time the President's budget runs its course, we will have passed on to our children a debt which will have tripled—tripled—a deficit which will have averaged every year for the 10 years a trillion dollars or more and a national public debt—that is the debt we owe to the Chinese, to the Japanese, and to our own people who own a fair portion of our debt—a national public debt which will have doubled as a percent of our gross national product, going up to 80 percent of our gross national product.

What does all that mean? It means essentially we will have built a debt in this Nation which our children will not be able to afford to pay down. Just the interest on that debt alone, as we move into the later years of this budget, will exceed anything else in the budget as a line item on the discretionary side of the ledger. It will exceed, for example, all the money we spend, the interest alone will exceed all the money we spend on national defense. It will exceed by a factor of three or four or maybe even eight accounts such as education, housing, veterans affairs, and health. The deficits will have been so large for so long that the debt will have grown to a point that there is no logical way or fair way that our children and our children's children, who will have to pay this debt, will be able to do it in a manner that would leave them with a nation that is as strong and as prosperous as the Nation that was given us.

Putting it another way, at the end of this budget, after these 10 years are over and beginning in about the third and fourth year of this budget, the spending will be so out of control at the Federal level, the growth of the Government will have occurred at such a rapid rate that we will have created a debt structure which will mean that our children will have about three choices in their future.

The first is that there will be a dramatic increase in inflation. We will try to pay this debt off with inflated dollars. There is no more regressive or harmful tax that a society can put on its people than to have uncontrolled inflation or massive inflation. But that is what one of the choices is.

The other choice is that we will raise taxes to a level that they will be so high we will essentially tax away the opportunity of our children to do things which were considered to be commonplace for our generation—buy a home, send their kids to college, invest in a small business, take a risk, create a job. All of that will be taxed away because the tax rates would have to get up to such a level to pay this debt off that we will no longer be able to have that type of prosperity. The third course of action, equally untenable, is that the dollar gets devalued—which is to some extent an inflationary event—and people stop buying our debt. They simply say: I don't believe you can pay this debt off—you, the people of the United States. You are not going to be able to generate enough productivity to do it. That, of course, leads to some level of implosion of our economy which I can't even calculate or comprehend, but it is much worse than what we even confront today.

So nobody is arguing or debating—at least I am not, though there are some

who are—I am not coming to this floor and saying it is irresponsible for this administration, for President Obama to have inserted a large amount of Federal spending into the economy this year and next year. We recognize that this economy is in stress and that the only source of liquidity for our economy is our National Government and that the Federal Reserve, for all intents and purposes, has become the lender of first resort. But that is a short-run issue.

The problem with this budget is that the type of spending which has to be done now is not curtailed after 2 years. It is not reigned in. It is not reduced or even leveled off. It continues up and up in the third year, the fourth year, the fifth year, the sixth year of the budget the President sent up here. The spending continues to go up on a path that is extraordinarily steep, so that the cost of the Government, which today and historically has been about 20 percent of GDP, jumps to 21 percent, 22 percent, 23 percent, and 24 percent. In fact, if you go outside the window and you presume these numbers continue to compound, you get to a cost of Government that ends up around 28 and 29 percent of GDP. You cannot sustain an economy with that type of cost.

I have a few charts to try to put this in perspective.

The first chart is on the issue of debt. The budget, as proposed by the President—and why do I keep talking about the President's budget rather than the chairman's budget? Because the President's Director of OMB said they are essentially the same, and they are essentially the same. We can get into the differences, but the differences are at the margin and they are really not arguable. The biggest difference is that the chairman's budget only goes for 5 years, not 10 years. Well, there are other big differences, but that leaves off the second 5 years, and by leaving off the second 5 years, you don't talk about and you essentially hide some of the most dramatic effects of this spending binge.

The President's budget increases taxes by $1.5 trillion, it increases discretionary spending by $1.4 trillion, and it increases mandatory spending by $1.2 trillion. And this number, this $1.2 trillion, is grossly underestimated. What does it do in the area of savings? On the mandatory side, it does nothing in the area of savings, absolutely nothing. In fact, the few discretionary savings he sent up, which I happen to support, were dropped in the chairman's mark, especially in the area of agriculture. So as we have said, and some people have heard it before—maybe not in this room—it spends too much, it taxes too much, and it borrows too much as a budget. What it doesn't do is save too much, and that is what gets us into trouble. The practical effect of this budget's structure is that it takes Federal debt and doubles it in 5 years and triples it in 10 years.

Try to remember what we are talking about. We are not talking about going from $100 to $200 to $300. We are talking about trillions. Trillions. I don't know what a trillion dollars is. I can't even conceive of it. But that is what we are talking about. We are talking about taking the Federal debt from $5.8 trillion up to $17 trillion, or thereabouts. To try to put it in perspective, if you take all the spending, all the debt run up by all the Presidents since the beginning of the country—George Washington through Franklin Pierce through George W. Bush—all that debt that has been run up over 230-some-odd years by all our Presidents, that debt is doubled by this President within 5 years of being in office.

There is another chart which shows this even better. It is called the wall of debt. This chart wasn't invented by me, but whoever invented it was a genius, obviously. The wall of debt shows how the Federal deficit just goes up and up and up and up. This wall of debt is what our kids are going to run into when they try to have a productive lifestyle. It is what is going to cost them their ability to be successful.

By the time we get to the end of this, or even right here in the middle somewhere of this budget, the average family in this country is going to have $130,000 of new debt for which they are responsible. And $130,000 is probably more than the mortgage on the homes of most people. The interest cost on that debt, which most Americans, which all Americans are going to be responsible for, will be about $6,000. That may be more than what most people pay in interest on their homes. But that is the debt that is going to be passed on to them by this budget.

Why does it happen? It happens for one very simple reason. It is called spending. The simple fact is that under the President's budget—and under the budget proposed by the chairman—the spending of the Federal Government goes up dramatically, comes back down, and then starts back up again. It goes up dramatically, of course, in these 2 years here, which I said I have reservations about. I especially had reservations about the stimulus package, which was a misallocation of spending, even though I supported the stimulus effort. Why does it start back up again? It starts back up again because this President, in a very forthright manner—and I give him credit for this—has said not only in his budget but he has said publicly that he genuinely believes the way you create prosperity is to significantly increase the size of the Federal Government, to take it to the left dramatically. So he does. As a result, spending goes up at a rate that is simply not affordable for our children.

Look at this black line here. This is the black line that reflects the average spending of the Federal Government between 1958 and 2008. Look at how much higher the spending is of this Government under this proposed budget. That is a huge gap. When you are talking about an economy as large as ours, when you are talking about 2, 3, and 4 percent—or in this case, 4 or 5 percent—that is where the massive deficits come from. That is where the massive increase in debt comes from. It is debt that is the issue.

The chairman used to say: The debt is the threat. He is absolutely right, the debt is the threat, but the driver of the threat is spending. Unless you are willing to address the issue of spending, you are not going to get debt under control because you can't tax people enough to cover that. Well, of course you can always inflate the economy and try to cover it, but that leads to much more harmful events.

So this is the fundamental difference we have as a party. The President has said he wants to spend, he wants to tax, and he wants to borrow. And I think it is important to note there is a little subtlety here that hasn't been focused on too much, and that is this: When President Clinton came into office, he also wanted to spend and tax, but he didn't want to borrow. He used his taxes, which he increased—which I probably opposed—in order to reduce the deficit. This President, on the other hand, who is claiming he is going to raise taxes on just the wealthy—which is a canard if there ever were a canard around here—is using all that revenue not to reduce the deficit but to increase spending, and then he spends on top of that. So he is using it to grow the size of Government. He is very forthright about this. He is going to use those tax revenues to nationalize the health care system. That is the way I describe it; he describes it another way. He is going to use those revenues to basically create a massive expansion of spending in the other accounts of the Federal Government. But he is not going to use those revenues to try to reduce the deficit. That is the big difference between President Obama and President Clinton in the area of fiscal policy. So he doubles and triples the debt, and as a result, he leaves to our children a nation which is not affordable. So as I said, there is a fundamental difference.

You know, in the past we would get these budget debates on the floor, and they were sort of academic exercises. People would engage in them, and they would be very interesting, but I don't think anybody ever saw it as the core of the policy of the country. Even though it was important, it wasn't the core.

This debate is about this country's future. This budget is about where this country ends up. The pathway that has been laid out in this budget is a pathway that leads to a debt which the chairman has openly said is not sustainable. If the chairman knows it is not sustainable and the President knows it is not sustainable, why haven't they sent a budget up here to address that fact? Instead, they have sent a budget up here which does nothing about that fact, and, in fact, it does the opposite. It increases spending, it

increases discretionary and mandatory spending, and it saves absolutely zero in the area we most need savings, which is the mandatory accounts.

So the difference is this: The President, as I said, has been forthright. His budget—this budget—probably the most significant document we have received here in the area of fiscal policy since perhaps the time of Lyndon Johnson or before, concludes that the way to prosperity is to expand the size of Government in an exponential manner by spending on Government programs in hopes that they create some sort of economic activity and create prosperity over the long run. Well, we believe, as a party, that doesn't work because in this case it is not paid for and it creates all this debt which we then pass on to our children to pay. We believe the way to prosperity is to have a government that is affordable and to pass that affordable government on to your children. Equally important is to empower the individual citizen and groups of citizens to go out, take a risk, and create a job, not to have the Government take from the individual the ability to create jobs because it taxes the individual either through inflation or through taxes or through a huge debt burden, as is proposed in this budget—a huge debt burden that is not sustainable.

So this is a very significant debate and a very significant decision point in our Nation's history because if this budget passes in its present form, we are guaranteeing that we will pass on to our children a nation whose Government is not sustainable, and therefore we will be passing on to our children a nation which is less than what we received from our parents. No generation has the right to do that to another generation, and that is what this debate is about.

Mr. President, at this point, I yield to Senator JOHANNS, who has an amendment or who wishes to discuss a motion to instruct.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. JOHANNS. Mr. President, because of the procedure we are following at the moment, I can't make this motion right now, but we will offer the motion at the appropriate time.

I rise today to speak about something I am bringing to the Senate. I am on the floor today because I think it is unwise and I also think it is unfair to the American people to use budget reconciliation to pass cap and trade.

Just to review the history of this, I joined the senior Senator from West Virginia and circulated a letter asking the leadership of the Budget Committee not to include reconciliation instructions to pass cap and trade. I was very happy that a number of my colleagues agreed with us. Eight Democrats signed the letter, and 25 Republicans—even some who support cap and trade—signed the letter. Notably, the budget resolution which we considered on the floor of the Senate did not include reconciliation instructions. I commended members of the Budget Committee during floor debate for not including instructions for cap and trade. I do so again today.

At the same time, I expressed concern that the real threat, though, came from the House in terms of what it had done with its resolution. The House budget, I think we all know, included, interestingly enough, reconciliation instructions. We all know why they included the instructions. The House has no use for them. They are not necessary under House rules. Therefore, there is no reason to include them other than to attempt to force cap-and-trade provisions into the conference report.

We are nearing that day when a conference report will come to us. This would restrict input from the American people, or the Senate body, on a policy that would result in massive taxes and fees.

I thank Members on the other side of the aisle. I think they should be commended for what they did next. Understanding that the House was trying to slip climate change into law without review, without debate, without amendment, without consideration, 26 of my colleagues from the other side voted with the Republicans in support of my amendment.

What was the result? The result was that 67 Senators made it very clear just a few days ago that they would not support using budget reconciliation to pass cap and trade. This vote, I would offer, showed courage and leadership. Probably most importantly, it showed true bipartisan spirit.

Today I am again asking for the support and leadership of my colleagues to stand in support of my motion to instruction the budget conferees. My motion just says: Don't just drop our amendment when you walk into the conference committee meeting.

It says: Remember, we voted overwhelmingly against shutting off debate and using as little as a single legislative day to pass complex cap-and-trade legislation.

It says: Don't forget that cap and trade, if passed, will radically change the economic landscape of this great Nation.

Amendments to such a bill should not be narrowly limited by the rules of the budget process, a process that was really built for deficit reduction, not greenhouse gas reduction. It asks for leadership from our Senate conferees so the American people can witness a full debate on this very important issue.

Where does that leave us today? One might ask the question: Why is the motion necessary? With such a strong showing against including instructions for cap and trade, isn't that message already clear? The message is clear, but I think we have to be vigilant for some simple reasons.

First, we learned over the past several days that budget discussions are far from over. Reports indicate that negotiations will continue over the next several days, maybe into the next several weeks. Memories fade. If we think that budget reconciliation is off the table as time wears on, we could be very mistaken.

Budget Committee leadership from both the House and the Senate has specifically noted that debate on the inclusion of reconciliation instructions continues to be very intense. In other words, the use of budget reconciliation for cap and trade does remain a possibility. Cap and trade could be slipped into law if the House instructions, as currently written, end up in the conference report.

For me, today's motion is about being able to say to Nebraskans when I return home—to look them in the eye and say: Yes, I read that bill, and I carefully considered its impact on you, your families, your businesses, and your future. And, yes, I did everything I could to make sure people from Nebraska understood well the significant tax burden likely to result from the legislation. And, yes, after considering all of those things, I stood up and cast a vote, yes or no.

We need to stand up to those who want to use reconciliation to stop transparency and limit debate. I believe both the Chairman of the Senate Budget Committee, whom I respect, and the Ranking Member of the Senate Budget Committee, whom I respect, are battling mightily to ensure that reconciliation instructions are not included. Today, on the floor of the Senate, I commend them for that bipartisan effort. But they need our help. They need an army of Senators whose primary concern is the interest of the American people. A vote in support of this motion can do just that. We need this vote. We need to pass this motion. We need to insist that the text of the amendment, which 67 Senators, both Republican and Democrat supported, remains in the conference report on the budget.

I appreciate the opportunity to express this view. I urge my colleagues to support this motion. I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. If the Senator will indulge me for about 2 minutes because I want to speak quickly on behalf of the amendment of the Senator from Nebraska? He has outlined a lot of the substantive reasons it is important. It would not be appropriate to do this type of huge policy on a 20-hour debate, no-amendment situation, up-or-down vote. But there is another issue which goes to the integrity of the Senate and the purposes of the Senate.

Basically, reconciliation is purely a Senate event. The House doesn't need reconciliation. The House has a Rules Committee. They can determine how long debate is going to be, when there is going to be debate, and how many amendments there are going to be.

The Senate historically has been the place where people come to talk, to discuss, to air out an issue, and then to have amendments on that issue. That is the whole function of the Senate in our constitutional process. I find it incongruous, to be kind, that the House of Representatives would be trying to dictate to the Senate the rules of operation of the Senate in a manner—first, it is inappropriate to begin with, but they are dictating them in a manner which basically goes at the fundamental purpose of the Senate, which is that the Senate be the place where debate, discussion, and amendment occurs on policy issues of great substance.

I do not argue that reconciliation is not a useful and appropriate tool to be used around here. There are many reconciliation initiatives for which I voted. But in the area the Senator has noted, which is a massive change in industrial policy, a huge tax on every person who turns on a light in every home in America, that should not be done under reconciliation. Equally important, the House of Representatives should not be explaining to the Senate or telling the Senate what the rules of the road are in the Senate. They have enough issues on their own over there.

At this point, I think the Senator from Michigan wanted to be recognized. At the completion of the remarks of the Senator from Michigan or the chairman's comments, unless the Senator has further comments, the next Member to be recognized on our side will be Senator GRASSLEY.

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

Mr. CONRAD. Mr. President, let me indicate with respect to the question of reconciliation being used for cap and trade or climate change, there is no provision on the House side for that purpose. At least that is the stated intention of the Speaker of the House of Representatives. And there is no reconciliation instruction in our resolution at all for any purpose.

Let me indicate I happen to agree with the Senator from Nebraska. I personally do not believe reconciliation should be used for this purpose. I must say, I am very disappointed the Republicans, when they were in a position to do so, abused reconciliation. I believe that strongly. Reconciliation was designed for one purpose and one purpose only, and that was deficit reduction. Our friends on the other side used it to dramatically cut taxes and increase the deficit. That was, to me, an absolute abuse of reconciliation.

But two wrongs do not make a right, and I do not believe using reconciliation for major substantive legislation that is not fundamentally deficit reduction is an appropriate use of reconciliation. That is No. 1.

No. 2, I think people will find that because reconciliation was designed for a very specific purpose, that it does not work well for the purposes of writing major substantive legislation. I will not go into all the technical reasons why that is the case, but it is the case. We will get to questions of reconciliation being used for other purposes as well.

I have argued strenuously, publicly and privately, that reconciliation ought to be reserved for deficit reduction. But I do want to indicate that there is no reconciliation instruction in the resolution coming from the Senate; and in the House, the Speaker has made clear that reconciliation would not be used for climate change legislation or for cap-and-trade legislation.

Mr. GREGG. Will the Senator yield for a question?

Mr. CONRAD. I would be happy to yield.

Mr. GREGG. I totally want to identify my position with the Senator's argument as to the purposes of reconciliation and the fact it should not be used for major public policy initiatives which require debate and hearings in the Senate and an amendment process. Are we to presume, therefore, that your logic on cap and trade applies also to major health care reform?

Mr. CONRAD. My logic does, as I have made very clear over and over, publicly and privately. But, you know, I don't get to decide. We have House conferees, we have other Senate conferees, and, of course, we have a White House that has an interest—although they have no formal role in the budget process here. They submit a budget, but as the ranking member well knows, the budget resolution is entirely a congressional document.

With that said, I do want to indicate that I previously voted for the amendment of the Senator. I will vote for it again. But I do want to indicate we do not have any reconciliation instruction in our resolution, and the House, through its leadership, has made clear they do not intend to use a reconciliation instruction for the purpose of cap and trade or for the purpose of climate change legislation.

Mr. GREGG. If the Senator will yield for a further question, I will make this a rhetorical question. The Senator is one of the most influential Members of the Senate and of the Congress. When he says he wants something to happen, especially when it deals with the budget, I know it will.

Mr. CONRAD. I wish that were true. I wish the Senator had been with me in the discussions over the last few days, even in our caucus on Tuesday.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I, too, rise to speak to a motion to instruct conferees. I understand we do not yet have an agreement to be able to move forward on that.

I first want to indicate that I, as well as the chairman of the Budget Committee, joined with the Senator from Nebraska in supporting his amendment to the budget resolution. But I believe it is not enough just to say what we will not do on climate change. It is very important to say what we will do. So that is what my motion to instruct does. It provides a positive direction for future climate legislation. I thank my colleagues, Senators BOXER, BROWN, SHAHEEN, CARDIN, and LIEBERMAN for cosponsoring this motion to instruct.

The budget we pass is truly about investing in America's future. With all respect to our ranking member, for whom I have great respect and fondness, there is a difference in this budget in terms of priorities. There is no question about it. There is a big difference in terms of what we want to invest in—education, energy independence, health care, jobs. I might say coming from Michigan: Jobs, jobs, jobs.

So there is a difference in direction, in values, and priorities in this budget. I believe it is what the American people are asking for. Our policy on climate change has to invest in the future just as our budget does. If done right, climate change legislation will create new jobs, new industries, and it will revitalize and strengthen our economy. So I will offer a motion to instruct in response to other amendments that say what we cannot do. My motion, on the other hand, is what America can do, what we must do.

My State of Michigan is facing serious challenges right now. We have the highest unemployment rate in the country, of 12.6 percent. The hardworking people, the families in Michigan and other States that are struggling, need us to do a climate change policy right so that it does create jobs and transform our economy. Our economy cannot go forward with the same old policies dependent on foreign oil and pollution that harms our health and our economic interests. Climate policy can and must look out for working families and businesses, whether it is a farmer, a manufacturer, or a clean tech engineer. That is why the motion to instruct that I will be offering refers to a future climate policy that is well balanced to address all of these interests, so it does create jobs and strengthens manufacturing and breaks America of our dangerous addiction to foreign oil. We cannot rely any longer on the same old technologies and the same old fuel.

With new energy solutions come new jobs and new industries. America has always led the world in innovation and we can do it again in a green energy economy if we do this right. We are in the midst of a revolution, an energy revolution. Over 100 years ago, Henry Ford revolutionized manufacturing in transportation with the automobile and the assembly line. He also revolutionized the way we pay people in this country. He gave his workers $5 dollars a day to work on the line when it was not necessary to do that, because he wanted to make sure he had people who could buy his automobiles.

Through doing that, that revolutionized people to invest in workers. He

helped create the middle class of this country. In the 1980s we had a computer revolution that changed the way we work, the way we communicate, the way we learn, the way we live. The energy revolution of the 21st century will change our economy, I believe, if done right.

That is why the right kind of climate policy is so important. The motion to instruct that I will be offering will direct the conference committee toward a smart climate policy that will protect and strengthen manufacturing. First we ensure a level playing field in the world economy so climate legislation does not hurt our bottom line. This will protect U.S. manufacturers from international competitors that do not follow the same important environmental standard our companies will have to follow.

Second, new manufacturing opportunities will arise. I believe that. For example, to meet the needs of new clean energy production, we will need to produce clean energy technologies on a massive scale. We are talking about 8,000 parts in a wind turbine. As I have said to many colleagues, we can build every single one of those in Michigan. I know I talk a lot about this. I talk a lot about our economy in Michigan. But I truly believe if our energy policy can turn Michigan's economy around, it will turn America's economy around.

Recent history has shown what happens when we rely primarily on foreign sources of energy. We subject ourselves to less than friendly international governments that can leverage unstable supply and higher prices against the people we represent. The motion to instruct I will offer will guide the conference committees to take steps to further reduce our dangerous addiction to foreign oil.

Furthermore, our domestic energy needs also increase over time, and all sources of clean energy should be part of the portfolio. Diversification of our energy supply is key for security, stability, and opportunity. This is a national and international problem and we must solve this together.

My motion directs the conferees to ensure that all regions contribute equitably and help each other as America transitions to a clean energy future. I also believe a successful climate policy has to include all our economic stakeholders. Agriculture and forestry can make significant contributions to greenhouse gas reduction, perhaps as much as 20 percent, with the right incentives. My motion to instruct provides clear and certain opportunities for landowners so they can achieve emission reductions and benefit from doing so.

Finally, this motion to instruct puts us on the road to a balanced climate policy. With policies that meet these objectives, we can ensure the American public that greater economic opportunity lies ahead, and we can do this while meeting the ambitious emission reduction targets set by President Obama.

Instead of arguing about what we cannot do, I urge my colleagues to embrace what we can do. That is what this motion to instruct relates to—creating jobs, protecting our environment, energy independence. This is what our future is about.

In addition to speaking about the motion to instruct, I would take a moment to say, on the broader budget resolution, this resolution again is different. It is about jobs, it is about energy independence, health care, education, tax cuts, yes, for the middle class who have been overlooked for too long, as well as focusing on cutting the deficit in half during the life of this budget resolution.

We know this deficit has been run up. When I came into the Senate in 2001, we were debating what to do about a $5.7 trillion surplus over 10 years, and colleagues were willing to make decisions, our colleagues on other side of the aisle, were willing to go into deficits for the war in Iraq, go into deficits for tax cuts for a few, go into deficits for a different set of policies.

It is true, this budget resolution reflects what I believe is a different set of priorities that are the priorities of the American people. I am very proud of and grateful to our chairman, the Senator from North Dakota, for his leadership, and I appreciate the ranking member as well for his graciousness, even though we have different views. I very much appreciate the way he and the chairman conduct the committee. But I am proud to say this is different. The American people want a different set of priorities, and that is what this budget resolution provides.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from North Dakota.

Mr. CONRAD. Madam President, at this moment, I ask unanimous consent that next Senator GRASSLEY be accorded 14 minutes; that Senator BOXER follow him for 10 minutes.

How much time would Senator WYDEN request ?

Mr. WYDEN. Could I have 10 as well?

Mr. CONRAD. And 10 minutes to Senator WYDEN.

Mr. GREGG. Is this all coming off of your time?

I will be yielding my time on this side.

Mr. CONRAD. I would always be happy to give Senator GRASSLEY time off mine.

Mr. GRASSLEY. I will take it off your time.

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

The Senator from Iowa is recognized.

Mr. GRASSLEY. Pretty soon we are going to have a motion dealing with small business. I want to address that issue now so that I get it addressed properly as a senior member of the Senate Finance Committee.

Everyone in this body knows that small businesses are an extremely important and dynamic part of the U.S. economy. I wish to say, and I often do, that small business is the employment machine of our economy.

President Obama agrees with that. Small businesses have generated 70 percent of the net increase in jobs in the United States over a long period of time. Three weeks ago, we debated this issue during the budget resolution debate. During the debate, the Senate spoke on this point, because Senator CORNYN had a small business tax relief amendment. That amendment passed by an overwhelming vote of 82 to 16.

America's small businesses have been suffering during this recession. If you go back to your States frequently, as I do, you will hear about it from your small businesses very directly. A few weeks ago, Senator LANDRIEU and Senator SNOWE held a hearing on the crunch hitting small business. They found that big banks have been cranking down lending to small businesses. At a time we are putting more money into big banks, why? I do not know that we got an explanation. I have been trying to get an answer out of Treasury on whether banks receiving the bailout money have been similarly squeezing out small business customers. I am still waiting for an answer from our Treasury Department.

A very good source of answer, though, as we turn elsewhere, an answer about the environment of small business, is found in the monthly surveys of small businesses conducted by the National Federation of Independent Business. We all know about the NFIB, the largest small business organization. NFIB has been conducting these surveys now for 35 years.

The membership of that organization includes hundreds of thousands of small businesses all across America. You can find the survey on NFIB's Web site www.nfib.org. I wish to encourage every Member to check out this month's survey, because I am going to be referring to it with charts I have with me.

The survey shows some extremely disturbing trends on credit availability. Small businesses depend on credit. Small businesses are getting squeezed very hard. That chart is up now. As you can see, the chart shows the availability of loans has fallen off the cliff as late as 2007 and gets worse as you get into 2009.

You see on the right side of the chart the sharp downturn evidencing the lack of ability of small businesses to get loans. This credit crunch as well as other factors has contributed to the near record low in the NFIB's index of small business optimism. I wish to have you view this, something like we regularly view, the University of Michigan's monthly index on consumer confidence.

The NFIB takes surveys regularly. This chart shows small business owners turning extremely pessimistic in the last couple of years. You can see how that has ''downturned'' very rapidly at the right end of the chart. What you see here is the attitude of decisionmakers in small business of America,

the people who create the jobs. Those are the decisionmakers for the businesses that President Obama and we in the Congress agree are most likely to grow or contract jobs.

The pessimism evidenced by the chart is at its second lowest point in the 35-year survey. This data should concern every policymaker in this body. As bad as the two sets of charts are, I have a worse picture.

This chart shows the net increase or decrease in small business hiring plans. The survey asks the small business owner simply whether he or she plans to expand, on the one hand, or contract, on the other hand, employment over the next 3 months.

As you can see even more dramatically, look at the right-hand side of the chart here. If I said on those others to the left hand, in each case I was talking about the right. I do know the difference between the left and right hand. But as you can see even more dramatically on the other two charts, this chart shows small business activity contracting tremendously.

Small business hiring plans are at their most negative level in the entire 35-year history of this survey, again, the right side of the chart. Let me repeat, because it is so important, this goes back to 1974, those surveys. Since NFIB started doing them, the likelihood of small business owners adding workers has never been worse.

With this pessimism, we should not be surprised then that job losses for small businesses have been growing dramatically. The national employment report recently released by Automatic Data Processing shows 742,000 nonfarm private sector jobs were lost from February to March 2009. Of those 742,000 lost jobs, 614,000 or 83 percent, were from small business.

The President's recent efforts to increase lending to the small business sector are commendable. The centerpiece of his small business plan will allow the Federal Government to spend up to $25 billion to purchase the small business loans that are now hindering community banks and other lenders.

Unfortunately, that is only a drop in the bucket.

Remember that small business accounts for about half of the private sector. Moreover, the positives that will come to small businesses from this relatively small package of loans—which will ultimately and obviously have to be paid back—will be heavily outweighed by the negative impact of the President's proposed tax increases. Helping small businesses get loans just to take that money back in the form of tax hikes is not helping the economy or small businesses.

The President's budget proposes to raise the top two marginal rates from 33 percent and 35 percent to 40 percent and 41 percent respectively, when PEP and Pease are fully reinstated. President Obama's marginal rate increase would mean an approximately 20 percent marginal tax rate increase on small business owners in the top two brackets.

Many of my friends on the other side will say that while they agree that successful small businesses are vital to the success of the U.S. economy, the marginal tax increases for the top two brackets will not have a significant negative impact on small businesses. I take exception to that argument. They used Tax Policy Center data, and I want to show why that should not be allowed.

Proponents of these tax increases seek to minimize their impact by referring to Tax Policy Center data that indicate about 2 percent of small business filers pay taxes in the top two brackets. In testimony before the Senate Finance Committee, the liberal think tank, Center on Budget Policy and Priorities, also used that figure. Moreover, Secretary Geithner has testified using that figure. They argue that a minimal amount of small business activity is affected.

However, there are two faulty assumptions to this small business filer argument.

The first faulty assumption is that the percentage of small business filers is static. In fact, small businesses move in and out of gain and loss status depending on the nature of the business and the business cycle. The nonpartisan Joint Committee on Taxation has indicated that, for 2011, approximately 3 percent of small business filers will be hit by these proposed higher rates. These statistics compare to a 2007 Treasury which showed 7 percent of flow-through business owners paying the top rate. In the latest analysis, when the impact of the alternative minimum tax is fully included, that percentage may drop some.

The second faulty assumption is that the level of small business activity, including employment, is proportionate to the filer percentage. This is where the argument is hogwash.

According to NFIB survey data, 50 percent of owners of small businesses that employ 20–249 workers would fall in the top two brackets. You can see it right here on this chart. It shows what I am talking about. According to the Small Business Administration, about two-thirds of the Nation's small business workers are employed by small businesses with 20 to 500 employees.

Do we really want to raise taxes on these small businesses that create new jobs and employ two-thirds of all small business workers? Of course, we don't. But that is exactly what the majority is going to do if they follow the President's lead.

With these small businesses already suffering from the credit crunch, do we really think it's wise to hit them with the double-whammy of a 20 percent increase in their marginal tax rates?

Newly developed data from the Joint Committee on Taxation demonstrates that 55 percent of the tax from the higher rates will be borne by small business owners with income over $250,000. This is a conservative number, because it doesn't include flow-through business owners making between $200,000 and $250,000 that will also be hit with the budget's proposed tax hikes.

If the proponents of the marginal rate increase on small business owners agree that a 20 percent tax increase for half of the small businesses that employee two-thirds of all small business workers is not wise, then they should either oppose these tax increases, or present data that show a different result for this group of people.

As we prepare for the conference on the budget resolution, the President and the congressional Democratic leadership have an opportunity to change course. They have an opportunity to revisit the tax heavy, spending heavy, and debt heavy budget they have passed 2 weeks ago. Both budgets would perpetuate the double whammy of constricted credit on the one hand and high taxes on the other, directed at America's job creation engine—small business.

In the coming days, we Republicans will try to persuade our Democratic friends who have all the controls of fiscal policy to change course for the benefit of small business that we all agree ought to be our first concern. One way they can change course is to focus, like a laser beam, on jump-starting the Nation's job engine—small business America. We need an upturn in the small business optimism index that is contrary to what this chart shows. We need to reverse the direction of this sharply downward sloping arrow. If we ignore this negative environment, we are just kidding ourselves. We need to change course and reverse this even more sharply downward sloping hiring plan arrow.

That is where the President and Congress agree we need to get more job growth. As we take the final steps on the budget, let's match that budget with this reality

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, I listened to Senator GRASSLEY's remarks, and I have been in conference with folks who have read this budget line by line. It is important for me to say something as someone who represents the largest State in the Union. As I look at this budget and it is how one looks at it—I see it as a boon to small business. I don't see one specific tax increase aimed at small business. Yes, if an individual is over $250,000 a year, for all of us in that category, the tax breaks will expire. But to say that all small businesses are hit hard is an argument that doesn't hold up, in my eyes. I have great respect for my friend, and I know he has analyzed it another way. But when I look at the priorities of the new President and of this Democratic Congress, what do I see?

Here are the priorities. Investment in energy, that is going to be great for

small business. Talk to my venture capitalists. They are ready, willing, and able to make huge commitments to alternative forms of energy. Investment in education, that is also going to be good for people who work in the education field. And health care, we know that as we have more insurance out there available for people, there will be many jobs created and many small businesses created around the delivery of health care.

I guess the way one looks at this budget depends on their point of view. Clearly, I believed our President, when he said he had those priorities. I view this budget overall as being a boon to small business and being a boon to the American people as we move forward with investments that will create many jobs.

The reason I wanted this time in particular was to kind of reargue an old argument we already had once before and that has come before us. Senator JOHANNS wants to have another vote to say we won't use the reconciliation process which, for people who don't know what that means, we won't use a process that we only need a majority to win. We are going to use the 60-vote requirement to write and pass global warming legislation.

I know this is going to pass because it passed before. I think most Members believe if we can get 60 votes for climate change legislation, fine. But I have to say again, after reviewing the number of times the Republican Party has used reconciliation since 1980, it has been 13 times out of the 19 times that reconciliation has been used. I would say to people who might be listening to this, to try to keep it as simple as possible: Reconciliation is used when there is a way to reduce the deficit. That is when it is used. You want to reduce the deficit so you say: Therefore, if you are reducing the deficit, we will do it with just a majority vote instead of a supermajority vote. That is the thinking behind it.

A cap-and-trade program, which many of us support in order to combat global warming, will give us the ability to reduce the deficit. We know that because that is what we were told last year as we worked on the Boxer-Lieberman-Warner bill. Much of the funds went back to consumers to help them pay energy costs. But there was a segment of funds that went straight into deficit reduction. But, no, my Republican friends don't want to look at that. Even though they used this 13 times, they want to prohibit the use of reconciliation for global warming legislation.

As I look back on the number of times Republicans have used reconciliation, in my view, it didn't make life any better for the American people. This is what they used it for. They used it to cut health program block grants to our States. They used it to cut Medicaid. They used it to cut food stamps. They used it to cut dairy price supports. They used it to cut energy assistance. They used it to cut education grants. They used it to cut impact aid and title I compensatory education programs for disadvantaged children. They used it to cut student loans. They used it to cut the Social Security minimum benefit. Our friends on the other side were very happy to use the reconciliation process, which only required 51 votes, to hurt the American people. That is what I think those cuts did. But when it comes to helping the American people by stepping up to the plate and addressing global warming and, in the course of doing so, creating millions of new jobs, no, they want to have a supermajority.

Senator JOHANNS showed us he can get the votes to pass that. I know he will. That is why I am so grateful to Senator STABENOW, who has said: OK, you want to say we won't use reconciliation. She is saying: We will, in fact, keep the reserve fund in there for global warming so we can move it forward. This reserve fund will allow us to invest in new jobs that will come about by investments in clean energy technologies which will make us a healthier economy, energy independent, and it will make us more secure because we will have to import less foreign oil. We are going to see increases in energy efficiency which will yield amazing benefits. That will help us in the long run reduce energy costs. We are going to use these funds to protect consumers. This is what the Stabenow-Boxer-Brown-Lieberman-Cardin amendment is saying. We want to keep that reserve fund in the budget so we can move forward with climate change legislation.

I am looking forward to this moment. This is long overdue. We have lost 8 years. But the kind of approach we need is the kind of approach Senator STABENOW is envisioning. We cannot afford to wait. Scientists are telling us we are going to face rising sea levels, droughts, floods, the loss of species, spreading diseases. Our own health officials in the last administration and this one have told us we have to act. The Environmental Protection Agency has proposed an endangerment finding.

We are being told that our people are in danger if we do not enact global warming legislation. It is spelled out.

Severe illnesses are going to crop up as a result of organisms that will now be living in warmer waters.

To quote the EPA—and they talk about the heat waves and the mortality rate and the wildfires and the drought and the flooding—this is what they say. I will close with this quote. They say: Global warming left unchecked is a serious harm to our people. It is not a close case, they say. The greenhouse gases that are responsible for global warming endanger public health and welfare within the meaning of the Clean Air Act.

Madam President, I ask unanimous consent to have printed in the RECORD the EPA's Proposed Endangerment Finding.

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

EPA'S PROPOSED ENDANGERMENT FINDING

The effects of climate change observed to date and projected to occur in the future—including but not limited to the increased likelihood of more frequent and intense heat waves, more wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea level rise, more intense storms, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems—are effects on public health and welfare within the meaning of the Clean Air Act.

This is not a close case in which the magnitude of the harm is small and the probability great, or the magnitude large and the probability small. In both magnitude and probability, climate change is an enormous problem. The greenhouse gases that are responsible for it endanger public health and welfare within the meaning of the Clean Air Act.

Severe heat waves are projected to intensify in magnitude and duration over the portions of the U.S. where these events already occur, with likely increases in mortality and morbidity. The populations most sensitive to hot temperatures are older adults, the chronically sick, the very young, city-dwellers, those taking medications . . ., the mentally ill, those lacking access to air conditioning, those working or playing outdoors, and the socially isolated.

Mrs. BOXER. I say to my friends and my colleagues who are listening to this debate, vote for the Stabenow motion to instruct. It is an important motion. It will keep the reserve fund and will allow us to move forward and attack this serious problem of global warming that has gone unaddressed for too long.

Madam President, I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2010

Mr. REID. Madam President, I ask the Chair to lay before the Senate a message from the House on S. Con. Res. 13, the concurrent budget resolution.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendment to the resolution (S. Con. Res. 13) entitled ''Concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2010, revising the appropriate budgetary levels for fiscal year 2009, and setting forth the appropriate budgetary levels for fiscal years 2011 through 2014.'', and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. REID. Madam President, the following request has been approved by Senator GREGG and the Republican leadership.

I ask unanimous consent that the Senate disagree to the amendment of the House, agree to the request for a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees; that prior to the Chair appointing conferees,

the following motions to instruct the conferees be in order; and that a majority side-by-side motion to instruct be in order to any Republican motion to instruct and that the majority motion be voted on first; that upon disposition of all motions, any remaining statutory time be yielded back; and that the conferee ratio be 2 to 1; provided further that the statutory time be considered as having started running at 3 p.m. today, and that the time be charged equally to both sides. The motions in order are Johanns, cap and trade; Stabenow, cap and trade, which is a side by side; Gregg, no debt increase; Sessions, nondefense, nonveterans spending freeze; Ensign, point of order relative to raising taxes; Cornyn, taxes; Alexander, competitive student loans; Coburn, budget line by line; DeMint, health care, that no point of order be in order to this motion; Vitter, oil and gas tax.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Oregon.

Mr. WYDEN. Madam President, Chairman CONRAD has emphasized how important it will be to tackle the major issues—health care reform and climate change—in a bipartisan way. I wish to spend a few minutes first expressing my support for that position and urging that the conference on the budget proceed expeditiously because then the heavy lifting in the Senate will begin.

For example, for American health care, what is needed is nothing short of a transformation of our system. American health care is simply broken. Medical costs are gobbling up everything in sight. Middle-class people know their paychecks are not going up, and the prime reason is because medical costs take away all of what would otherwise be a wage increase.

Our newspapers report daily that Americans are being laid off at their jobs. They lose their health benefits. What we see again and again is a spiral of tragedy, as they simply lurch from one effort to another to try to find health care and cannot get it.

For example, on Tuesday, the New York Times published a front page story titled, ''No Job and Soon No Benefits, Race to Help Son Stay Cancer Free.'' Dana Walker of Humble, Texas, was laid off from her job at DHL leaving her and her family without health insurance. Her son Jake is just 21 years old and is a cancer survivor. Now uninsured, the Walkers have had to defer their own care, pay up front for Jake's care, and have essentially been refused care at the hospital that specializes in care. In the article, Mrs. Walker said, ''Your job as a parent is to protect your children at any cost. I really feel like I had let him down.''

I don't believe Mrs. Walker has let her son down. She's doing all she can. In the individual market health insurers can discriminate on the basis of age, gender, family size, geography, health status and pre-existing conditions like cancer. Even though Jake has been cancer free for a year, he can't find affordable health insurance on his own. Insurance companies can pick and choose the customers who are the good risks and leave the bad risks, like Jake Walker, out in the cold. It isn't Mrs. Walker who's let her son down. It's the health care system.

This is not going to be fixed by a piecemeal approach to health care reform that tackles one part of the system or another and produces incremental change for perhaps a short period of time. What is needed is transformational change. I believe Democrats and Republicans in the Senate are committed to that objective.

I think there is a growing recognition that both parties have had a valid point. Democrats, in my view, are correct that you cannot fix health care unless you cover everybody because without full coverage you cannot organize the market. There is too much cost-shifting. There is no emphasis on prevention. You have to get all Americans good quality, affordable care. Republicans have valid points, in my view, as well. You should not just turn everything over to the Government and say that is the answer.

What is really needed for transformational change is containing the costs. The Congressional Budget Office, last May, said that for the amount of money America is spending today on health care, all Americans in a couple years could have good quality, affordable coverage like their Members of Congress. That is what the Congressional Budget Office said when it looked at one approach to dealing with health costs.

I am very confident, under the leadership of Chairman BAUCUS and Chairman KENNEDY, that they will have a lot of support for transformational change so we make sure all Americans have access to good quality, affordable choices, and they get rewarded when they take sensible steps, for example, in preventive health care and wellness and shop carefully for health care coverage.

Today, if you are lucky enough to have health care coverage, you do not get any choice at most employers. That is not the way it is for Members of Congress. So why don't we agree, Democrats and Republicans, after we get this budget conference put together, that we are going to make sure all Americans get good quality, affordable choices like Members of Congress have? Then let's start rewarding them. Let's reward them for sensible prevention. For example, the Safeway Corporation has been doing that for some time. I would like to say that seniors who lower their blood pressure and lower their cholesterol would get reduced Part B premiums. That is the outpatient portion of the Medicare program. But these are areas where Democrats and Republicans can come together.

There has been considerable discussion on the Senate floor about the idea of reconciliation for tackling health care. I think Chairman CONRAD is absolutely right in his approach.

I will say there have been many of us on both the Democratic and Republican side, as we have looked to health care, who want to make the issue of reconciliation irrelevant. We want to make the issue of reconciliation irrelevant because we are hoping to bring enough Democrats and Republicans together so we will have 70 or more Senators gathered to fix the health care system.

These issues, ultimately, in my view, are not ones that automatically produce a partisan divide. The private insurance system is also broken. It is about cherry-picking.

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. Five minutes 31 seconds.

Mr. WYDEN. For the remainder of my time, Madam President, let me tick off a number of other areas where Democrats and Republicans on this health care issue can come together for transformative change.

Today's private insurance model is also broken. It is all about cherry-picking. It is about taking healthy people and sending sick people over to Government programs more fragile than they are. So what Democrats and Republicans want to do—again, in the name of transformative change—is we want to say that the companies are going to have to take all comers. We understand that is a key part of health care reform.

But we are going to put them all on equal footing. There are not going to be any price controls or big Federal regulatory systems. But everybody is going to be part of a big group so we contain costs as part of a big pool. We will reward prevention and wellness, which, of course, is not done today. This is where I think it will be possible for firms in the health care area to both do good and do well by offering better service to our people.

Other areas of transformative health care reform: The issue of portability and making sure our people can take their health care coverage with them so they do not lose their coverage when they lose their job or they wish to leave their job. That is what happens today. Of course, much of the health care system does not offer that kind of portability because it is built around what happened in the 1940s, when somebody started working and stayed put for 25 years, until you gave them a gold watch. Well, today the typical worker changes their job 11 times by the time they are 40. We need portable coverage. Democrats and Republicans can work together on that.

I want to close, again in the name of bipartisanship, by talking about how we can help people who have coverage. They have been described by some as the contentedly covered Americans. I

think what we ought to say for those folks, Democrats and Republicans, is, let's let them keep the coverage they have. Let's make sure they are wealthier in the new system because they get rewarded when they engage in those preventive practices or make a good purchase. Let's make sure they are healthier in the new system. Chairman CONRAD is here and has talked about improvements, for example, in chronic care, which is certainly part of making Americans healthier.

Finally, let's make sure that if they leave their job or their job leaves them, as I have touched on, they are going to have a safety net of affordable coverage.

Each and every one of those points I have talked about is an issue on which Democrats and Republicans can come together. I hope the Senate will follow Chairman CONRAD's advice about proceeding expeditiously. I think there are many Members of the Senate who want to tackle these big issues—climate change and health care—in a manner that makes reconciliation irrelevant because we have brought together the kind of broad majorities that I think are particularly within the grasp of the Senate on this issue of reforming health care. I look forward to working with colleagues on both sides of the aisle for exactly that kind of transformative policy to better meet the needs of the American people.

With that, Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Madam President, just briefly, I want to thank Senator WYDEN for his leadership. He is really an outstanding member of the Budget Committee. No one—no one—has spent more time on health care reform and tax reform than the Senator from Oregon. No one has reached across the party divide more assiduously than Senator WYDEN. I very much appreciate his contributions to the committee and to the Senate and especially to a thoughtful debate and discussion of the key issues facing the country.

One of the things that is so striking on health care is that we are spending about 18 percent of our gross domestic product on health care. And some are saying: Well, we have to spend another $1 trillion to $1.5 trillion. It strikes some of us as improbable that when we are spending $1 in every $6 in our economy on health care—about twice as much proportionately as any other country in the world—that the answer is to spend another $1 trillion to $1.5 trillion.

Senator WYDEN, through really years of effort—and I mean years—working week after week with the Director of the Congressional Budget Office, with other policymakers, has put together a bipartisan health care plan. It is the only one of significance I know of that has broad-based bipartisan support. He deserves all of our thanks for the efforts he has extended. I once again thank the Senator for his leadership in the committee, on the floor, in the Senate, and for the seriousness of purpose he has brought to the task.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Madam President, while I agree with Senator CONRAD that Senator WYDEN has worked hard on this and he is raising some important issues, I am very worried about where we may be heading in the realm of health care. I have been impressed with Senator WYDEN's efforts to create something that could result in bipartisan agreement. I don't know where we are headed, but I respect him greatly for his efforts.

MOTION TO INSTRUCT

Madam President, I ask unanimous consent to call up my motion to instruct conferees.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama Mr. SESSIONS moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the current resolution on the budget for fiscal year 2010) be instructed to insist that the conference report on the concurrent resolution shall freeze non-defense and non-veterans funding for 2 years, and limit the growth of non-defense and non-veterans funding to 1% annually for fiscal years 2012, 2013 and 2014.

Mr. SESSIONS. Madam President, the budget resolution is on the floor now, and I believe we ought to talk about it and be honest with ourselves about it. I will speak as one Senator. I know it passed this Senate. I don't think any Republican voted for it. Maybe a couple of Democrats voted against it, but it passed with extra votes to spare.

I would say—and I hate to say it, but I will repeat what I have said before: I believe this is the most irresponsible budget in the history of this Republic. It surges debt to a degree to which we have never seen before, not because it assumes we are going to be in long-term economic turmoil—they assume we are going to have economic growth roaring back in a year or two and that revenues will be surging in to the Government. The debt and deficit we are incurring is a direct result of massive spending—an alteration, I believe, by all accounts of an historic concept that Americans have of limited government, lower taxes, and a vibrant private sector. We have always objected to the Europeans and their more socialist model. We have consistently, year after year, had greater growth than they have had, lower unemployment than they have had, and we have been proud of that.

Of course, both Europe and the United States are in trouble today. I was rather mortified when the European leaders told our President and our Secretary of the Treasury that no, they were not going to spend like the United States; no, they believe we are incurring too much debt and they were not going to follow us; and the President of the European Union said our financial proposals were the road to hell. That is what he said about them.

Let me share a few things before we get started on the specifics of the motion to instruct. This is what the President's budget called for. He submitted a 10-year budget, and this is not something, let me add, that he was forced to do. This budget represents the President's, the administration's, and now, I guess, this Senate's fundamental view that we need to spend, spend, spend more than we ever have in history and not be too much worried about the debt.

So under the present state of affairs, in 2008 the debt of the United States, from the founding of the Republic over 200 years, totaled $5.8 trillion—a lot of money. We paid on that $170 billion in interest in 2008. That is how much interest we paid. We spent less than $100 billion on education and $40 billion on highways. This year we paid $170 billion on interest on our debt. But, within 5 years, according to the President's own budget numbers we will double that debt to $11.8 trillion in 5 years, and in 10 years, the debt will triple to $17.3 trillion. The young people who are coming out of school today and beginning to work, how much interest will they be required to pay on that 10 years from now? Not $170 billion, but according to our own Congressional Budget Office that scored this carefully—and they are under the control of the Democratic majority, but they are a nonpartisan group, and I respect what they do—they calculate we will pay $806 billion in interest, over ten times what we are spending today on the education expenditures of the Federal Government, and many times the $40 billion we spend on highways this year.

I would say this is a stunning development. I am worried about it. I think every American should be worried about it. Are those projections off base? I have the numbers; they just released the numbers for this year. Remember, last year was the biggest deficit this Nation has had since World War II—$455 billion. We need to be working that annual deficit down.

Look: In October, the first month, we hit $134 billion; by January—4 months—we were at $563 billion this fiscal year. That is this fiscal year. By January of this year, in 4 months, $563 billion in deficit represents the largest deficit in the Republic since World War II. Here we go back to the end of the quarter, at 6 months from October, through March, it is now $953 billion, already twice what last year's numbers were. So we are on track this year to see an annual deficit of $1.8 to $1.9 trillion. That is unbelievable.

I ask my colleagues, does it get better? Not under the President's budget. Under the President's budget, in the outyears, the numbers continue to go

up, and in the tenth year, his budget projects a deficit of $1.2 trillion. Over 10 years, his budget deficit will average over $900 billion each year. Again, this is not projecting a war; it is projecting a decline in defense spending for military activities around the globe. It is projecting solid, even robust economic growth. The deficits are caused by spending. I am so disappointed we haven't done a better job of controlling it.

I know the Senate budget is a 5-year budget. That is what they think is going to look a little better than the President's 10-year budget, but according to the Republican staff, they did an analysis of it and it is essentially the same over the first 5 years. In fact, Mr. Orszag, of the President's Office of Management and Budget, who used to be the Director at CBO, said publicly it was 98 percent of what the President wanted. This chart shows that in discretionary outlays it is 98.8 percent identical to the President's 5 years; on total outlays, it is 96.6 percent identical; and the revenue they project is 99.8 percent identical.

What can we do about it? There are a lot of things we can do. The most difficult—and our chairman, Senator CONRAD, and the ranking member, Senator GREGG, have made some steps toward dealing with the crisis in entitlements. They are growing at a rapid pace and we have to do something about it. This budget assumes no reform on entitlements whatsoever, but maybe they will be able to make something happen. I would like to see us project some savings in that, but it is not shown in this budget.

So the motion to instruct I have filed, and that at some point we will be voting on, would say we ought to begin to establish some sense of fiscal responsibility by containing the growth in discretionary, nondefense, nonveteran spending. This can be done. It is particularly easy to do so this year because we, a few months ago—a few weeks ago, really—passed an $800 billion stimulus package, on top of our base budget. So I would have thought, when we did our baseline budget this year, knowing we had pumped in $800 billion over the next 2 years to try to stimulate the economy, that we would have a frugal baseline budget. Not so. In fact, according to the budget that is on the floor, I believe, it shows a 7-percent increase in baseline discretionary, nondefense spending.

Most of my colleagues know the rule of seven: A 7-percent growth rate doubles your money in 10 years. So this proposal puts us on a track to double the spending for discretionary, nondefense spending in 10 years. It is an unsustainable track.

I propose this: In light of this stimulus package—the largest single appropriation of money in the history of America that we passed, and every penny going to the debt; all $800 billion of it has to be borrowed so we can spend it. In light of that, we ought to be able to keep the baseline budget flat for 2 years and show a modest increase of 1 percent over the next 3 years. This will make a difference. It will save us $173 billion. It will give us—it will start us on a process of having a baseline spending level for this country at a more frugal rate. Most States are having to cut. Most cities are showing reductions, 3.56 percent, some more than that, all over the country. They are not disappearing from the face of the Earth. It is not impossible to cut spending, but this doesn't propose any cut. It proposes 2 years of flat spending—but remember, we added $800 billion on top of it; and then for 3 years, a 1-percent increase. This will make a difference. In over 10 or 15 years, it will have an even bigger impact than we might think.

I urge my colleagues to consider this. We ought to show some restraint. Everybody is saying, Well, we will worry about that tomorrow. We have a crisis today, and we are going to spend today, and we will worry about the debt later. But it is time for us to stand up and be counted, I believe. I think my amendment is modest, I think it is responsible, but I think it is significant. I urge my colleagues to consider this motion to instruct.

I appreciate the opportunity to speak on it. I appreciate those who worked on this budget, but I have to say, it should not become law. It is a bad mistake for this country to do it. I urge my colleagues to not go forward with a lockstep movement to vote for this budget. I don't think the American people are at all happy with it. I believe they know we are doing something fundamental to this country—and that was a big part of some of the tea party talk—a deep angst out there that something is happening to their country that is unprecedented.

I appreciate my colleagues' attention to this motion to instruct and I urge their support for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Madam President, I thank the Senator for his remarks. I disagree with them, but I respect them. They are deeply held on the part of Senator SESSIONS, who is an important member of the Senate Budget Committee.

Let's review the record, because I have heard some things here today that are a bit of rewriting of history. How did we get in this ditch? This wasn't the Obama administration's doing. The Obama administration has been in office less than 100 days. They inherited this colossal mess. Who did they inherit it from? They inherited it from the previous administration, aided and abetted by what was for 6 years solid Republican majorities in the House and the Senate. And what was the record they produced? Not projections in the sweet bye-and-bye of what the new President's budget might do. We can look back and see what their policies actually did. And what did they do? Well, on spending, it is interesting to see the crocodile tears now, but when they had a chance, they doubled the spending of the country. That is a fact. They doubled it.

Much more than that, they took the deficit to unprecedented levels.

This is the deficit record of the previous administration. What you see is an ocean of red ink. The black is the previous administration. The Clinton administration balanced the budget and stopped raiding the Social Security trust fund. The Bush administration came in and ran up the deficit to record levels, put the economy in the ditch, and then left town. They said to the Obama administration: Good luck.

This is what happened to the debt under the Bush administration. Not only did they double spending, they more than doubled the debt of the country, and that was at a time when the economy was relatively good. What a tragic record. What a legacy they have left for this country—a legacy of debt, deficits, and decline—the three Ds. And they are the Ds that belong and describe the record of the previous administration.

What did President Obama inherit? Record deficits, the more than doubling of the national debt, the worse recession since the Great Depression, the financial markets and housing markets in crisis, almost 4 million jobs lost in the last 6 months alone, and war in Iraq and Afghanistan. My goodness, what a mess he was left to try to clean up.

Senator GREGG has made it very clear—and he is right—that we have a need to increase the short-term deficit, unless we want to return to Hoover economics, which put this country in a depression and, unfortunately, that is exactly what I heard in the previous speech—a desire to return to Hoover economics. The markets will correct themselves; the Government doesn't have to do anything. We can just sit by and watch the whole thing collapse.

That was the philosophy of the last administration. We can see what happened. It was a tragic mistake. We can go back further in history and see what happened in the 1920s and 1930s when that same philosophy prevailed. It put this country into the worst depression in the economic history of our country.

All I can say is, no thanks. My vote is no on going back to Hoover economics.

I say to my colleague, Senator GREGG, who recognizes that Hoover economics is not the answer, this is the statement he made:

> I am willing to accept the short-term deficit number and not debate it, because we are in a recession, and it's necessary for the Government to step in and be aggressive, and the Government is the last source of liquidity. And so you can argue that this number, although horribly large, is something we will simply have to live with.

Senator GREGG said much the same thing today. Of course, he is right.

Look, nobody is more of a deficit hawk, I don't think, in this place than I am. But I understand in the short term, when your economy is collapsing, deficits and debt will grow. That is necessary because only the Government can provide the liquidity to prevent a complete collapse. But over time, it is absolutely essential that we pivot and go back to a more sustainable fiscal course. That is what this budget begins to do.

For example, on domestic discretionary spending, we take it from 4.3 percent of GDP in 2010 down to 3.2 percent in 2014. We are stepping down discretionary spending in each and every year, measured as a share of our national economy. That is what economists say is the right way to measure. I could show it in dollar terms, but that doesn't take into account inflation. This does.

When I hear this talk about this being a big-spending budget, please, I don't know what budget they are talking about. They are not talking about the budget that passed the Senate because the budget that passed the Senate increases nondefense discretionary spending, on average, per year, by 2.5 percent. That is not a big spending budget.

Let's look at the defense side as well because in 2010 defense spending under this budget is 4.8 percent of GDP. Over 5 years, we step it down to 3.7 percent of GDP almost the exact same trajectory as nondefense discretionary spending that we are taking from 4.7 percent of GDP in 2010 down to 3.6 percent in 2014. So it is one thing to come out and make a claim, it is another thing to prove it. Everybody has a right to their own opinion, but they don't have a right to their own facts.

These are the facts of the budget before us. This is a tough and fiscally responsible budget that increases nondefense discretionary spending, on average, by 2.5 percent a year. Measured against the share of the economy, we are taking both defense spending and nondefense discretionary spending down as a share of our national income to the lowest level it has been in many years.

Madam President, where are the increases that are in this budget, the 2.5 percent, on average, increase in nondefense discretionary spending? I have already shown that we are taking both defense spending and nondefense spending down as a share of the national income. But where are the increases, as modest as they are?

In overall discretionary spending, the biggest increase is in defense, which is 37 percent. Why? Because this President and this budget were honest about war spending, unlike the previous administration, which played hide the ball and acted as though the war wasn't going to cost anything.

I am not overstating because for several years in a row the previous administration, even though we were at war, said the war in their budget was going to cost nothing. Let me repeat that. The previous administration, even after the war in Iraq had begun, claimed in their budget submissions that the war was going to cost nothing—nothing. What an amazing thing. It wasn't true.

This President came in and said: No, we are going to write a new chapter. We are at war, and we are going to put the war cost in the budget. So in the modest increases here, 37 percent of them are defense; 14 percent is in international. That is also something hidden in the previous administration. They kept presenting what they called ''supplemental'' budgets after their regular budget to hide the full cost of their involvement overseas.

The next largest increase in the modest overall increases we have is for veterans; 10 percent of the increases is for our Nation's veterans. Why? Because they deserve the best care we can provide. We have the largest dollar increase for veterans health care in this budget than in any budget that has been presented. I am proud of that because we are keeping faith with our Nation's veterans.

Ten percent of the increase is for education, and 10 percent is for income security. That is because we are in a deep recession. That means people are out of work, and if we are going to provide unemployment benefits to keep them from losing their homes and being out on the street and not being able to feed their families, we provide unemployment benefits. That costs money, and that is in the budget.

Eight percent is for the census. We only do the census once every 10 years, but we have to pay for it. It is in the budget. Six percent is for natural resources and the environment. Three percent is for transportation, and 2 percent is for other items.

The overall context of this budget, I want to make clear—the deficit, in dollar terms, is being reduced from $1.7 trillion this year, and this year's budget is almost totally the responsibility of the previous President because he set in place the policies that the new administration inherits. We stepped down the deficit, very dramatically, by more than $500 billion from 2009 to 2010, by more than $300 billion from 2010 to 2011, by another $300 billion from 2011 to 2012, and then more modestly thereafter, so that we are reducing the deficit over the 5 years of this budget by two-thirds. Measured as a share of the gross domestic product—which, again, economists say is the best way to measure—the deficit is reduced by more than three-quarters, from 12.2 percent of GDP to less than 3 percent of GDP in 2014. So over the 5 years, we are reducing the deficit by three-quarters.

One other point I want to make is that the previous administration—not only did they more than double the debt and double spending, they tripled foreign holdings of U.S. debt. It took 224 years and 42 Presidents to run up $1 trillion of U.S. debt held abroad. The previous President alone tripled that amount. You talk about a legacy of debt, you talk about a legacy of weakening the country, that is it.

Madam President, I don't mind hearing criticism of the budget we have proposed. Is it a perfect document? No. Do we have to do much more, especially in the next 5 years? Absolutely. But this budget is a good and responsible beginning. If our budget is so bad, why haven't they offered an alternative? If our budget is as irresponsible as they claim, why did they not offer an alternative?

Well, I think we know the reason. They didn't want to have to be held responsible for the tough choices of presenting a budget. So talk is cheap around here. This budget upholds the President's fundamental priorities of reducing our dependence on foreign oil, a focus on excellence in education, and fundamental health care reform because that is the 800-pound gorilla that can swamp this boat. Without such reform, we are headed on a course in health care that is totally and completely unsustainable. Finally, we are dramatically reducing the deficit over the next 5 years.

Those are the priorities the President asked us to preserve. We have done it in the budget. The President supports it. He is right to do so. Let's remember this President did not create this mess; he inherited it. He has been asked to clean it up. I am proud of the aggressive actions he has taken to try to get us on a better course.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CONRAD. Madam President, I will take this moment to ask those Senators who have motions to instruct to please come to the floor. We have had Senator JOHANNS offers his, and Senator SESSIONS offer his. We have other Senators—Senator ENSIGN, Senator CORNYN, Senator ALEXANDER, Senator COBURN, Senator DEMINT, and Senator VITTER. It would be very helpful if those Senators would come and be prepared to offer their motions so we do not unduly take the time of the Senate in quorum calls, especially on a day in which we are going to have 9 or 10 votes. We know we can only do about three votes an hour. That means three hours of voting when we get started on voting. So it is already going to be a late night. It would be very helpful and considerate to our colleagues if those who have motions to instruct would come to the floor and offer their motions.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GREGG. Madam President, I ask unanimous consent that the next two speakers on our side to be recognized—and, of course, there be an alternative speaker possibly from the Democratic side—the next two speakers on our side are Senator VITTER for 10 minutes and then Senator ALEXANDER for 10 minutes to talk about their motions to instruct.

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

Mr. GREGG. Madam President, I also ask unanimous consent that after Senator ALEXANDER, Senator COBURN be recognized to talk about his motion to instruct.

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

Mr. GREGG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MOTION TO INSTRUCT

Mr. ALEXANDER. Madam President, I wish to speak on behalf of a motion to instruct the conferees, which I have here. Do I need to send this to the desk?

Mr. GREGG. Not yet.

Mr. ALEXANDER. I will speak on behalf of it and send it at the appropriate time.

This should be a relatively easy motion for our colleagues to support because it simply instructs the conferees to support a position that the entire Senate adopted unanimously. That provision during our budget debate was to accept the position of maintaining a competitive student loan program that provides students and institutions of higher education with a comprehensive choice of loan products and services.

I ask the Chair if she will let me know when I have 2 minutes remaining.

The PRESIDING OFFICER. The Senator will be notified.

Mr. ALEXANDER. I thank the Chair.

Madam President, there are three reasons in support of maintaining a competitive student loan system. The first is that 12 million students rely on it today in New Hampshire, in Tennessee, in North Dakota—all across our country.

Second is that now is not the time to be creating a new half-trillion-dollar national bank that would run up the debt, a bank that would replace 2,000 private lenders, and make $75 billion in new loans a year. That is not a proper function of the U.S. Department of Education.

And third, the cost savings that is alleged is—and I will be gentle in my words—a trick on students to make Congressmen look good.

What we are going to be doing if we do not preserve this choice is saying to all the students who get a loan that we are going to take money from them and then give it to other students so that Congressmen can go home and brag that he or she has increased the amount of the Pell grants. Let me be specific in what I say.

I was the U.S. Secretary of Education in 1991 and 1992 when we created something called the Direct Loan Program. We have a federal student loan program. Most people who go to college are familiar with it. About two-thirds of the students at our 6,000 different institutions from the University of New Hampshire to the Nashville Auto Diesel College to Harvard to San Francisco State have a Federal grant or a loan. When you get a student loan, you take it to the institution of your choice.

We now have 2,000 lenders who help provide all those different kinds of loans. They give financial aid counseling, they give interest rate deductions, they help students and families plan on how to pay for college. In other words, they service the loans and then the Government supports that by guaranteeing almost all of the loans.

We set up a separate program which we called direct lending. That was, you could come straight to the Government to get your loan. In other words, we created a government bank run by the Department of Education. We said to the students and to the institutions: You make the choice. You may either have a private student loan guaranteed by the Government through your local bank or financial institution, or you may come to the U.S. Department of Education to get your loan.

We have had more than 15 years of experience with that now, and what have the students and institutions said? Three out of four say we like the regular student loan program, we like the choice, we like the private lender. Since we are getting the loan, we like the idea of going to a bank to get a loan because that is what banks do. If you want a car, you go to a car dealer. That may be changing. You may have to go to the Department of Treasury to get a loan the way the country is going. For 15, 16 years we market tested this and so we have that direct loan program.

The situation right now is we have 12 million students at 4,400 different institutions getting $52 billion in loans by their choice from banks instead of from the Government. One-fourth get it from the Government. It has been that way for a long time.

What the President's proposal wants to do is to take all those choices away from the students and say: Line up outside the Department of Education to get your student loan, all 15 million of you. There will be 4,400 institutions and 12 million students who may not like that.

Second point. Is a national bank a good idea? We read in the paper that the Government is going to take stocks in the biggest banks. So we are going to nationalize the banks. Then we read in the paper the Government is going to take stock in General Motors and Chrysler—hopefully that is not true—so we are going to have the Government deciding what kind of car we are going to be making, what kind of plants we will have, where the plants are going to be. I cannot think of a worse organization to do that.

This is a proposal to say: All right, now the Government is going to be your bank. It is going to be the bank for your student loans. We are going to create a new national bank. It would have over a half trillion dollars in outstanding student loans. It would make 15 million student loans every year, $75 billion in loans a year. We will run all this out of the U.S. Department of Education, a wonderful Department. I was myself there for 2 years. But what do we know about being a national bank? Not very much. Andrew Jackson would roll over in his grave about the idea of a national bank of this size.

My final point. This proposal, with all due respect, is a trick on students to make Congressmen look good, and here is why.

The budget we originally got said we will take $94 billion in savings and we will spend it on Pell grants. Let's think about that a minute. Common sense will tell you that the Department of Education is not going to know more, is not going to be able to replace 2,000 lenders at a cheaper cost. That simply is not going to work. That is what common sense would tell you.

The Congressional Budget Office has told us that in order for the Department of Education to administer these loans, it would cost about $28 billion over the next 10 years. That is the computation I have made. They estimate that the cost of administering the current Direct Loan Program is about $700 million a year. So if they did them all, that would be at least $2.8 billion a year.

Conservatively speaking, you don't have $94 billion in savings; you have 94 minus 28. So you have around 66. So you have $66 billion that goes somewhere out to banks, maybe to reduce loans, maybe to reduce interest rates, maybe to administer the loan program. But the bottom line is, if the Government takes this program over, it is going to be borrowing money at one-half of 1 percent and loaning it out to 15 million students at 6.8 percent. Borrowing at one-half of 1 percent and loaning it out at 6.8. On every student loan—and I hope all 15 million students listen to this—your friendly Government is going to take back 6.5 percent

of the 6.8 percent interest you are paying. What is it going to do? The Congressman or Congresswoman can go home to Tennessee or wherever and say: I increased Pell grants. But they won't tell you: I took money from this student to give it to that student. That is not the way to do it.

What we should do, if that spread is too high right now, is let's cut it down—

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. ALEXANDER.—if the savings is estimated at $90 billion. We know it is closer to 60. Maybe it is 20, maybe it is 30, maybe it is 35. Maybe we should lower the interest rate to 3 or 4 percent or 5 percent or whatever is the appropriate rate. But that does not justify creating a national bank in the Department of Education to try to handle 15 million loans.

So my argument, Madam President, is this: There are colleagues on both sides of the aisle—and there are a number of Democrats—who strongly support the idea of competition and choice in higher education. That is why we have the best higher education system in the world. We have competition and choice all the way through it. The grants and the loans don't go to colleges; they go to the students, and the students choose the college. They can go to Nashville Auto Diesel College if they want or they can go to Harvard; it follows them to the school of their choice. They ought to be able to go to the lending institution of their choice and not line up outside of the Department of Education to get 15 million loans every year. That is not right. It is not the way our country ought to work. So the first is to preserve choice for the 15 million students who now have it at 4,400 institutions.

The second reason is, let's not be creating another nationalized asset in America. We need to be thinking of ways of getting the Government out of the private sector. I mean, this recession is not for the purpose of the Government taking over every auto company, every bank, all the student loans, and every business that is in trouble. We need to be thinking of ways of going the other direction. That is the America we know. That is the America we want. So we don't need a new national bank.

Arne Duncan is the new Secretary of Education. I think he is the President's best appointee. He ought to be working on paying teachers more for teaching well, creating more charter schools, helping states create higher standards. That is his agenda. I don't think he came from Chicago to Washington to be named banker of the year, which is what he would be doing if he became a national bank president for student loans. That is what this proposal would do unless the Senate sticks to its position.

Finally, I don't want to be a part of any situation which has Congressmen and Senators playing a trick on 15 million students and saying: I am going to borrow money at a quarter of 1 percent and loan it to you at 6.8, and then I am going to take credit for giving the rest of it away. I think that will come home to roost, and it ought to come home to roost.

I appreciate the opportunity to make this motion to instruct, and I hope it will come to a vote. I hope it has the kind of bipartisan support it had before. I hope the President will think of all the other things there are to do that need attention, such as fixing the banks, getting credit flowing, restoring the auto companies, and leave the student loan system to continue to work in the way it should work.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. If the Senator will yield, I would suggest that he send his motion to the desk at this time and set aside the pending motion.

Mr. ALEXANDER. Madam President, I send to the desk my motion to instruct conferees.

The PRESIDING OFFICER. Without objection, the pending motion is set aside. The clerk will report the motion to instruct.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. ALEXANDER] moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the current resolution on the budget for fiscal year 2010) be instructed to insist that the final conference report include the Senate position maintaining a competitive student loan program that provides students and institutions of higher education with a comprehensive choice of loan products and services, as contained in section 203 of S. Con. Res. 13, as passed by the Senate.

The PRESIDING OFFICER. The Senator from Louisiana.

MOTION TO INSTRUCT

Mr. VITTER. Madam President, I ask unanimous consent that the pending motion be set aside and that my motion be sent to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. VITTER] moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the concurrent resolution on the budget for fiscal year 2010) be instructed to insist that if the final conference report includes any reserve funds involving energy and the environment, that such sections shall include the requirements included in section 202 (a) of the Senate-passed resolution to require that such legislation would not increase the cost of producing energy from domestic sources, including oil and gas from the Outer Continental Shelf or other areas; would not increase the cost of energy for American families; would not increase the cost of energy for domestic manufacturers, farmers, fishermen, or other domestic industries; and would not enhance foreign competitiveness against U.S. businesses.

Mr. VITTER. Madam President, a few weeks ago, when we debated the budget here on floor of the Senate, I passed language contained in section 202(a) of that budget resolution. This motion to instruct conferees is very simple. It says that we will fight to keep that language in the final budget resolution.

What does that language do? Well, it is very simple. It says that this budget legislation '' . . . would not increase the cost of producing energy from domestic sources, including oil and gas from the Outer Continental Shelf or other areas; would not increase the cost of energy for American families; would not increase the cost of energy for domestic manufacturers, farmers, fishermen, or other domestic industries; and would not enhance foreign competitiveness against U.S. businesses.''

That is a pretty simple, straightforward plea, and it is one we should keep in this budget resolution—fight and demand to retain that language in our budget. That is why I ask all my colleagues to join me in supporting this motion to instruct.

At a gut level, this is very simple. New taxes kill jobs. New taxes kill jobs. According to a preliminary estimate based on the Center for American Progress data, 271,000 oil and gas jobs would be destroyed by the administration's proposed new taxes and fees on energy. That would be a bad idea, in my opinion, at any time. But now, as we are in the midst of a horrible recession, which is still getting worse, it is a horrendous idea. Now is not the time to impose these new taxes on the economy, including the oil and gas industry. New taxes would hurt workers by extending the recession and by depressing job creation just as, hopefully, an economic recovery in the next several months starts to gain a foothold.

The oil and gas industry is significant to our economy and employs more than 6 million fellow Americans. Attacking that industry in the midst of a horrible recession is attacking those 6 million of our fellow citizens. Right now, they feed their families, put a roof over their kids' heads because of good, solid jobs in the energy sector producing good, affordable energy for Americans. These proposed taxes would kill those jobs in the midst of a horrible recession.

This is not brain surgery. We know from history, from practice, that higher taxes in this sector result directly in less domestic energy, and restrained supplies lead to higher energy costs for consumers too. So in today's economy, that would stifle recovery and make Americans more dependent on foreign oil and natural gas.

New taxes will make it more expensive for oil and natural gas companies to expand or initiate new exploration and development programs, and that would mean fewer jobs for American workers.

New taxes hurt businesses, threaten jobs, and they are then passed on to

consumers as higher prices. And higher taxes are a burden felt throughout the economy. They discourage business expansion, investment, and job creation.

Again, this is a very simple, basic, but important notion. This is no time to increase taxes on domestic energy production. This is no time to stifle what will hopefully soon become the beginnings of a recovery. In terms of our energy picture, this is no time to lessen domestic production when we should be moving in the opposite direction and increasing domestic production and independence from foreign sources. All of these energy tax proposals would do exactly that.

Let's be clear about it. These proposals have been made. They are there in black and white. They are concrete. They are real proposals from the Obama administration and some liberal Members of Congress, and they fall into two big categories: No. 1, a very aggressive, ambitious cap-and-trade program, which is a tax on so many forms of energy and activity in our country; and No. 2, direct tax increase proposals on domestic oil and gas production. I don't believe any time is a good time to push that policy, but I would hope we can all agree that now, in the midst of a severe recession, which unfortunately is still getting worse, is really not the time to increase taxes on the domestic energy sector. It will cost us jobs, it will stifle a recovery, it will increase costs on consumers, and it will hurt American businesses and consumers.

Madam President, let's all join in support of this language in the Senate version of the budget resolution. In our previous debate of a few weeks ago, it was adopted by unanimous consent. Let's make sure it is fought for and preserved in the final version of the budget resolution.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

MOTION TO INSTRUCT

Mr. COBURN. Madam President, I ask unanimous consent that the pending motion be set aside, and I offer a motion to instruct the budget conferees.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the concurrent resolution on the budget for fiscal year 2010) be instructed to insist that Conference Report include a reserve fund that promotes legislation that achieves savings by going through the Federal Budget line by line, as President Obama has called for, to eliminate wasteful, inefficient, and duplicative spending, as set forth in Section 224 of S. Con. Res 13.

Mr. COBURN. Madam President, this was accepted during our debate. The reason I bring it back is that if you ask the American people what they are worried about, they are worried about their jobs, they are worried about their health care, but they are also worried that we are spending their children into oblivion. And they are right—we are.

One of the great things about President Obama's promises was that he said he recognized we have waste in the Federal Government. He recognized we have duplication in the Federal Government. He recognized we have programs that aren't working in the Federal Government. And the commitment he made—and he has made three times since being sworn in as President—is to do a line-by-line evaluation of every Federal program out there, to check it for waste, No. 1; No. 2, to check to see if it is duplicative of something else, which a third of them are; and No. 3 is, does it have any metrics on it and is it being defrauded?

The fact is, it is now common knowledge that at least $300 billion a year—at least $300 billion a year—is either wasted, defrauded, or duplicated in the Federal Government. The real problem is that even though we now have a President who wants to attack that, Congress hasn't been willing to do it. We have not been willing to keep our side of the bargain in terms of oversight and evaluation.

It strikes me that if all the money we are borrowing to run the Government today was really our money, none of us would ever allow what is going on in the Federal Government. None of us would. None of us would allow the duplication.

We had a hearing yesterday in Senator CARPER's Federal Financial Management Subcommittee on the waste and fraud in Medicare and Medicaid. It went up to $74 billion—$74 billion, and we are not doing anything about it? Total improper payments. We only have improper payments in about three-quarters of the Federal Government even though it is a mandated law that they have to supply it. But they can't measure it because they don't know what they are paying for.

The fact is, we know we have big problems. We have a fraud bill in front of us that we haven't finished working on that is to go after fraud. Well, the biggest fraud is right here. The biggest waste is right here. So the point ought to be, as we go into a conference on the budget, that we ought to commit to the American people that we are willing to do what they are having to do right now; that we are going to look at where things aren't working, we ought to look at where things are wasted, we ought to look at things we are not measuring and start measuring them, and the things that are not effective, we should get rid of. That is all this says. It just says we will go line by line through every Federal program; that we will have oversight at least once a year on everything that is out there, and we will make a dent in this $300 billion-plus.

Here is the question. Is it moral to waste $300 billion and that $300 billion come out of lost opportunity of our children? Is this a moral position the Senate wants to stand on? Does the Congress want to stand on that? Can our country ultimately survive, if we keep doing what we are doing? The answer to that is emphatically no, we cannot. Every republic in the history of mankind has died under fiscal collapse. They have not been invaded from outside until they rotted from within.

This is a straightforward commitment by the Senate and the Congress, through the budget, to meet President Obama's request that what he is going to do we are going to do, and we are going to weed out a large portion of the ineffectiveness, of the duplication, and of the waste that is in our Government and our grandkids' Government. There is no reason for us to have anything other than a unanimous vote on this motion to instruct.

If you do not think we should be doing that, you do not belong in the Senate. If you do not think we have a constitutional obligation to evaluate where we are spending the money, get rid of the waste and go line by line through all these programs, we need some other people up here. That is because right now our Republic is in jeopardy. It is not from terrorism. It is from our own potential fiscal collapse. The time to attack that is now.

It is my hope the Senate will send a huge vote on this motion that we mean business, we are going to join hands with President Obama, and we are going to fix most of what is wrong, in terms of these programs.

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

I withdraw that. I see Senator DEMINT is here.

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

MOTION TO INSTRUCT CONFEREES

Mr. DEMINT. I send a motion to the desk.

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

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the concurrent resolution on the budget for fiscal year 2010) be instructed to insist that the conference report on the concurrent resolution shall include a point of order against legislation that eliminates the ability of Americans to keep their health plan and eliminates the ability of Americans to choose their doctor, as contained in section 316 of the concurrent resolution, as passed by the Senate, and insist further that an additional condition be added providing such legislation shall not decrease the number of Americans enrolled in private health insurance, while increasing the number of Americans enrolled in government-managed, rationed health care.

Mr. DEMINT. Madam President, we are here to talk about the budget. Obviously there are a number of different

things in the budget of concern and some controversy. I appreciate the opportunity to speak on this motion which addresses a particular part of the budget related to health care. During the campaign the President promised that any changes in health care would protect the patient's right to pick their plan, their doctor, and to keep the plan they have if they want it. My motion simply codifies that, in a sense, we make sure we keep the promise.

In the budget there is a downpayment which has been referred to of, I think, around $700 billion on some massive changes in health care. My concern is this could mean an expansion of Government plans rather than making private health insurance more available to patients. We do not need to just speak of the public interest when we are talking about health care; it is important that we talk about the patient's interests. I think most of us agree that when the patients can work directly with their doctors, choose their own doctors, choose their own health plans, the Nation is better off.

There is an old saying that success has many fathers while failure is an orphan. Our health care failures have a father. In most cases it is the Government. See, our policies make it hard for individuals to have a health insurance plan they can afford and own and keep. One part of that is the Government today pays for over half of the health care in America through Medicare, Medicaid, children's health programs, and veterans health programs. But, unfortunately, when they pay doctors in hospitals they often pay below cost.

In fact, it has been estimated that Government payment causes private health insurance to be 20 percent to 30 percent more expensive than it would be if everyone paid their fair share of the cost. So the Government at the beginning is a big part of the problem of making health insurance too expensive for individuals.

A number of us had the opportunity this week to hear from the President and CEO of Safeway Supermarkets. They have over 200,000 employees. He was going through a lot of the statistics about their health plan and how they have been able to keep the cost of health care level for the last 4 years. They have done a lot of things not only to make health insurance and health care more accessible, they have done a lot of things to make their employees healthier. You see, they use a lot of incentives, recognizing that 70 percent of our health problems as Americans are caused by our own behavior—whether it be smoking or overweight or poor diets. It is pretty obvious through the statistics that people have a lot of control over how healthy they are and therefore how much they have to spend on health care.

Safeway, through a lot of incentives that discourage smoking and encourage people to get in better shape—eat better, lose weight—are able to save their employees money and to make them healthier and to reduce the cost of the health care for the company and for the employees.

There are a lot of demonstrations like this around the country that show private health insurance can work. Freedom can work if we let it.

The President of Safeway asked us to make some changes that would give them more flexibility to offer even more incentives for people to cut their own cost of health care by changing their behaviors. This is something we should all want. Instead of moving immediately to some massive new Federal plan, let's look at what we can do to let the free market system work, where patients and doctors and employers and associations can work together to make private health insurance work.

There are a lot of things we do here that make it harder. I will list a few. Small businesses could do the same thing as Safeway if we allowed them to work together in associations to buy their health insurance and to provide these incentives for better health and better access to health care. But, yet, we have consistently voted against allowing this to happen. Why will we not let that happen? Why will we not let individuals deduct the cost of their health insurance, like we do employers? It is almost as though we do not want individuals to have health insurance. Then we throw up our hands and talk about how many people are uninsured in our country.

Health insurance would work much better if it were portable. We could change some of our laws and regulations to make it much easier for people who have insurance with one company to take it with them when they leave to go to another company or to start their own business. Yet we refuse to do those things that would allow the market to work.

Right now in this country, individuals can only buy health care or health insurance from companies that are in their State, that are certified in their State. Why not let people buy health insurance from any State in the country as we do with other services? Why restrict it to a one-State monopoly, where regulations or mandates or other things could shoot up the cost of health care? We could create a more competitive, higher quality health insurance market if we let it become national market.

We do other things that seem absurd, such as we will allow a small employer to put money in a health savings account for their employees but we will not let that employee use the money in the health savings account to pay for a health insurance premium. Why do we do that? If we want people to have health insurance, to have the freedom to buy and own their own health insurance, we would do these simple things that put the patient more in charge. They would have better health care, better health insurance, and probably a lot better health.

What we are doing every day is sliding closer to a national or socialized health care system, saying the system we have does not work when the fact is we have done about everything we can to make it impossible for a free system to work. We do have serious problems and challenges in our health care system but almost all of them are made worse by the people who work in this place everyday.

The question now is whether more Government will make those problems better or worse. I think to ask that question answers it on its face. We know the free market did not create these problems because there is no free market for health care in the United States today. Government dominates the market. It does not pay its fair share. It regulates everything to the point where it makes it very difficult for the private market to work.

Let's not give up on freedom and go to socialism here in America before we have tried to fix the simple things that are obvious, in front of us, the things that companies such as Safeway say we can do to provide better insurance and make people healthier and lower their cost and give them plans they can keep.

No matter what the problem is in Washington, people here seem to think the solution is more Government. But we do not need a new Federal program for health care. We need to remove the Federal barriers that keep freedom from working in health care.

We have taken over banks, auto industry, mortgage lending, education, transportation system. Look at the areas the Government is running today and ask yourself, do you want to run health care the way we have been running education in America; as we have been running the financial markets for the last few months; or how we are doing with the auto industry now that we have essentially taken it over?

Health care is the best in the world here in America because of that small segment of the private market, the free market, that is working—the best pharmaceuticals, the best technology, the best private health care.

Socialism does not work. There is not an example in the world where it does. We keep hearing here, why don't we be more like Europe or more like Canada, where people have to wait 6 months or more to get an MRI. The only reason theirs works as well as it does is they are the beneficiary of a lot of American technology that is developed in the free market system. They are the beneficiaries of a lot of the prescription drugs that come out of our country that are developed here because there is still a free market. This is a reason that the technology and the prescriptions are not being developed in other countries that are socialistic. Freedom works and we need to expand it here in America.

Let me talk briefly about this motion to instruct conferees. Hopefully it

will not be controversial because it is essentially a promise from the President of the United States. My amendment would require a supermajority vote to consider any legislation in the future that would take away people's freedom to keep their own health plan or take away people's freedom to choose their own doctor or decrease the number of people with private insurance while increasing the number of people in Government-rationed health care programs. All my amendment says is give freedom a chance. The American people have not given up on freedom and neither should their elected officials.

I thank the ranking member, I thank the Presiding Officer, and ask for the consideration of my motion.

I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from New Hampshire.

Mr. GREGG. For the information of our colleagues, we have three more speakers on our side who will take 10 minutes each, offering motions to instruct. There may be other speakers but I do not know of them. I hope we can sort of start voting here, depending on what the chairman desires to do, at some point in the near future.

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

Mr. CONRAD. Mr. President, I would be eager to do that. I think what we need to do is have other Members come and offer their motions to instruct and see what time is needed in terms of rebuttal on that. It would be our intention to—if you have three more on your side, 10 minutes each, so we will probably need 30 minutes on the other side. I don't want to lock this in at the moment because I have not talked to leadership and I do not know if there are other considerations, but the intention would be to begin voting about 7 o'clock. Perhaps we can move that up. Perhaps I will not need all of that time. Hopefully not.

Mr. GREGG. We may not need all of the time on our side either.

Mr. CONRAD. We need to check with the leadership to see when votes can start, but it would be our intention, perhaps in the 6:45 to 7 o'clock timeframe, to begin voting, perhaps even a little bit before that. We will have to check with the leadership.

MOTION TO INSTRUCT

Mr. GREGG. Mr. President, I send a motion to instruct to the desk.

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

The bill clerk read as follows:

The Senator from New Hampshire [Mr. GREGG] moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the concurrent resolution on the budget for fiscal year 2010) be instructed to insist that the final conference report limit the increase in the public debt for the period of 2009 through 2019 to an amount no greater than the amount of public debt accumulated from 1789 to January 20, 2009.

Mr. GREGG. Mr. President, as we have discussed earlier at some length, there are three essential problems with the President's budget. The first is that it spends too much, the second is it taxes too much, and the third is it creates too much debt. It is the third issue I think many of us find to be the most severely distressing issue.

Of course, it is driven by the first two issues. But the idea that we are going to double the debt in 5 years, triple it in 10 years; we are going to have, on average, a $1 trillion deficit every year for the next 10 years, and that we are going to build up the national debt to a point where it is 80 percent of the gross national product, the public debt is disturbing. It basically is on an unsustainable path. It means our Nation will be put at risk by that type of debt.

Now, the Congress is not doing a very good job of disciplining itself. This problem is driven primarily by spending. But the fact is, the result of that spending is this explosion in debt.

As I have held up before this chart that shows the picture of the Presidents since the beginning of our Nation, President Washington through President George W. Bush, they generated this much debt on this country, $5.8 trillion.

President Obama's budget just in the first 4.5 years essentially is going to double that debt. All the debt added to the United States, to the backs of American citizens since 1776, or actually 1789 when the Government started creating debt, over 200 years, all of that debt is doubled now in just 5 years.

That is not tolerable. Then that debt, after doubling in 5 years, triples in 10 years. Our children end up with this debt. Our children are the ones who have to pay for this. The people who will be working in America are the ones who are going to have to pay for this and bear the burden of this debt. They are going to suffer either massive inflation, massive devaluation of the dollar, massive tax increases or a dramatic disruption in our capacity to sell debt as a nation because of this.

The chairman of the committee has said this is an unsustainable path. Yet nothing in this budget addresses the fact that this path is one we have chosen to follow. It is akin to saying: We know we are going to go off a cliff. We are on a path that takes us off a cliff, but the budget does nothing to change the direction we are walking and, in fact, accelerates our pace toward that cliff.

That makes no sense at all to me. Why would we pass a budget which we know will create so much debt and so much of a burden on our children that our Government will not be able to be sustained and our children will not be able to afford the Government.

It is counterintuitive to do something that is certainly not correct. One generation has sort of a fiduciary responsibility to the next generation. In the history of our Nation, each generation has passed on to the next generation a better nation, a stronger nation, a more prosperous nation. Yet this budget locks in place a path that absolutely guarantees, absolutely guarantees, that our generation will pass onto our children a country that is not as prosperous, is not as strong as what we received from our parents.

That is not right, not fair, inappropriate. It is a totally inappropriate thing to do. It can be corrected. It is not as if this is not an uncorrectable event. There has been a decision made on the other side of the aisle and by the President in bringing forward this budget to significantly explode the size of the Government. That is a conscious decision that was made. The President is very forthright about this. He thinks that is a way to create prosperity. It does not happen if at the same time you are running up the national debt at rates which are unsustainable.

The debt, the public debt will double during the term of this budget—double from 40 percent to 80 percent. We have the public debt so high under this budget, or the President and the Democratic Members of this Senate and the House have it so high under this budget that if we tried to apply it to the European Union as a country in Europe, for example, we would be rejected because, under the terms of the European Union, a country cannot have as high a debt as we are going to have after this budget runs its course.

Actually, it is about the middle of the budget that we hit that threshold. Can you believe that? Countries such as France are going to be more fiscally responsible than we are. But that is the truth. That is the way this budget plays out. As I say, this is a path over a cliff for our Nation.

I have offered this motion to instruct. I call it the 1789 motion because that is the date when we started running up debt in this country. In essence, it says this: We cannot pass a budget here in this 5-, 10-year cycle that adds more debt to the backs of our children than the total debt that was added to this country from 1789 through January 20, 2009.

I think that is a fairly reasonable standard. We are going to say you cannot exceed the amount of debt that is being added by this budget—that amount of debt cannot exceed the amount of debt that has been added to this country since our beginning, 230-some-odd years.

We have to have some standard to live by. That seems like a reasonable one, that in 5 or 10 years we do not take the debt up so quickly and so horrifically that we actually exceed all the debt put on the backs of the American people since the beginning of our Nation, from 1789 through January 20, 2009.

This standard, if it is passed, will be a standard that will be enforced under the budget. The effect of it will be that we will have to figure out some way to

reduce debt or the rate of growth of debt under this budget. That is reasonable. If it is the desire of this administration to radically expand the size of Government, as it appears to be the desire of this administration to take spending in this Government up to astronomical levels in the context of our historical spending at the Federal Government, to go from 20 percent of GDP up to 25, 26 percent of GDP, if that is the purpose of this administration, and it appears to be their purpose, it is their purpose, it is what they said they are going to do in this bill, in this budget, well, then they cannot do it by passing those bills on to the next generation and creating this massive debt.

They have to come up with some other way to do it. My suggestion would be that they do not spend that much money. That would be the suggestion from our side of the aisle. But maybe from the other side of the aisle is that they raise taxes radically on all working Americans, which they do anyway in this bill, but they would have to raise money in any event. We should not put the burden on our children by creating all this additional debt.

This is a simply fairly reasonable test as to how much debt this budget should be able to run up on our people. It should be less debt in 5 years than has been run up on the American people in over 200 years.

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

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

MOTION TO INSTRUCT

Mr. CORNYN. Mr. President, I ask unanimous consent that the pending motion be set aside, and I send to the desk another motion for which I ask its immediate consideration.

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

The clerk will report.

The bill clerk read as follows:

The Senator from Texas [Mr. CORNYN] moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the concurrent resolution on the budget for fiscal year 2010) be instructed to insist on the inclusion in the final conference report of the point of order against legislation that raises Federal income tax rates on small businesses as contained in section 307 of the concurrent resolution, as passed by the Senate.

Mr. CORNYN. Mr. President, my motion instructs Senate conferees to include section 307, which is included in the Senate-passed budget resolution, in the final conference report. As the distinguished chairman of the Budget Committee knows, this creates a 60-vote point of order against any legislation that raises income taxes on small businesses. The Senate, in a bipartisan vote of 82 to 16—a rarity these days, when we see that kind of overwhelming bipartisan support on anything—approved this point of order which I offered as an amendment to the budget. The Senate voted so overwhelmingly for this amendment—and I suggest it would be appropriate to vote for this motion to instruct in at least the same numbers—because the Senate should not pass a budget that increases income taxes on small businesses in Texas or Alaska or anywhere else, especially during a time when the economy is struggling and when our No. 1 priority is to help employers retain employment for their current employees and, hopefully, at some point begin to increase the number of jobs available to Americans.

Almost 400,000 businesses in Texas that employ around 4 million people would be especially hit by a failure to pass this motion to instruct and by any increase in income taxes on small businesses. For example, earlier when I spoke on the budget resolution, I mentioned Don Thedford, a small businessman in Tyler, in east Texas, and how he told me he has been able to grow his small business in part because of the tax relief we provided in 2001 and 2003. It is common sense and certainly intuitive that taxes can have an impact on the ability of a business to expand or, when taxes are unnecessarily high, cause it to contract.

Another businessman in east Texas, Cory Miller from Winnesboro, tells a similar story. Through one business that Cory has, he drills and services water wells. Of course, in the process, he gives families and communities access to fresh water. In his business, he manufactures a type of pump he invented, one which he now sells to other well drillers and drilling rig manufacturers. He has been in this business for 25 years and now employs 35 people. Cory, like Don, believes the tax relief we passed in 2001 and 2003 created the kind of positive, progrowth environment which allowed him to grow his business and that higher taxes in the middle of a recession will force him to make tough decisions and possibly lay off employees.

Higher taxes for people such as Don and Cory will mean they will not be able to reinvest more money in their businesses to purchase equipment or to hire more people because they will have to pay Uncle Sam higher taxes instead. As Cory put it:

Every dollar taken from an aggressive, growth-oriented small businessman like myself is a dollar that will not be used to expand my business or hire new employees.

We all know if small businesses are hit by higher taxes such as those proposed in the administration's budget, it will cause them to contract. We also know that small businesses are the vehicle that has produced most of the new jobs over the last decade. Given that President Obama and his administration have said their primary objective in dealing with the economy is job creation and retention, I don't understand why they would propose in their budget to increase taxes on the engine of job creation known as small business.

The Senate made its voice clear when a bipartisan majority supported my point of order as an amendment to the budget in the Senate. I ask my colleagues once again to reaffirm their support in the same bipartisan fashion by joining with me in supporting this motion to instruct conferees not to raise taxes on small businesses, the primary job engine in the country.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, we are going to start voting shortly. I ask unanimous consent that the votes be in the order as listed in the original unanimous consent request under which we are functioning, which would be Senators STABENOW, JOHANNS, GREGG, SESSIONS, ENSIGN, CORNYN, ALEXANDER, COBURN, DEMINT, and VITTER.

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

Mr. GREGG. As I understand from the chairman—and certainly it is our sentiment—we can pretty much begin voting whenever anybody is ready.

Mr. CONRAD. I am told by leadership staff we have a problem voting before 7 in terms of getting some Members here.

Mr. GREGG. I ask unanimous consent that the time between now and 7 be equally divided between the two parties under the leadership of myself and Senator CONRAD, and that should Senator ENSIGN be here, he has the last motion to instruct which we need to discuss. So he gets 10 minutes from our side or such time as he may desire from our side that is still remaining.

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

Mr. CONRAD. Mr. President, let me observe that we have a chance to handle a number of these motions by voice vote. There are a number of them we could support, we could accept. Senator GREGG will be talking to those Members who have motions to instruct that we could accept. I ask them to carefully consider that offer. We have stacked up 10 potential votes. We can do three votes an hour. That would be three hours of voting starting at 7. That would take us until 10 tonight. Frankly, as I count them, we have six of these motions that we could accept, shortening the time for voting by 2 hours. That would mean we could be done by roughly 8. It is dependent on Senators being willing to take voice votes or being willing to have their motions accepted on a unanimous consent basis.

I make that plea to Senators. We could do it the way that gets us finished with our business in a reasonable way by 8 or we could go until 10.

The other thing I want to add is, this will not affect how these motions do in conference. If somebody has that in

mind, sometimes it does make a difference, but in this case it will not.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

MOTION TO INSTRUCT

Mr. GREGG. Mr. President, I send a motion to the desk on behalf of Senator JOHANNS and ask that it be reported.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. JOHANNS] moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the current resolution on the budget for fiscal year 2010) be instructed to insist that if the conference report includes a Deficit Neutral Reserve Fund to Invest in Clean Energy and Preserve the Environment and Climate Change Legislation similar to section 202 of S. Con. Res. 13, as passed by the Senate, then that Deficit Neutral Reserve Fund shall also include the language contained in section 202(c) of S. Con. Res. 13, as passed by the Senate, which provides that the Chairman of the Senate Budget Committee may not revise allocations for legislation if that legislation is reported from any committee pursuant to section 310 of the Congressional Budget Act of 1974.

MOTION TO INSTRUCT

Mr. GREGG. I send a motion to the desk on behalf of Senator ENSIGN and ask that it be reported.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the concurrent resolution on the budget for fiscal year 2010) be instructed to insist that the conference report on the concurrent resolution include the point of order against legislation that raises taxes directly or indirectly on middle-income taxpayers (single individuals with $200,000 or less in adjusted gross income or married couples filing jointly with $250,000 or less in adjusted gross income) as contained in section 306 of the concurrent resolution as passed by the Senate.

Mr. GREGG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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, I rise to speak in opposition to the motion of the Senator from Michigan, Ms. STABENOW, that instructs the conferees to include some but not all of the limitations the Senate voted for with respect to climate change legislation.

I think the Senate needs to understand that the effect of this motion would be to instruct conferees on the issue of climate change without including the Senate's protection for consumers against higher gas and electricity prices, which was adopted by the Senate by a vote of 89 to 8 during the debate on the budget resolution. The Senate adopted several budget amendments to try to specify what the parameters should be in the debate over climate change legislation.

One of those amendments that was adopted was one that was sponsored by me. That amendment specified that climate change legislation could not increase electricity or gasoline prices. It was adopted by the Senate by a vote of 89 to 8.

What Senator STABENOW's motion would do if it were agreed to is it would instruct that it would be the Senate's only specific instruction on what should be included in the final budget on climate change legislation, apart from the reconciliation limitations that would be included. So, in other words, other protections, such as those included by my amendment, could be excluded were the conferees to adhere to the instructions in her motion.

The bottom line is, Senator STABENOW's motion to instruct would encourage conferees to drop the commonsense protections adopted by the Senate with a vote of 89 to 8 when it adopted my amendment to the budget resolution.

Just, again, by way of background, I do not think there is anybody who would argue the point that a cap-and-trade proposal is going to raise energy prices. This motion does nothing to include protection against those higher prices.

Under the President's cap-and-trade proposal that was contained in his budget, it would impose what is a massive new energy tax on anyone who drives a car or turns on a light switch.

In fact, Secretary of Transportation Ray LaHood has said the administration is ''not for an increase in the gas tax as long as the economy is bad, people are out of work, people don't have jobs. No one should be promoting an increase in the gas tax.'' The cap-and-trade proposal the President has put forward would do just that. It would also increase the cost of electricity prices.

Secretary of Energy Chu just testified recently:

I think especially now in today's economic climate it would be completely unwise to want to increase the price of gasoline.

The President and his Budget Director have been very clear that prices are going to go up on consumers, and they are going to feel the pain, the economic pain associated with higher prices for electricity and gasoline.

The President himself acknowledged that when he was talking about a cap-and-trade proposal some time back. He acknowledged his plan would lead to higher electricity prices, and he said:

Under my plan of a cap and trade system, electricity rates would necessarily skyrocket.

What happened during the debate on the budget is we adopted my amendment, by a vote of 89 to 8, which specifically stated that any cap-and-trade climate change legislation could not increase electricity rates or gas prices for consumers in this country. The Stabenow motion to instruct, if adopted, would instruct the conferees in an opposite direction. It would exclude that protection that was included in my amendment to the budget resolution.

So I ask my colleagues in the Senate to defeat the Stabenow motion. The Johanns motion, on the other hand, to instruct the conferees not to use reconciliation to accomplish climate change legislation is a good motion. I hope the Senate will vote to adopt it. That was also one that was adopted by a fairly large margin when it was voted on during the debate on the budget a couple weeks ago.

But let me restate as clearly as I can, if the Stabenow motion is adopted by the Senate today, it would instruct the conferees in a number of areas with regard to cap-and-trade legislation, many of which sound good: invest in clean energy technology initiatives, decrease greenhouse gas emissions, create new jobs in a clean technology economy, strengthen the manufacturing competitiveness of the United States, and I could go on. There are nine of them that are stipulated here. The one that is conspicuously and noticeably absent is the protection against higher prices for consumers in the form of higher gasoline prices and higher electric rates.

So it was an amendment adopted by the Senate by a vote of 89 to 8. It would be my view that the Senate should not go back on an overwhelming vote like that, which made it very clear that any climate change legislation should not raise electricity and gasoline prices on American consumers. The Stabenow motion, if adopted, would not include that protection. I ask my colleagues to vote to defeat it.

Mr. President, I yield the floor.

Mr. CONRAD. Mr. President, for the advice of our colleagues, we are very close to being able to begin voting. At roughly 7 o'clock, we will begin. We have 10 motions pending, or we will have by that time. We are still waiting for a signed copy of one motion that I will send up when that is available. Again, we are asking colleagues—we have a number of these we can take which would reduce the number of votes that would have to be conducted. Senator GREGG is working diligently to talk to colleagues to see if they are willing to take a voice vote or take an acceptance by unanimous consent, and we are still waiting for final answers on all of those matters. So again, for the advice of our colleagues, we are very close to the time when we can do that.

I ask unanimous consent to set aside the pending motion to instruct so I may offer a motion to instruct on behalf of Senator STABENOW.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Ms. STABENOW] moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the concurrent resolution S. Con. Res. 13 (the current resolution on the budget for fiscal year 2010) be instructed to insist that the final conference report include a Deficit-Neutral Reserve Fund to Invest in Clean Energy and Preserve the Environment (as provided in section 202(b) of S. Con. Res. 13, as passed by the Senate) that would allow the Chairman of the Committee on the Budget of the Senate to revise the allocations of 1 or more committees, aggregates, and other appropriate levels and limits in the resolution for 1 or more deficit-neutral bills, joint resolutions, amendments, motions, or conference reports that would—

(1) invest in clean energy technology initiatives;

(2) decrease greenhouse gas emissions;

(3) create new jobs in a clean technology economy;

(4) strengthen the manufacturing competitiveness of the United States;

(5) diversify the domestic clean energy supply to increase the energy security of the United States;

(6) protect consumers (including through policies that address regional differences);

(7) provide incentives for cost-savings achieved through energy efficiencies;

(8) provide voluntary opportunities for agriculture and forestry communities to contribute to reducing the levels of greenhouse gases in the atmosphere; and

(9) help families, workers, communities, and businesses make the transition to a clean energy economy.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, earlier today, the Senate was very close to reaching an agreement to complete action on the financial fraud measure. It is a bipartisan measure which is the result of significant bipartisan work of Senators LEAHY, GRASSLEY, and virtually every member of the Judiciary Committee. I thought we had an agreement, but we were not able to do this, in spite of all of the good work of Senator LEAHY. We simply want to limit amendments to this bill. Everyone has had ample opportunity to offer amendments. I guess it would have been nice if we had voted later last night, but I had a meeting at the White House. I had to be at the meeting, and I left here about 5:15 and the meeting lasted until about 7:30.

We are going to file cloture tonight on this measure. Everyone should acknowledge that this means we are going to have a cloture vote Saturday morning around 11 a.m. There will be another vote on Sunday, if we are asked to use up all of this time. It is unfortunate, since people had all the opportunity they had to offer amendments. No one has tried to stifle amendments on this or anything else this year. It is unfortunate, and that will mean there will be some amendments, well intentioned and good, that deal with the financial crisis facing this country that will fall, but we have had good debate the last few days on this legislation.

I wish there were some other way to do this. I pulled out all the stops to try to talk to a number of Senators, and I apologize for not being able to work something out, but that is the way it is sometimes.

Mr. LEAHY. Mr. President, would the Senator yield?

Mr. REID. I am happy to yield.

Mr. LEAHY. Mr. President, I think the distinguished leader is doing all he can do in this case. I am surprised, as he said, since this bill has had huge bipartisan support and bipartisan sponsorship. It is to try to protect people from losing their retirement funds, their home, their savings for their children to go to college, from these mortgage fraud people. Everybody across the political spectrum has endorsed the bill.

We voted on every amendment to remain to the bill. There are about a dozen or more that have nothing to do with the bill. It is unfortunate for the people who are seeing their life savings being ripped off by unscrupulous criminals, and that we cannot criminalize it in such a way as to stop it. So I will be here to vote. The irony is that when the bill finally gets to a vote, it will probably pass about 90 to 5.

Mr. REID. Mr. President, I ask unanimous consent that the Republican leader be allowed to make a statement prior to the vote.

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

The Republican leader is recognized.

(The remarks of Mr. MCCONNELL are printed in today's RECORD under ''Morning Business.'')

Mr. REID. Mr. President, on the motions to instruct, I ask unanimous consent that there be 2 minutes between each vote for debate equally divided between Senators GREGG and CONRAD or the sponsor of the motion. Senators GREGG and CONRAD can determine who has the time.

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

Mr. REID. I ask unanimous consent that there be 10-minute votes after the first vote.

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

Mr. REID. I thank the Chair.

The PRESIDING OFFICER. The pending question is on agreeing to the Stabenow motion to instruct.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays are ordered.

The PRESIDING OFFICER. Who yields time?

Mr. CONRAD. Mr. President, Senator STABENOW would like to speak.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, this amendment was included in the Senate budget resolution. It lays out clear, positive instructions for balanced climate change legislation that allows agriculture and forestry to participate voluntarily. It focuses on jobs, protecting manufacturing, protecting consumers, and it lays out a positive approach rather than just saying no to reconciliation, which is a policy I agree with. We need to have a positive, balanced approach, and this motion does that.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, I rise in opposition to the Stabenow motion to instruct. She is correct that it imposes limitations on climate change legislation as adopted during the budget resolution, with one very important deletion, and that is one that consumers care about the most, which prevents consumers from having to pay higher gasoline prices and electricity rates.

If the Senate adopts this motion, it will undermine an amendment I offered to the Senate budget resolution, which passed 89 to 8 in the Senate, which prevents consumers from having to deal with higher gas and electricity rates as a result of climate change legislation. That is an important protection. It is something the conferees need to keep in the budget resolution.

I hope the Senate will vote to defeat the Stabenow motion to instruct because it does undermine what we did in the budget resolution with respect to the protections afforded to consumers when it comes to higher gas and electricity prices. I urge my colleagues to vote no.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Rhode Island (Mr. WHITEHOUSE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. ROBERTS) and the Senator from Ohio (Mr. VOINOVICH).

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

The result was announced—yeas 57, nays 37, as follows:

[Rollcall Vote No. 163 Leg.]

YEAS—57

Akaka	Boxer	Carper
Baucus	Brown	Casey
Bayh	Burris	Collins
Begich	Byrd	Conrad
Bennet	Cantwell	Dodd
Bingaman	Cardin	Dorgan

Durbin	Leahy	Reed
Feingold	Levin	Reid
Feinstein	Lieberman	Sanders
Gillibrand	Lincoln	Schumer
Hagan	Lugar	Shaheen
Harkin	McCaskill	Snowe
Inouye	Menendez	Stabenow
Johnson	Merkley	Tester
Kaufman	Mikulski	Udall (CO)
Kerry	Murray	Udall (NM)
Klobuchar	Nelson (NE)	Warner
Kohl	Nelson (FL)	Webb
Lautenberg	Pryor	Wyden

NAYS—37

Alexander	DeMint	Martinez
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Specter
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Wicker
Cornyn	Kyl	
Crapo	Landrieu	

NOT VOTING—5

Kennedy	Rockefeller	Whitehouse
Roberts	Voinovich	

The motion was agreed to.

The PRESIDING OFFICER. There are now 2 minutes equally divided prior to a vote in relation to the Johanns motion to instruct.

Who yields time?

The Senator from Nebraska.

Mr. JOHANNS. Mr. President, Members of the Senate, I rise this evening for the express purpose of asking for your support for a motion that is very straightforward. We have already voted on this in an amendment I submitted during the budget process.

The motion basically says that we will not use the reconciliation process to pass cap-and-trade legislation. The last time this issue was before this body, we had 67 Senators, both Republicans and Democrats, who spoke very loudly and clearly opposing budget reconciliation to pass cap-and-trade legislation. I ask that we do that again. I ask that we do that again to indicate very clearly that we do not want to use the reconciliation process for cap-and-trade.

I conclude my remarks by saying thank you for your thoughtful approach to this, and I ask for the yeas and nays.

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

The yeas and nays are ordered.

The Senator from North Dakota.

Mr. CONRAD. Mr. President, I wish to point out to colleagues that there is no reconciliation instruction on the budget resolution that we are sending to conference from the Senate. In the House, the Speaker and the rest of the leadership has indicated there is no intention and no provision for reconciliation to be used for cap and trade or for climate change.

With that, we are prepared to vote.

Mr. President, we have an agreement on 10-minute votes for all remaining votes.

The PRESIDING OFFICER. That is correct.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Rhode Island (Mr. WHITEHOUSE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. ROBERTS) and the Senator from Ohio (Mr. VOINOVICH).

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

The result was announced—yeas 66, nays 28, as follows:

[Rollcall Vote No. 164 Leg.]

YEAS—66

Alexander	Corker	Lincoln
Barrasso	Cornyn	Lugar
Baucus	Crapo	Martinez
Bayh	DeMint	McCain
Begich	Dorgan	McCaskill
Bennet	Ensign	McConnell
Bennett	Enzi	Murkowski
Bingaman	Feingold	Murray
Bond	Graham	Nelson (NE)
Brownback	Grassley	Pryor
Bunning	Gregg	Risch
Burr	Hagan	Sessions
Burris	Hatch	Shelby
Byrd	Hutchison	Snowe
Cantwell	Inhofe	Specter
Carper	Isakson	Stabenow
Casey	Johanns	Tester
Chambliss	Klobuchar	Thune
Coburn	Kohl	Vitter
Cochran	Kyl	Warner
Collins	Landrieu	Webb
Conrad	Levin	Wicker

NAYS—28

Akaka	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Sanders
Cardin	Lautenberg	Schumer
Dodd	Leahy	Shaheen
Durbin	Lieberman	Udall (CO)
Feinstein	Menendez	Udall (NM)
Gillibrand	Merkley	Wyden
Harkin	Mikulski	
Inouye	Nelson (FL)	

NOT VOTING—5

Kennedy	Rockefeller	Whitehouse
Roberts	Voinovich	

The motion was agreed to.

Mr. GREGG. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. There is now 2 minutes equally divided prior to a vote in relation to the Gregg motion to instruct. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, this motion is fairly simple but very important. Since our country began in 1789, we have been adding debt to the American people. All this says is that all the debt that has been run up, from 1789 to 2009, through January 20, 2009, that that total debt should not be exceeded during the term of this budget. It seems like a fairly reasonable request. If we do not follow it, we are going to end up passing on a debt to our children that they cannot support. I hope people will support this limitation on the addition of debt to our Nation and to our children.

Mrs. MURRAY. Mr. President, the Senator from New Hampshire has offered an amendment to the conference report that we not double the debt from the time President Obama took office through the end of 2019. Our budget does not go through 2019. It would not double the debt through 2014. The debt when President Obama took office was about $10 trillion. So this amendment is not necessary. I urge a no vote.

Mr. GREGG. Mr. President, with my additional time, I would simply note if that is the position the majority takes, then everybody should vote for it.

The PRESIDING OFFICER. The question is on agreeing to the motion.

Mr. GREGG. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Rhode Island (Mr. WHITEHOUSE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Ms. ROBERTS) and the Senator from Ohio (Mr. VOINOVICH).

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

The result was announced—yeas 40, nays 54, as follows:

[Rollcall Vote No. 165 Leg.]

YEAS—40

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Graham	Nelson (NE)
Brownback	Grassley	Risch
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Specter
Cochran	Isakson	Thune
Collins	Johanns	Vitter
Corker	Kyl	Wicker
Cornyn	Lugar	
Crapo	Martinez	

NAYS—54

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

NOT VOTING—5

Kennedy	Rockefeller	Whitehouse
Roberts	Voinovich	

The motion was rejected.

The PRESIDING OFFICER. There is now 2 minutes equally divided prior to a vote in relation to the Sessions motion to instruct.

Mr. SESSIONS. Mr. President, this motion would instruct that the budget be altered so that there would be level funding for 2 years during the time that we are now spending an additional $800 billion in the economy as part of the stimulus package.

We ought to be able to keep the baseline budget level for 2 years, and then finish out the 5-year budget at 1 percent growth. We have doubled the national debt through this budget—we will do so in 5 years—and triple it in 10.

Interest on the debt today is $170 billion over the President's 10-year budget. At the 10th year, it would be $800 billion in interest alone, dwarfing our education budget of $100 billion, dwarfing the highway budget of $140 billion.

This is the right approach to show some discipline on the baseline budget at a time we are surging the discretionary spending through the stimulus package.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, the amendment that is before us will freeze spending, nondefense and nonveterans funding, for 2 years and limit the growth of nondefense and nonveterans funding to 1 percent annually for fiscal 2012, 2013, and 2014.

Now, I would remind all of us, we are in an economic crisis in this country. The investments we make in this budget that is before us are important for education, for health care, for energy, and for the other priorities that on which this country has asked us to move forward.

I urge my colleagues to vote no on the motion before us so that we can have the flexibility to deal with these critical issues before us today.

The PRESIDING OFFICER. The question is on agreeing to the Sessions motion.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Rhode Island (Mr. WHITEHOUSE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. ROBERTS) and the Senator from Alaska (Ms. MURKOWSKI).

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

The result was announced—yeas 38, nays 56, as follows:

[Rollcall Vote No. 166 Leg.]

YEAS—38

Alexander	Brownback	Cochran
Barrasso	Bunning	Corker
Bayh	Burr	Cornyn
Bennett	Chambliss	Crapo
Bond	Coburn	DeMint
Ensign	Isakson	Sessions
Enzi	Johanns	Shelby
Graham	Kyl	Snowe
Grassley	Lugar	Specter
Gregg	Martinez	Thune
Hatch	McCain	Vitter
Hutchison	McConnell	Wicker
Inhofe	Risch	

NAYS—56

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

NOT VOTING—5

Kennedy	Roberts	Whitehouse
Murkowski	Rockefeller	

The motion was rejected.

Mr. NELSON of Nebraska. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I believe the next motion in order is the Ensign motion.

The PRESIDING OFFICER. The Senator is correct.

There are 2 minutes equally divided prior to a vote in relation to the Ensign motion.

Who yields time?

Mr. ENSIGN. Mr. President, this is my motion that says let's not raise taxes, whether they are direct or indirect taxes, on anybody making less than $250,000. It was agreed to unanimously when the amendment was considered by the full Senate, 98 to 0. Unfortunately, it was said that it would be stripped out. We went through a whole parliamentary mess to understand that this amendment would not bring the bill down. I am hoping the managers who take this bill to conference keep this amendment in conference, so we don't raise the taxes on any family making less than $250,000 a year.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, the Senator from Nevada is correct. This amendment passed on the budget 98 to nothing. The Democrats are happy to support it. It is 8:25 at night. I suggest we take it on a voice vote.

Mr. ENSIGN. That is fine.

The PRESIDING OFFICER. The question is on agreeing to the Ensign motion.

The motion was agreed to.

Mr. SANDERS. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. There is now 2 minutes equally divided prior to a vote in relation to the Cornyn motion to instruct.

Mr. CORNYN. Mr. President, my motion instructs conferees to retain my amendment, which passed by a strong bipartisan majority of 82 Senators who voted in favor, which says don't raise taxes on small businesses. We all know that is the principal job creator in the economy. It passed 82 to 16. My hope is we have a similar if not better vote on this motion to instruct.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, this is on an amendment many of us supported. We are happy to take it on a voice vote. If not, I will be supporting the motion, if the Senator insists on a vote this evening.

The PRESIDING OFFICER. The question is on agreeing to the Cornyn motion.

The yeas and nays were ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Ms. LANDRIEU), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Rhode Island (Mr. WHITEHOUSE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Kansas (Mr. ROBERTS).

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

The result was announced—yeas 84, nays 9, as follows:

[Rollcall Vote No. 167 Leg.]

YEAS—84

Akaka	Dorgan	McCaskill
Alexander	Ensign	McConnell
Barrasso	Enzi	Menendez
Baucus	Feinstein	Merkley
Bayh	Gillibrand	Mikulski
Begich	Graham	Murray
Bennet	Grassley	Nelson (NE)
Bennett	Gregg	Nelson (FL)
Bond	Hagan	Pryor
Boxer	Hatch	Reed
Brownback	Hutchison	Reid
Bunning	Inhofe	Risch
Burr	Inouye	Sanders
Burris	Isakson	Schumer
Cantwell	Johanns	Sessions
Cardin	Johnson	Shaheen
Carper	Kaufman	Shelby
Casey	Klobuchar	Snowe
Chambliss	Kohl	Specter
Coburn	Kyl	Stabenow
Cochran	Lautenberg	Tester
Collins	Leahy	Thune
Conrad	Levin	Udall (CO)
Corker	Lieberman	Udall (NM)
Cornyn	Lincoln	Vitter
Crapo	Lugar	Webb
DeMint	Martinez	Wicker
Dodd	McCain	Wyden

NAYS—9

Bingaman	Durbin	Kerry
Brown	Feingold	Voinovich
Byrd	Harkin	Warner

NOT VOTING—6

Kennedy	Murkowski	Rockefeller
Landrieu	Roberts	Whitehouse

The motion was agreed to.

Mr. CONRAD. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. There is now 2 minutes equally divided prior to a vote in relation to the Alexander motion to instruct.

Mr. CONRAD. Mr. President, can we have order in the Chamber.

The PRESIDING OFFICER. The Senate will be in order.

Mr. CONRAD. Mr. President, we need order because Senator ALEXANDER is next, and if he would be so gracious as to accept a voice vote on his motion, we would take his motion. It is a good motion. We support it.

Mr. ALEXANDER. Mr. President, I say to the Senator, thank you very much. I accept that.

All the motion does is instruct the conferees to do what the Senate has already unanimously agreed to do to preserve the competitive student loan system.

The PRESIDING OFFICER. If there is no further debate on the motion, the question is on agreeing to the Alexander motion.

The motion was agreed to.

Mr. CONRAD. Mr. President, next, I believe, is the motion of the Senator from Oklahoma, Mr. COBURN.

The PRESIDING OFFICER. There is now 2 minutes equally divided prior to a vote in relation to the Coburn motion to instruct.

The Senator from Oklahoma.

Mr. COBURN. Mr. President, I will be very brief. This is fulfilling a campaign promise of Barack Obama. He said he wanted us to go through the budget line by line to eliminate wasteful programs, eliminate duplicative programs. We accepted this earlier. This is a vote to say we are going to do that. We are going to hold up our end of the bargain, as the President is going to hold up his end of the bargain, and we are going to go through and find some of this $300 billion worth of waste.

With that, I yield back.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, would the Senator accept a voice vote on his motion because we would be prepared to support him?

Mr. COBURN. I will accept a voice vote.

Mr. CONRAD. The Senator is very gracious.

The PRESIDING OFFICER. If there is no further debate on the motion, the question is on agreeing to the Coburn motion.

The motion was agreed to.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I wish to make a note for the record there was no ''no'' voiced on the vote.

Mr. CONRAD. Mr. President, let me indicate, because of the good nature and the graciousness of the Senator, this is an amendment that we will try to preserve in conference.

BYRD RULE

Mr. LEVIN. Mr. President, I ask the Senator from North Dakota, is it true that when a reconciliation bill comes to the floor, it must meet the requirements of the Byrd rule or be subject to a 60-vote point of order?

Mr. CONRAD. Yes

Mr. LEVIN. Is it true that a provision in a reconciliation bill is subject to a Byrd rule point of order if it produces a change in outlays or revenues that is merely incidental to the nonbudgetary, i.e., policy, components of a provision?

Mr. CONRAD. Yes

Mr. Levin. Is it true that every provision of a reconciliation bill is subject to the Byrd rule; and any provision that does not meet all of the requirements of that rule, would be subject to a 60-vote point of order?

Mr. CONRAD. Yes

The PRESIDING OFFICER. There is now 2 minutes of debate equally divided prior to a vote in relation to the DeMint motion to instruct.

Who yields time?

Mr. CONRAD. Senator DEMINT is next.

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

Mr. DEMINT. Mr. President, my motion simply codifies some promises during the last campaign focusing on health care as part of this budget. My motion would create a 60-vote point of order for any legislation that takes away a person's right to pick their own doctor, to choose their own plan, or to keep the health plan they already have. These are promises the President made, that no health care reform would take away those rights, and my motion is to insist that the budget conference report include that.

Mr. CONRAD. Mr. President, I support this amendment. I think it is entirely reasonable in what it outlines. We all want patients to be able to choose their doctors. We want to make certain if people are happy with the health care plan they are in, that they are able to stay in that plan.

I would ask the Senator from South Carolina, would he consider accepting a voice vote—a strong voice vote—in favor of his amendment?

Mr. DEMINT. Mr. President, I appreciate the offer very much, but knowing that the chairman probably doesn't see my nature as good as Senator COBURN's, I suspect it might not stay in, in conference. I would like a rollcall vote, but I thank the Senator from North Dakota very much for his offer.

Mr. CONRAD. Mr. President, I would note for the RECORD that the Senator from South Carolina is smiling.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the DeMint motion to.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Ms. LANDRIEU), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Rhode Island (Mr. WHITEHOUSE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Kansas (Mr. ROBERTS).

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

The result was announced—yeas 79, nays 14, as follows:

[Rollcall Vote No. 168 Leg.]

YEAS—79

Akaka	Dorgan	McCain
Alexander	Ensign	McCaskill
Barrasso	Enzi	McConnell
Baucus	Feingold	Menendez
Bayh	Feinstein	Murray
Begich	Gillibrand	Nelson (NE)
Bennet	Graham	Nelson (FL)
Bennett	Grassley	Pryor
Bond	Gregg	Reed
Boxer	Hagan	Reid
Brownback	Hatch	Risch
Bunning	Hutchison	Schumer
Burr	Inhofe	Sessions
Byrd	Inouye	Shaheen
Cantwell	Isakson	Shelby
Carper	Johanns	Snowe
Casey	Johnson	Specter
Chambliss	Kaufman	Tester
Coburn	Klobuchar	Thune
Cochran	Kohl	Udall (CO)
Collins	Kyl	Vitter
Conrad	Lautenberg	Voinovich
Corker	Leahy	Webb
Cornyn	Lieberman	Wicker
Crapo	Lincoln	Wyden
DeMint	Lugar	
Dodd	Martinez	

NAYS—14

Bingaman	Harkin	Sanders
Brown	Kerry	Stabenow
Burris	Levin	Udall (NM)
Cardin	Merkley	Warner
Durbin	Mikulski	

NOT VOTING—6

Kennedy	Murkowski	Rockefeller
Landrieu	Roberts	Whitehouse

The motion was agreed to.

The PRESIDING OFFICER. Under the previous order, there is now 2 minutes of debate, equally divided, prior to a vote in relation to the Vitter motion to instruct.

The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, in our original Senate debate on the budget, we passed by unanimous consent language that is in section 202(a) that we would not raise taxes on domestic energy production.

That language says that our budget legislation ''would not increase the cost of producing energy from domestic sources, including oil and gas from the Outer Continental Shelf or other areas; it would not increase the cost of energy for American families; it would not increase the cost of energy for domestic manufacturers, farmers, fishermen or other domestic industries; and it would

not enhance foreign competitiveness against U.S. businesses.''

This motion to instruct would say we need to keep that mandate in the final version of the budget. This is important because, unfortunately, the President has proposed tax increases in all those areas, and all those significant increases in domestic energy production are part of his budget proposal.

It would be tremendously wrongheaded and would hurt Americans to increase taxes on energy, particularly now in the midst of a deep recession. I ask all my colleagues to support this motion to instruct, and I respectfully ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I have been conferring off and on during the day with my distinguished Republican counterpart. I think this is where we are.

Monday, at about 5:30, we will have a vote on cloture on the underlying financial fraud legislation. We will determine what time Tuesday morning we will vote on final passage of that bill, if cloture is invoked. Again, we will vote Monday night at about 5:30 on cloture, and sometime Tuesday morning we will vote on final passage.

At this stage, we have a tentative agreement to have 6 to 8 hours of debate on Sebelius, and we would have passage of that by a 60-vote margin on her sometime late Tuesday.

Following that, we are trying to work something out on Mr. Strickland, who is one of the secretaries for Ken Salazar. I talked to Senator BUNNING. We are trying to get him some information to which he is entitled. If we can get that information, we will get that done very quickly. If we cannot, then Senator BUNNING has agreed to a reasonable period of time—and Senator MCCONNELL and I will determine what that is—to have a debate and a 60-vote margin on his approval.

Hopefully, if the conference is completed on the budget, we would go to that sometime Wednesday, with a statutory 10 hours on it.

That is where we are. It has been a difficult time. I am sorry to have everyone concerned about the Saturday cloture vote, but that is how things work.

I say to my friend Dr. COBURN, he is a thorn in my side, but he is a real gentleman, as I have said before. I think this is going to work out very well for everybody. We all have a lot of things already scheduled the next few days. Having the Saturday vote would do a lot of damage to a lot of plans—these are not vacation plans, but whatever plans people have in their home States. I hope that answers everybody's questions.

I have not said this often enough. I remind everyone that all the press is interested in is seeing Senator MCCONNELL and me jostle. We jostle very little. We have an understanding as to what is good for this body, and sometimes our views of what is good for this body are different but not very much. I express my appreciation to him for all the work we have been able to get done this week, which has been very difficult, and to work this out for a Monday vote.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, we still have pending the motion of Mr. VITTER, the Senator from Louisiana. That was an amendment that was taken by unanimous consent or voice vote during the budget resolution. It is now here as a motion to instruct. Obviously, we are going to have a rollcall vote on it. We asked the Senator to withhold. He has asked to have a rollcall vote, which is absolutely his right. Senators will vote their judgment.

The PRESIDING OFFICER. The question is on agreeing to the Vitter motion.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Vermont (Mr. SANDERS), and the Senator from Rhode Island (Mr. WHITEHOUSE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Kansas (Mr. ROBERTS).

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

The result was announced—yeas 63, nays 30, as follows:

[Rollcall Vote No. 169 Leg.]

YEAS—63

Akaka	Crapo	Lugar
Alexander	DeMint	Martinez
Barrasso	Dorgan	McCain
Baucus	Ensign	McCaskill
Bayh	Enzi	McConnell
Begich	Feingold	Nelson (NE)
Bennet	Graham	Nelson (FL)
Bennett	Grassley	Pryor
Bond	Gregg	Reid
Brownback	Hagan	Risch
Bunning	Hatch	Sessions
Burr	Hutchison	Shelby
Byrd	Inhofe	Snowe
Carper	Isakson	Specter
Chambliss	Johanns	Stabenow
Coburn	Johnson	Thune
Cochran	Klobuchar	Udall (CO)
Collins	Kohl	Vitter
Conrad	Kyl	Voinovich
Corker	Landrieu	Webb
Cornyn	Lincoln	Wicker

NAYS—30

Bingaman	Dodd	Kerry
Boxer	Durbin	Lautenberg
Brown	Feinstein	Leahy
Burris	Gillibrand	Levin
Cantwell	Harkin	Lieberman
Cardin	Inouye	Menendez
Casey	Kaufman	Merkley
Mikulski	Schumer	Udall (NM)
Murray	Shaheen	Warner
Reed	Tester	Wyden

NOT VOTING—6

Kennedy	Roberts	Sanders
Murkowski	Rockefeller	Whitehouse

The motion was agreed to.

The PRESIDING OFFICER. Under the previous order, all statutory time is yielded back, and the Chair appoints the following conferees on the part of the Senate: Mr. CONRAD, Mrs. MURRAY, and Mr. GREGG.

FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009—Continued

Mr. REID. Mr. President, I ask unanimous consent that the vote on the cloture motion on the substitute amendment to S. 386 occur at 5:30 p.m., Monday, April 27; that if cloture is invoked, all postcloture time be yielded back and any pending germane amendments be disposed of; then the substitute amendment, as amended, be agreed to; that the bill, as amended, be read a third time, and that the vote on passage of the bill occur at 12 noon on Tuesday, notwithstanding rule XII, paragraph 4, without further intervening action or debate; that once cloture has been filed, the mandatory quorum be waived; provided further that at 4:30 p.m. Monday, there be 60 minutes of debate prior to the cloture vote, with the time equally divided and controlled between the leaders or their designees.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

CLOTURE MOTION

Mr. REID. Mr. President, I send a cloture motion to the desk.

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

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee substitute amendment to S. 386, the Fraud Enforcement and Recovery Act of 2009.

Patrick J. Leahy, Debbie Stabenow, Kent Conrad, Barbara Boxer, Patty Murray, Herb Kohl, Jeff Bingaman, Russell D. Feingold, Bernard Sanders, Bill Nelson, Ben Nelson, Richard Durbin, Jack Reed, Amy Klobuchar, Robert P. Casey, Jr., Claire McCaskill, Harry Reid.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, as in executive session I ask unanimous consent that on Tuesday, April 28, at 10 a.m., the Senate proceed to executive session to consider the Calendar No. 62, the nomination of Kathleen Sebelius to be Secretary of Health and Human Services; that there be 8 hours of debate with respect to the nomination, with

the time equally divided and controlled between the leaders or their designees; that upon the use or yielding back of time, the Senate proceed to vote on the confirmation of the nomination and that the confirmation be subject to an affirmative 60-vote threshold; that upon achieving that threshold, the nomination be confirmed, the motion to reconsider be laid on the table and there be no further motions in order, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

The Republican leader.

Mr. MCCONNELL. Mr. President, I ask there be a modification to allow Senator BUNNING 20 minutes of the time available for the nomination of Kathleen Sebelius.

Mr. REID. No problem at all with that, Mr. President.

The PRESIDING OFFICER. If there is no objection to the request as modified, it is so ordered.

Mr. REID. Mr. President, I would finally say we are working on Tom Strickland. Senator BUNNING has written a letter to Mr. Strickland. He is entitled to a response, either orally or in writing. We hope to get that for him tomorrow. But we will work that out next week, we hope. We are going to be in session tomorrow. Hopefully I can have that information for Senator BUNNING tomorrow.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DURBIN. Mr. President, I ask unanimous consent the Senate proceed to executive session to consider Calendar No. 47; that the nomination be confirmed, the motion to reconsider be laid upon the table, no further motions be in order; that any statements relating to the nomination be printed in the RECORD; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF DEFENSE

Ashton B. Carter, of Massachusetts, to be Under Secretary of Defense for Acquisition, Technology, and Logistics.

MORNING BUSINESS

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

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

TRIBUTE TO STEVEN MOSLEY

Mr. REID. Mr. President, we talk a lot around here about being a family, and we are. There are people we learn to like a lot. A lot of times we see these people just passing through as they are doing their jobs.

One of the people I have known since I have come to the Senate is a man by the name of Steve Mosley. If I had a picture of Steve Mosley, everyone would recognize him. He is a big man, always smiling. He was someone who came to my office quite often for different things he was assigned to do. I had a number of conversations with him.

He loved sports activities. He was a season ticket holder for the Washington Wizards. He never missed a home game. He loved the Redskins and hated the Dallas Cowboys. He was certainly willing to say that at any time.

Steve has been a member of the Sergeant at Arms team and family. For 32 years he has been with Capitol Facilities, ensuring the service needs of the Capitol were met. It was bringing wood to an office, it was doing some work that needed to be done because someone had messed up an office, moving furniture—whatever it was, he was available.

He was a native Washingtonian, married to his wife Michelle for 26 years. Steve had one child, a son, Steven, Jr. He is 25 years old. His son Steven, Jr. and his wife Michelle of course were both stunned when Steve died. He was only 52 years old. He was born on April 12.

As I said, he loved the Redskins; was a season ticket holder. Also, he loved Cadillacs and he had two of them.

I think one of the most important things to remember about Steve is that he cared deeply about people. He was always the first to help, whether it was an Easter basket for one of the people who worked here who was in need of a little extra, or, for people who needed a ride, his Cadillac was always available to take them wherever they needed to go.

He died way too soon and we, as a Senate, certainly are not as good as we were before Steve died. He was loved by all of his coworkers at Capitol Facilities in the Capitol. I will miss him. We all will miss him. I want the RECORD to be spread with the knowledge to his family that we cared about Steve as he cared about us.

Our thoughts go with his family, that they will be able to work through this time of bereavement as we look toward a brighter day.

Mr. MCCONNELL. Mr. President, I rise to note the sad and sudden passing of a very familiar face to me and to many others around the Capitol.

Steve Mosley had been a fixture on the Capitol Facilities staff for 32 years when he passed away last night—and those of us who knew him will miss his great disposition and all that he did for so many years behind the scenes to keep this place running smoothly.

It has been noted that Steve was a pretty serious Redskins fan. That is an understatement. People who knew him say they can't remember him ever missing a single home game, rain or shine. And he liked to share his enthusiasm for the Skins with colleagues, particularly the Cowboy fans.

But Steve's friends also remember him for his generosity.

Like the time he offered to help set up the wedding reception of one of his colleagues so the colleague would be able to go out and enjoy his bachelor party. Steve never made it to the bachelor party himself. He spent the night making sure everything was ready for the reception.

One colleague recalled the time he wanted to get a limousine for his daughter on prom night but couldn't afford to spend the money. He told Steve about it at work one day, and the night of the prom, Steve showed up at the house in a black Mercedes Benz that he had washed and waxed for the occasion. Not only could the daughter use Steve's car for the prom—she could have him as a chauffeur too. A couple years later, Steve did the same thing for the girl's younger brother.

A lot of us have been here a long time, but few of us have been here as long as Steve was. He loved his job. He took a lot of pride in doing it well. And anytime someone new came on board, they knew they could learn the ropes, and a lot more, from Steve Mosley.

Senator REID mentioned earlier that the Senate is really a family. And whenever we lose somebody in the Senate, whichever office they are from or duty they perform, we lose a member of the family. And with Steve it is like we are losing one of the elders in that family. He takes a lifetime of proud and service with him and he leaves a distinguished legacy and many friends behind.

So on behalf of the entire Senate, I want to extend our condolences to Steve's wife, Michelle, and to their son, Steven, Jr, for their loss. And I want to take this opportunity to express my deep appreciation and my thanks to our friend Steve for his many years of devoted service.

We'll miss him.

CHINA

Mr. DORGAN. Mr. President, I am chairman of the Congressional-Executive Commission on China, and I want to say a few words about China and a very courageous man in China who we believe now is in a Chinese prison and likely being tortured. I think it is very important for our country to speak out about this issue.

Let me say first, there are many thoughtful and independent people in China today who understand the importance of fundamental rights and the role of strong and independent legal institutions. A few of these people work for the Chinese Government. Many work at universities or with U.S. companies and law firms. They care about the rule of law. Some of have cooperated with US agencies to increase food

safety and improve security for coal miners, and others. Those are the folks in China who get it.

There are also independent men and women in China who take a different approach. They apply what they know about the rule of law and the role of fundamental rights in very much the same way. Except that they choose to sound the alarm when the rights of vulnerable people are violated. And in so doing, they go to great lengths and place themselves at enormous personal risk. They defend the interests of consumers whose children are poisoned by powdered milk. They help the families of earthquake victims. They seek to represent the rights of illegally detained Tibetan monks. They stand up for their country and its people. By doing this, they are claimed to be enemies of the state. So who are the enemies of the state?

I want to tell you about one man today, a man who is very courageous, a man named Gao Zhisheng. His wife is visiting Washington, DC, today. I want to tell you about him because it is so important for me to do so.

This is a photograph of this courageous lawyer from China: Gao Zhisheng, with his son, his wife, and his daughter. He disappeared 80 days ago and has not been heard from since. We know 2 years ago he was arrested by the Chinese secret police and put in prison and tortured—tortured with electric shock and other devices I will not describe.

What was his transgression then? He wrote an open letter to the U.S. Congress asking us to pay some attention to the lack of human rights that existed in China. For writing an open letter to Members of the U.S. Congress, in 2007, Gao Zhisheng, one of the most noted and distinguished human rights lawyers in China, was imprisoned for over 50 days and brutally tortured.

Now, in 2009, he taken from his bed by 10 members of the secret police, and has not been heard from since. Let me tell you what has transpired.

Mr. Gao Zhisheng has represented some of the most vulnerable people in China. They include persecuted Christians, exploited coal miners, banned Falun Gong practioners, and so many others. He has always believed in the power of law, using the law to battle corruption, to overturn illegal property seizures, to expose police abuses, to defend religious freedom. He is a devout Christian. He has fought to protect those who engage in peaceful spiritual and religious practice in China.

In 2005, the government took away his license to practice law, closed his law practice. As I said, in 2007, they arrested him, threw him in prison, and tortured him. Eventually, he was released and brought back home and placed under house arrest. The police surveillance proved almost harsher than prison. In fact, authorities monitored the family's every movement, stationed an officer in the family's living room, prevented his daughter from going to school, a kind of collective punishment. His 16-year-old daughter was barred from attending school. There was 24-hour surveillance of this traumatized family.

The treatment for that family in recent months was so brutal they decided their survival depended on escaping China. But Gao was too closely monitored and could not think of leaving them without placing his family at even greater risk.

So in January, Gao's wife, 6-year-old son, and 16-year-old daughter were smuggled out of China. They then traveled to the United States. After his family fled China, security agents seized Gao from his bed and he has not been seen or heard from since.

We know this situation is extremely grave because we know what the Chinese have done to him in their prison system previously. They have not offered the slightest word about his whereabouts, despite repeated requests from United Nations agencies, the US government, foreign governments, NGOs, and the media. All have asked for information about the whereabouts of this courageous human rights lawyer, and the Chinese Government has said nothing.

The Chinese Government has signed or ratified many international human rights commitments about Mr. Gao Zhisheng that require it to come clean about Mr. Gao. I call on, and we call on, today, the Chinese Government to allow Mr. Gao to have access to a lawyer, access to his family, and for the government to publicly state and justify the grounds for the continued detention of this courageous person.

The right to speak freely and the right to challenge the Government—all of these are enshrined in the Chinese Constitution. Yet it appears the Chinese Government and the Communist Party that runs that Government is intent on upholding the violation of these basic constitutional rights in the case of Mr. Gao.

As I indicated, I am chairman of the Congressional-Executive Commission on China. We have the largest and the most significant publicly accessible repository of political prisoners in China. We have the largest, publicly accessible data base of information about many thousands of Chinese political prisoners.

There are many people today who languish in dark cells—dark cells—of Chinese prisons because they spoke out to defend the rights of others. None has done so more than Mr. Gao, who is a noted and celebrated human rights lawyer, who has lost his law office, lost his legal license, been imprisoned multiple times, has now been ''disappeared'' into the prison system, was tortured before, and we expect has been tortured again. We need to put a stop to it.

We need to find a way to convince the Chinese Government to tell us what has happened to Mr. Gao. What have they done with him? How do they justify it? And when, when, when will they tell us they will release this man to be with his family and begin to accord people like Mr. Gao and others, who stand up for the rights of others, the same human rights we would expect them to be given?

China will be a significant part of our future. I understand that. My plea today is to the Government of China to do the right thing with respect to this courageous and brave man.

As I indicated, his wife, Geng He, is with us today here in Washington, DC. I am not permitted to point her out in the Senate galleries. But she, too, is a very courageous woman, and she wishes very much to have this courageous man, her husband, released from detention in China and be given his freedom.

Mr. DODD. Mr. President, will my colleague yield?

Mr. DORGAN. Yes.

Mr. DODD. I wish to thank my colleague from North Dakota. This is a very valuable contribution my colleague has made. It may only be one individual, one family, but I think when we speak up on behalf of an individual such as Mr. Gao, we do so for a lot of other people across the globe who face the same kinds of restrictions he is going through. I wish to join with him in expressing our concern.

I urge my colleagues to maybe craft a letter of some kind we might be able to send to the Ambassador here in Washington or to the appropriate governmental personalities or agencies in China to express our collective concern about this. I am the second-ranking member of the Foreign Relations Committee, and I have a deep interest in what he is talking about.

I thank him immensely for taking a few minutes this afternoon to address this issue. As the Senator points out, we are not allowed to recognize people who are in the Chamber, but let it be said that there is an individual who is with us during these remarks who is the wife of this individual. We thank her for her courage, her family's courage, and we will do everything we can to support the efforts of our colleague from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I know the Senator from Utah will be recognized. I wish to say that earlier this week and later today I will be here to talk about Roxana Saberi, who is imprisoned in Iran. She is a constituent of mine. I have great concern about these circumstances in Iran and China and elsewhere, as all of us do. My thoughts and prayers are with Roxana and her family. Similarly, my thoughts and prayers are with the family of Mr. Gao.

I am happy to yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am indebted to the distinguished Senator from North Dakota for his remarks today, and I certainly join with him in

requesting the Chinese Government to make this matter right. I am very grateful he has taken the time to come and tell us about Mr. Gao as well as this wonderful woman who is being held in Iran. I wish to compliment him for it and say that I wish to be identified with his remarks.

HONORING OUR ARMED FORCES

Mr. LAUTENBERG. Mr. President, another 5 months have passed, and more American troops have lost their lives overseas in Iraq and Afghanistan. I wish to honor their service and sacrifice by including their names in the RECORD.

Since I last included the names of our fallen troops on November 20, 2008, the Pentagon has announced the deaths of 123 troops in Iraq and in Operation Enduring Freedom, which includes Afghanistan. They will not be forgotten and today I submit their names into the RECORD:

LCpl Ray A. Spencer II, of Ridgecrest, CA; PFC Richard A. Dewater, of Topeka, KS; CPL Francisco X. Aguila, of Bayamon, Puerto Rico; SGT Raul Moncada, of Madera, CA; SPC Michael J. Anaya, of Crestview, FL; SSG Gary L. Woods Jr., of Lebanon Junction, KY; SFC Bryan E. Hall, of Elk Grove, CA; SGT Edward W. Forrest Jr., of St. Louis, MO; CPL Jason G. Pautsch, of Davenport, IA; PFC Bryce E. Gautier, of Cypress, CA; A1C Jacob I. Ramsey, of Hesperia, CA; LCpl Blaise A. Oleski, of Holland Patent, NY; LCpl Stephen F. Dearmon, of Crossville, TN; SPC Adam M. Kuligowski, of Arlington, VA; SPC Israel Candelaria Mejias, of San Lorenzo, Puerto Rico; SGT Daniel J. Beard, of Buffalo, NY; TSgt Phillip A Myers, of Hopewell, VA; SGT Devin C. Poche, of Jacksonville, NC; LCpl Nelson M. Lantigua, of Miami, FL; LTJG Francis L. Toner IV, of Narragansett, RI; LT Florence B. Choe, of El Cajon, CA; SSG Raphael A. Futrell, of Anderson, SC; SGT Jose R. Escobedo Jr., of Albuquerque, NM; Cpl Michael W. Ouellette, of Manchester, NH; Cpl Anthony L. Williams, of Oxford, PA; LCpl Daniel J. Geary, of Rome, NY; PFC Adam J. Hardt, of Avondale, AZ; SPC Gary L. Moore, of Del City, OK; SGT Christopher P. Abeyta, of Midlothian, IL; SGT Robert M. Weinger, of Round Lake Beach, IL; SPC Norman L. Cain III, of Oregon, IL; SSgt Archie A. Taylor, of Tomball, TX; SSgt Timothy L. Bowles, of Tucson, AZ; PO1 Theophilus K. Ansong, of Bristow, VA; LCpl Patrick A. Malone, of Ocala, FL; PFC Patrick A. Devoe, II, of Auburn, NY; 1LT Daniel B. Hyde, of Modesto, CA; SPC Jessica Y. Sarandrea, of Miami, FL; SGT Jeffery A. Reed, of Chesterfield, VA; Cpl Donte J. Whitworth, of Nobelsville, IN; SGT Simone A. Robinson, of Dixmoor, IL; CPL Brian M. Connelly, of Union Beach, NJ; CPT Brian M. Bunting, of Potomac, MD; SGT Schuyler B. Patch, of Owasso, OK; SGT Scott B. Stream, of Mattoon, IL; SGT Daniel J. Thompson, of Madison, WI; 1LT William E. Emmert, of Lincoln, TN; CPL Michael L. Mayne, of Burlington Flats, NY; CPL Michael B. Alleman, of Logan, UT; CPL Zachary R. Nordmeyer, of Indianapolis, IN; SSG Mark C. Baum, of Telford, PA; SSG Jeremy E. Bessa, of Woodridge, IL; MSG David L. Hurt, of Tucson, AZ; PFC Cwislyn K. Walter, of Honolulu, HA; SSgt Timothy P. Davis, of Aberdeen, WA; SFC Raymond J. Munden, of Mesquite, TX; SSG Daniel L. Hansen, of Tracy, CA; CPL Stephen S. Thompson, of Tulsa, OK; SSG Sean D. Diamond, of Dublin, CA; SSG Marc J. Small, of Collegeville, PA; LTC Garnet R. Derby, of Missoula, MT; SGT Joshua A. Ward, of Scottsville, KY; SPC Albert R. Jex, of Phoenix, AZ; PFC Jonathan R. Roberge, of Leominster, MA; LCpl Kevin T. Preach, of Bridgewater, MA; SSG Jason E. Burkholder, of Elda, OH; 1LT Jared W. Southworth, of Oakland, IL; SPC Christopher P. Sweet, of Kahului, HI; SGT James M. Dorsey, of Beardstown, IL; SGT Darrell L. Fernandez, of Truth or Consequences, NM; CW4 Milton E. Suggs, of Lockport, LA; CWO Phillip Windorski Jr, of Bovey, MN; CWO Matthew G. Kelley, of Cameron, MO; CWO Joshua M. Tillery, of Beaverton, OR; CWO Benjamin H. Todd, of Colville, WA; Sgt David W. Wallace III, of Sharpsville, PA; Sgt Trevor J. Johnson, of Forsyth, MT; PVT Grant A. Cotting, of Corona, CA; LCpl Julian T. Brennan, of Brooklyn, NY; SGT Kyle J. Harrington, of Swansea, MA; SPC Matthew M. Pollini, of Rockland, MA; SGT Ezra Dawson, of Las Vegas, NV; SSG Carlo M. Robinson, of Lawton, OK; PFC Ricky L. Turner, of Athens, AL; SSG Roberto Andrade Jr., of Chicago, IL; SSG Joshua R. Townsend, of Solvang, CA; SrA Omar J. McKnight, of Marrero, LA; Sgt Marquis R. Porter, of Brighton, MA; LCpl Daniel R. Bennett, of Clifton, VA; PVT Sean P. McCune, of Euless, TX; SGT Joshua L. Rath, of Decatur, AL; SPC Keith E. Essary, of Dyersburg, TN; SSG Justin L. Bauer, of Loveland, CO; MAJ Brian M. Mescall, of Hopkinton, MA; SPC Joseph M. Hernandez, of Hammond, IN; SGT Jason R. Parsons, of Lenoir, NC; LCpl Jessie A. Cassada, of Hendersonville, NC; SSG Anthony D. Davis, of Daytona Beach, FL; LCpl Chadwick A. Gilliam, of Mayking, KY; LCpl Alberto Francesconi, of Bronx, NY; PFC Christopher W. Lotter, of Chester Heights, PA; PFC Benjamin B. Tollefson, of Concord, CA; SPC Tony J. Gonzales, of Newman, CA; LCpl Robert L. Johnson, of Central Point, OR; CPL Charles P. Gaffney Jr., of Phoenix, AZ; MASA Joshua D. Seitz, of Sinking Springs, PA; MAJ John P. Pryor, of Moorestown, NJ; SSG Christopher G. Smith, of Grand Rapids, MI; SPC Stephen M. Okray, of St. Clair Shores, MI; SPC Stephen G. Zapasnik, of Broken Arrow, OK; LCpl Thomas Reilly Jr., of London, KY; PFC Coleman W. Hinkefent, of Coweta, OK; SSG Jonathan W. Dean, of Henagar, AL; PVT Colman J. Meadows III, of Senoia, GA; SSG Solomon T. Sam, of Majuro, Marshall Islands; SGT John J. Savage, of Weatherford, TX; CPT Robert J. Yllescas, of Lincoln, NE; MSG Anthony Davis, of Deerfield, FL; Capt Warren A. Frank, of Cincinnati, OH; 1LT William K. Jernigan, of Doraville, GA; SFC Miguel A. Wilson, of Bonham, TX; PVT Charles Yi Barnett, of Bel Air, MD; GySgt Marcelo R. Velasco, of Miami, FL;

We cannot forget these men and women and their sacrifice. These brave souls left behind parents, spouses, children, siblings, and friends. We want them to know the country pledges to preserve the memory of our lost soldiers who gave their lives for our country.

STAFF SERGEANT GARY LEE WOODS, JR.

Mr. BAYH. Mr. President, I rise today with a heavy heart to honor the life of SSG Gary Lee Woods, Jr., from Shepherdsville, KY. Gary was 24 years old when he lost his life on April 10, 2009, from injuries sustained from a truck bomb that detonated near his vehicle in Mosul, Iraq. He was a member of the 1st Battalion, 67th Armor Regiment, 4th Infantry Division of Fort Carson, CO.

Today, I join Gary's family and friends in mourning his death. Gary, who was known to family and friends by his middle name, Lee, will forever be remembered as a loving husband, son, and friend to many. He is survived by his devoted wife, Christie; his father and stepmother Gary and Debbie Woods; his mother and stepfather Becky and Pat Johnson; sisters Britteny and Heather Woods and Mandy Maraman; brothers Courtney and Troy Woods and Newman and Corey Johnson; grandparents Marilyn Waters and Nancy and Charlie Ratliff; in-laws Rick and Elaine Houston; and a host of other friends and relatives.

Gary, a member of the JROTC at Bullitt Central High School, joined the Army following his graduation from high school. A gifted musician, Gary sang and played the trombone, drums, piano and guitar. He was also an accomplished athlete and a member of Bullitt's football team.

While we struggle to express our sorrow over this loss, we can take pride in the example Gary set as a soldier. Today and always, he will be remembered by family and friends as a true American hero, and we cherish the legacy of his service and his life.

As I search for words to do justice to this valiant fallen soldier, I recall President Abraham Lincoln's words as he addressed the families of soldiers who died at Gettysburg:

> We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.

This statement is just as true today as it was nearly 150 years ago, as we can take some measure of solace in

knowing that Gary's heroism and memory will outlive the record of the words here spoken.

It is my sad duty to enter the name of Gary Lee Woods, Jr. in the RECORD of the Senate for his service to this country and for his profound commitment to freedom, democracy and peace. I pray that Gary's family can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Gary.

WILDFIRE IN NORTH MYRTLE BEACH, SC

Mr. GRAHAM. Mr. President, our hearts go out to the people of North Myrtle Beach, SC, today. As you may know, North Myrtle Beach firefighters, along with firefighters from around South Carolina, are battling the worst wildfire to hit that area since 1976.

While the cause of the fire is unknown at this point, high winds have fanned the flames resulting in a total damage of nearly 15,000 acres—23 square miles. My understanding is that officials on the scene estimate that the wildfire is about 75 to 80 percent contained at this point which is good news. Ninety firefighters from eight different departments from across South Carolina are currently battling this blaze.

It is at times like these when you really appreciate the hard work that our firefighters do on our behalf. You also appreciate the dangers. I understand that last night, two of our South Carolina firefighters had to deploy their emergency fire shelters when they became surrounded by flames. Both, I am told, are unhurt.

At this point, no injuries or fatalities have been reported and we should be very thankful for that. However, many have lost their homes. Seventy homes have been destroyed with another 29 severely damaged. I expect that that number, unfortunately, will likely go up. Anyone who has ever lost a home to a fire understands the sense of terrible loss—the loss of the house they grew up in and the loss of irreplaceable family heirlooms.

I want to thank North Myrtle Beach Mayor Marilyn Hatley, the Governor, his emergency management team, the Forestry Commission, the State Fire Marshall, the State national guard, the officials of Horry County, the South Carolina Red Cross, and the others who are pitching in right now to put out this fire. My understanding is that the Red Cross has shelters open in North Myrtle Beach and is housing several hundred people tonight.

I want to applaud our firefighters for always standing ready to answer the call to action. I pray that they accomplish their mission soon and come home safely to their families. And I pray for the families who have suffered devastating losses.

STATE OF THE INDIAN NATION

Mr. TESTER. Mr. President, Montana has a long history with its first citizens, the Native American Indian people that comprise my State's eight tribes. Montana's history with our tribes, like those at the Federal level, has fluctuated greatly over the years. At first treatment was shameful, characterized by war and violence. After the wars, the Federal Government engaged in neglect, by placing Indians on remote reservations and trying to forget about them. At long last, we have moved to the more progressive and enlightened policy of today—self-determination. This shift has been a long time in coming, but it is critical. Under this new policy, we appreciate tribes as sovereign units of government and work with them in that capacity to become self-sufficient through self-determination.

One of the good things Montana does on a biennial basis is ask an elected tribal chairman to address a joint session of the Montana Legislature and present a State of the Indian Nations speech. On March 10, 2009, James Steele, Jr., who is both chairman of the Confederated Salish and Kootenai Tribes of the Flathead Reservation and, the recently elected Chairman of the Montana-Wyoming Tribal Leaders Council, addressed my former colleagues in the legislature. I found his speech to be a thoughtful call for cooperation in addressing the current economic problems we face. It was also a fascinating description of the history of State/tribal relations. I think my colleagues in Congress will appreciate, and learn from it. I therefore ask unanimous consent to have Chairman Steele's speech printed in today's RECORD.

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

Good afternoon.

Thank you House Speaker Bob Bergren.

Thank you Senate President Robert Story.

Thank you also to Margarett Campbell, a Fort Peck Tribal member and the first Indian House Majority Floor Leader.

Thank you for the opportunity to speak in this distinguished chamber and for the opportunity to speak to the leaders of Montana, who have gathered here for this State of the Tribal Nations address.

I also thank the Montana National Guard that presented the colors. You have served our Nation well in putting yourself in harms way and you continue to serve through your community service. As United States Senators John McCain and Dan Inouye—themselves both war heroes have often pointed out—American Indians have a proud tradition of serving in the military in the highest percentage of any ethnic group in the United States. We ask our Creator for Godspeed for all Americans that serve this great country in places far away and pray for their families who also make tremendous sacrifices for the freedoms we have.

May I ask Bruce Sun Child from the Chippewa Cree Tribe to lead us in a prayer.

(Sun Child speaks in the Cree language.)

Thank you Bruce for your words of prayer.

I am pleased to introduce the Tribal Government leaders that have joined us today.

(Identifies tribal leaders by name)

Tribal leaders, I am honored to represent you today, as Chairman of the Montana-Wyoming Tribal Leaders Council and as Chairman of the Confederated Salish and Kootenai Tribes.

Honorable Governor Brian Schweitzer and Lieutenant Governor John Bohlinger, thank you. Throughout your administration, you have opened the front doors of the Capitol to the Tribes and we have walked through those doors many times. We look forward to continuing our government-to-government relationship throughout the next four years.

I thank the distinguished members of the Senate and House of Representatives and in particular, the American Indian legislators of Montana:

Representative Shannon Augare, House Majority Whip

Representative Tony Belcourt

Representative, Frosty Calf Boss Ribs

Representative Carolyn Pease-Lopez

Representative David Roundstone

Senator Carol Juneau

Senator Sharon Stewart-Peregoy, and Senator Jonathan Windy Boy

We look to you for leadership and guidance as the legislative session continues.

I would also like to recognize the statewide elected officials in attendance today Superintendent of Public Instruction, Denise Juneau, the first Indian woman to be elected to state-wide public office; Attorney General Steve Bullock; Secretary of State Linda McCulloch and State Auditor Monica Lindeen.

There are members of the Governor's cabinet present today, as well as representatives from the offices of Senator Baucus, Senator Tester, and Representative Rehberg.

I would especially like to thank and honor today Mr. Gilbert Horn, Sr. an Assiniboine of the Fort Belknap Indian Reservation, who, like the more storied Navajos, used the Assiniboine language with Gerald Red Elk of the Ft. Peck reservation to create a code our enemies in World War II were never able to break. At one point in the war Gilbert Horn successfully attacked a Japanese machine gun post and despite finding his uniform riddled with machine gun bullets managed to survive unscathed. He was awarded the Congressional Medal of Honor but this humble man felt like he didn't deserve special recognition because he was only doing his job. Thank you Gilbert Horn for your service to this country.

Thank you all.

Elected leaders, tribal elders, ladies and gentlemen: On behalf of the Tribal Nations across the State of Montana, I am honored to present the State of the Tribal Nations address. My name is James Steele, Jr., and I am the Chairman of the Confederated Salish and Kootenai Tribes and the Chairman of the Montana-Wyoming Tribal Leaders Council.

We live in times of tremendous change, politically and economically. We have seen history made in the election of President Barack Obama and his appointments of the most diverse cabinet in the history of the nation.

And we have also lost a great leader. This past month, Crow Tribal Chairman Carl Venne passed away—a tremendous loss for the Crow Nation, Montana, and the Country. Carl was a former Chairman of the Montana-Wyoming Tribal Leaders Council and gave this address during the 2007 legislative session. Please let us honor the passing of this great leader, this great man, and my friend, with a moment of silence.

The Charles M. Russell painting that dominates this Chamber serves as a reminder of the historic relationship between the Tribes and those who came west to this great country. Charlie Russell recognized that the coming of Lewis and Clark had a profound impact on the Indian people, as our way of life

was changed forever. In 1805, the economies of Native America were strong and thriving. In fact, in his orders to Lewis and Clark, President Jefferson instructed the two captains to take note and report to him on the economic activities of the Tribes, for Jefferson knew they were vibrant. Our families were strong units. We depended on each other for our survival. There was food, clothing and shelter with a strong religion and value system. An interesting aspect of Thomas Jefferson is that he had studied the governing structure of the six nations that comprise the Iroquois Confederacy and he was fascinated by the idea that there could be independent tribal governments who had autonomy from one another but who also coalesced for their common good. Historians believe that the relationship between those tribes influenced Jefferson and played a role in the crafting of the Constitution and the establishment of the United States.

The Russell mural depicts an event that took place on September 4, 1805 when Lewis and Clark's journey embarked on Salish territory at Ross Hole. The encounter between them and the Salish tribal people was a monumental event that ultimately led to the success of the expedition. The Salish people graciously provided the explorers with fresh horses, food and other vital supplies that were needed for their trek across the Bitterroot Mountains to the Pacific Ocean.

Without our assistance at Ross Hole and that of other tribes along the way, who knows what the outcome of the journey would have been. These people came looking for a new life, for opportunity, for the freedom to practice any religion they chose. They came looking for hope and opportunity, and we as Indian people hold that in common with them today. Maybe if Indian people had a strong policy on immigration things might have turned out quite differently!!

Today, we begin another partnership. It is a partnership that must be based on mutual respect and an understanding. We all must benefit if we as a state are to move forward. What is essential if we as Indian people are going to survive is that the State of Montana accepts the most basic premise that Indian tribes are sovereign units of government. It should be noted that the Constitution of the United States identifies three units of government and those are federal, state and Indian tribal governments. We are not racial groups who happen to live on a particular land base and want what other interests groups want. We are the successors in interest to those who signed treaties with the United States that allowed for Montana to be created. The United States does not sign Treaties with interest groups, they sign treaties with governments and our treaties were ratified by the United States Senate. They are binding contractual agreements in which we reserved to ourselves the rights of self-government and when the western states joined the Union their enabling acts committed them to respecting that authority. There are times when this phenomenon has created jurisdictional problems but to a great extent Montana, particularly in more recent years, has come to understand that our relationship is one of two governments that must be built on mutual respect. I believe that by carrying out this relationship in a mutually respectful fashion we can better the lives of the people who live on Indian reservations as well as those who do not. I believe that Indian reservations are good for Montana and can in fact significantly aid Montana in the area of economic development.

At this time it is important that we focus on economic development, job creation, education and health care. These things go hand in hand and our concerns are the same as yours. For too long our people have struggled in economically depressed communities. Our country is in the most severe economic downturn in a generation. But for Indian Country, this is not new as reservations have long suffered with high levels of unemployment. The question is how can Montana help its tribes develop and how can those tribes in turn assist Montana to develop its economy? One source of information that I would ask Montana's officials to look at is the study funded by the State & Tribal Economic development Commission and the University of Montana called the Uncovering Economic Contributions of Montana's American Indian Tribes.

Montana's reservations contribute to the state economy by purchasing goods and services from surrounding communities throughout the state with revenue generated from natural resource-based jobs, tribal businesses, federal funds that support some tribal operations and revenue from tribal assets.

Cooperative agreements between the Tribes and State will improve the economic conditions of the reservations and would benefit the State of Montana.

State and tribal leaders, consider these areas for cooperative agreements:

Partnerships focused on bringing a business development approach to tribal communities though technical assistance and strategic partnerships.

Improve management skills and the ability to land job-creating grants by using tribal colleges to train the workforce.

Assist Tribes with due diligence on energy development technologies.

These are just a few items to consider in the efforts to improve the health and well-being of our communities.

The Salish and Kootenai Tribes are mapping out our future as energy providers. This effort will reach a new stage in 2015 when CSKT purchases Kerr Dam and becomes a supplier of hydroelectric energy. CSKT has also successfully managed our local electric utility, Mission Valley Power, for the past 20 years and now serves 14,000 Indian and non-Indian customers.

The great Crow Nation has taken a bold step and signed an agreement with the Australian Energy Company to form the Many Stars Coal-to-Liquids Project. This effort will bring significant opportunities to the Crow people and to all Montanans, through the creation of 4,000 Montana-based jobs, an increased tax base, and will have a vast positive economic impact.

The GROS Ventre and Assiniboine Tribes of the Fort Belknap Reservation have used their Indian Country Economic Development funds for the creation of the Little River Smokehouse. This has brought great pride to the Assiniboine and Gros Ventre people. Thank you for this important program and please continue its funding this session.

The Little Shell Chippewa Tribes continue to receive our support in their endeavors to gain federal recognition. Senators Max Baucus and Jon Tester and Congressman Denny Rehberg have also supported the tribes in their 31-year effort for recognition.

The Northern Cheyenne is delicately balancing energy development to create jobs while being environmentally conscience with their traditional values.

The Assiniboine and Sioux Tribes of the Fort Peck Reservation are proud to report that they were the first to sign a revenue sharing agreement with the State of Montana to eliminate duplicate taxation of new oil and gas development on the reservation. This creates a competitive business environment on the reservation, leading to more development of tribal oil and gas resources and increased economic opportunities for tribal members.

The Chippewa Cree Tribe is engaging in energy development on and around the Rocky Boy's Reservation that will create more jobs, generate revenue, and provide direct control over development of land and resources. The Tribe has partnered with Native American Resource Partners (NARP) to create a tribally-owned energy company for exploring and developing oil and gas resources. The priorities will be on natural gas exploration and development followed by wind energy progress.

The Blackfeet Nation is working to upgrade Pikuni Industries to manufacture materials for Defense Department contracts; and oil drilling efforts have increased on the western side of the Blackfeet Reservation. The Tribe is also in discussion with wind energy producers about several wind projects on the Reservation.

These are just a few examples—from among many—of the efforts tribal governments are making to improve the health and well-being of our peoples.

Even with high rates of unemployment, the seven Indian Reservations of Montana and the state-recognized Little Shell Band of Chippewa, contribute a combined total of $1 billion annually to the Montana economy. Those numbers may surprise some people, but to those of you who work every day to make your home communities better for your people, these figures come as no surprise.

This is an important time to come together. It's important to remind ourselves and our surrounding communities that together, we are greater than the sum of our parts. An example of that played out when Transportation Director Jim Lynch reached out to Indian Country to coordinate conference calls about economic stimulus dollars and transportation funds. Our Nations are hungry for improvement and the tax status of Indian reservations can be attractive to industry.

In the more immediate term, during this legislative session, you will hear many ideas to help make Montana, even better.

The Governor has already signed into law Senate Bill 39, sponsored by Senator Carol Juneau, extending the duration of the Reserved Water Rights Compact Commission. I thank Senator Juneau, this legislative body, and the Governor for taking quick action on this bill, which is so vital to the economic future of my people and all Montanans. SB 39 will allow the CSKT and the State the time to negotiate a water compact that is fair for all who live on the reservation.

While there are many bills worthy of support, I must urge your support in particular for several bills that are vital in Indian Country because of their effect on our economies:

House Bill 161, sponsored by Representative Shannon Augare, ratifying the Blackfeet water compact. This bill represents a vital step in the journey towards fair and just water rights for the Blackfeet Tribe and tribal members, and I thank Representative Augare for sponsoring the bill.

House Bill 135, sponsored by Representative Tony Belcourt, funding the Peoples Creek mitigation account, as part of the Fort Belknap water compact. With this bill, the State begins to fulfill its obligations under the compact to the people of the Fort Belknap Reservation. Thank you Representative Belcourt—or Landslide Tony as some of us call him—for your sponsorship.

Senate Bill 201, sponsored by Senator Jesse Laslovich, revising the Crow water compact. This important bill allows the Crow Nation to access their interest earnings on funds appropriated as part of the State of Montana's obligation under the compact. With these monies, the Crow will be able to set up their

water administration office, as well as complete the ratification process of their water compact in the U.S. Congress. I thank Senator Laslovich for sponsoring this legislation.

House Bill 158, sponsored by Representative Shannon Augare, allowing for direct tribal access to economic development funding. This bill allows tribes to directly access the state's Big Sky Economic Development program funding. Representative Augare understands that the tribes will need to access all the resources they can to help their peoples during these times of economic crisis.

Senate Bill 456, sponsored by Carol Juneau, exempting tribally owned property from state property taxes, just as all governments in Montana are exempt from state property taxes. I am thankful for Senator Juneau's persistence in sponsoring this important bill, which is a simple matter of fairness and an important symbol of respect for the state-tribal government-to-government relationship.

I thank you for supporting the Indian Country Economic Development program, contained in House Bill 2. This program, established as part of the Governor's budget in 2005, has been a critical engine of economic growth in Indian Country, and is now more important than ever given the economic crisis.

Legislators, as you deliberate in making laws and decisions that affect the great State of Montana, let Charlie Russell's painting remind you of your obligation to include Native peoples as your neighbors, partners and friends. Let us move forward together.

Thank you.

LEM LEMTS.

GLOBAL YOUTH

Ms. MURKOWSKI. Mr. President, I rise to speak about a resolution designating April 24 through 26, 2009, as Global Youth Service Days. S. Res. 105 recognizes and commends the significant community service efforts that youth are making in communities across the country and around the world on the last weekend in April and every day. This resolution also encourages the citizens of the United States to acknowledge and support these volunteer efforts. S. Res. 105 passed the Senate by unanimous consent on April 20, 2009. This sends a very strong message of support to the thousands of youth across our great Nation who are contributing positively to their communities your efforts are recognized and appreciated.

Over the weekend, beginning this Friday, April 24, youth from across the United States and around the world will carry out community service projects in areas ranging from hunger to literacy to the environment. Through this service, many will embark on a lifelong path of service and civic engagement in more than 100 countries around the world.

This event is not isolated to one weekend a year. Global Youth Service Days is an annual public awareness and education campaign that highlights the valuable contributions that young people make to their communities throughout the year.

The participation of youth in community service is not just a nice idea for a way to spend a Saturday afternoon. All year long, young people across America, indeed across the globe identify and address the needs of their communities through community service and service-learning opportunities. They make positive differences in the world around them, learn leadership and organizational skills, and gain insights into the problems of their fellow citizens.

Youth who are engaged in volunteer service and service-learning activities do better in school than their classmates who do not volunteer because they see a direct connection to what they are learning and the real world in which they live. Youth who engage in volunteering and other positive activities are also more likely to avoid risky behaviors, such as drug and alcohol use, crime, and promiscuity. Service within the community also contributes positively to young people's character development, civic participation, and philanthropic activity as adults.

A survey by Civic Enterprises found that 47 percent of high school dropouts reported that boredom in school was a primary reason why they dropped out. High quality service-learning activities can, however, help young people make important connections between the curriculum and the challenges they see in their communities.

It is important, therefore, that the Senate encourage youth to engage in community service and to congratulate them for the service they provide.

In an effort to recognize and support youth volunteers in my State, I am proud to acknowledge some of the activities that will occur this year in Alaska in observance of National and Global Youth Service Days:

Anchorage's Promise, which works to mobilize all sectors of the community to build the character and competence of Anchorage's children and youth, has sponsored the annual Kids' Day 3-day events in Anchorage again this year. Youth provided significant service to their peers and to adults who attended Kids' Day activities last weekend:

Students educated the public on the 5 Promises: Caring Adults, Safe Places, Healthy Start and Future, Marketable Skills, and Opportunities to Serve.

Students from King Career Center served as volunteer safety patrols.

Teens served as greeters and passed out bags, helped vendors set up their booths, and cleaned up during and after the event.

Junior ROTC members provided security and helped with parking.

Teens assisted Anchorage's Promise Board members with tours and Opening Ceremony activities.

Three teens assisted the Kids in Nature Workshop for Parents and Caregivers instructor.

One youth volunteer assisted staff at the Alaska Natural History Museum.

Youth created cards to express support for our troops.

In addition to the Kids' Day events, young people from every region of Alaska will serve their communities in the following ways:

Youth volunteers, coordinated by Covenant House, will bring attention to the importance of conservation, recycling, and educate youth about Earth Day.

Various youth service projects will be performed by Juneau youth at local nonprofits.

Members of the Eagle River Boys & Girls Club provided ''kid power'' to fill 3000 Easter eggs.

The Eielson Air Force Base Youth Programs' Inside & Out Club will clean to make it shine as much as the kids do.

Youth volunteers, coordinated by the Anchorage Public Library, will help organize summer reading celebration materials.

Youth at Chugiak High School have produced and will show a docudrama that simulates a drunk driving collision and help educate their peers about the dangers of drunk driving.

Students at Steller Secondary School will provide the Covenant House residents with gift bags containing personal hygiene products.

Alaska Youth and Family Network volunteers will promote personal responsibility for wellness that focuses on youth with behavioral health problems.

Spirit of Youth volunteers from all across Alaska, including Thorne Bay, Ketchikan, Eagle River, Kodiak, Anchorage, Palmer, Juneau, Cantwell, Kasaan, Nenana, Nome, Shageluk, Cordova, Palmer, and Chugiak, will work with their peers and adults on projects as varied as sharing their artistic talents; organizing a potato feed fundraiser to help the local library; running a girls' study group; offering free babysitting, teaching Sunday school, and helping the elderly at the local hospital; raising money for youth activities and easing community tensions; improving the collective well-being of youth; including people with disabilities in social activities; teaching cheerleading and dance skills; coordinating canned food drives; honoring Haida culture through art and music; working with Native elders to retain Alaska Native boat making skills; responding to emergencies; restoring salmon habitat; learning about climate change and fire science; owning, operating, and crewing a seine fishing boat; giving teens a forum to discuss political issues; educating others about child labor; helping other youth to succeed in realizing their dreams; helping students with disabilities excel in physical education; and educating the public about domestic violence while advocating for justice and change.

The Alaska Teen Media Institute will provide teens with the tools and training needed to produce their own stories told in their own voices to be shared through a variety of media.

Members of the Mountain View Boys & Girls Club will kick off Mountain View Cleanup Day.

Members of Alaska Youth Environmental Action attended the Civics and Conservation Summit in Juneau where they met with legislators to talk about issues they care about in their communities, including the Renewable Energy Campaign.

The Anchorage Youth Parent Foundation Peer Outreach Workers will spread awareness of sexual assault in April by hosting an Art Competition at the POWER Teen Clinic.

Mr. President, I am so proud of all of these young people. I value their idealism, energy, creativity, and unique perspectives as they volunteer to make their communities better and assist those in need.

Many similarly wonderful activities will be taking place all across the Nation. I encourage all of my colleagues to visit the Youth Service America Web site—www.ysa.org—to find out about the selfless and creative youth who are contributing in their own States this year.

I thank my colleagues Senators AKAKA, BAYH, BEGICH, BINGAMAN, BROWN, BURR, CARDIN, COCHRAN, COLLINS, CORNYN, DODD, DURBIN, FEINGOLD, FEINSTEIN, GILLIBRAND, GREGG, HAGAN, HATCH, INOUYE, JOHNSON, KENNEDY, KLOBUCHAR, LANDRIEU, LAUTENBERG, LEVIN, LIEBERMAN, LINCOLN, MARTINEZ, MENENDEZ, MIKULSKI, MURRAY, BEN NELSON, BILL NELSON, SPECTER, and WHITEHOUSE for standing with me as original cosponsors of this worthwhile legislation, which will ensure that youth across the country and the world know that all of their hard work is greatly appreciated.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

HUMAN RIGHTS IN KENYA

• Mr. KENNEDY. Mr. President, I take this opportunity to call the attention of my colleagues to the serious dangers that exist for human rights today in Kenya. I particularly express my concern about the death threats being made against Paul Muite, a distinguished human rights attorney in that country.

Mr. Muite is a native of Kenya who has been an outspoken critic of the hundreds of extrajudicial killings that have taken place in Kenya since 2006, and he has sought an investigation by the International Criminal Court of these killings.

The threats against him have escalated in recent weeks. This week, I learned that someone had thrust an AK–47 in Mr. Muite's face.

I urge the Government of Kenya to give high priority to this alarming situation, and to take all necessary steps to protect the safety of Mr. Muite and others struggling to defend the fundamental human rights of the people of Kenya. The world is watching and I hope my colleagues in the Senate will join in calling attention to this basic issue.•

EXERCISE TIGER

Mr. BOND. Mr. President, today I rise to honor the 65th anniversary of the Exercise Tiger operation and the American servicemen who took part in this exercise. I extend my gratitude to their dedication and service to the people of Missouri and of the Nation.

On April 28, 1944, German Navy ''E'' boats, patrolling the English Channel, attacked eight American landing ships engaged in training operation Exercise Tiger. These operations, organized by the U.S. Army, were undertaken off a beach in Devon, England often patrolled by German ''E'' torpedo boats. With only one English ship to guard the convoy, there was a devastating surprise attack on the American ships ending in multiple ships being sunk.

Of the four thousand men who participated in this critical operation, nearly a quarter lost their life including over 200 men from the 3206th Quartermaster Company located in Missouri. Due to the secrecy of the mission, information on the fatalities was only released after the successful completion of the D-Day invasion.

April 28, 2009 marks the 65th historic anniversary of the WWII Battle of Exercise Tiger and an opportunity to recognize all the men who served and gave their life in that historic battle. I am proud to say that we have renamed U.S. Highway 54 in my home State of Missouri as the WWII Exercise Tiger Expressway, in honor of the sailors and soldiers who paid the ultimate sacrifice. The Missouri Exercise Tiger Army and Navy Anchor Memorial has been built on the Audrain County Court House Lawn in their memory.

The servicemen who participated in the Battle of Exercise Tiger are to be commemorated for their heroic actions. These men were an example for all American soldiers and a credit to the United States as it remains the free and great country that it is today.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering well over 1,200, are heartbreaking and touching. While energy prices have dropped in recent weeks, the concerns expressed remain very relevant. To respect the efforts of those who took the opportunity to share their thoughts, I am submitting every e-mail sent to me through an address set up specifically for this purpose to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

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

It is time to wake up, America. All it would take [for the price to drop] is for Congress to allow the oil companies to drill for oil anywhere in this country and the crude oil price would drop $30 to $50 a barrel. I, for one, am tired of Congress blaming business or the President for the problems of this country. Congress holds the key and they sit back and run up the government deficits until the value of our dollar is falling like a rock, which, in turn, is driving up the price of crude oil.

It was not that long ago that the Congress of the 1990s showed fiscal responsibility. But, this Congress shows that it is unwilling to try to solve any of the nation's problems. The deficit is snowballing into a problem that cannot be ignored any longer it is having an effect on all of our daily lives.

There has been many articles recently about the amount of oil that this country has is not enough to solve this countries demands for oil, but it sure would go a long way towards balancing trade deficits and have a huge effect on the economy. If Congress shows a willingness to do something about this problem, the commodities markets reaction would be swift; no action, be prepared to keep paying at the pump!

It is time to write our Senators and Representatives and tell them it is long overdue that they do something about utilizing our nation's oil resources, and with a percentage of the revenue from it to build renewable energy plants like solar and wind generation projects. The politicians keep saying that they are all for looking out for the poor and the working class in this country but [that is not happening.] There is some huge possibilities if Congress acts, if not we are starting to see what the future looks like.

KYLE, *Genesee.*

These high gas prices are making it more and more difficult for my family to just get to town for the basic essentials. We live on top of a mountain in Idaho, and it takes us 25 minutes just to drive down in town where we do our grocery shopping, banking, medical care and prescription pick-up as well as postal service, and any hardware or building supplies we might need as we are building a large house. Due to the increasing gas prices, we have had to condense our trips down to once a week, so we are not near as frequently patronizing the local businesses like we used to. I would plead with Congress to please increase our domestic oil supply as this is an extreme hardship on thousands and thousands of Idaho residents as well as the local businesses.

DARLENE, *Kamiah.*

Let me begin by saying that I sincerely appreciate your decision to consult your constituents about the energy issue. Though the electorate may be vastly uninformed, it is nevertheless every citizen's duty to be active and politics, and you are encouraging this laudable behavior. You deserve to be commended.

Yet now I fear I must turn from a tone of praise to one of criticism because you requested personal—and thus emotionally-charged—anecdotes. Indeed you asked for policy opinions, too, but from your email, those seemed of secondary importance. Anecdotes and emotions have no rightful place in the policy-making process, no matter how many you receive and how depressing they are. The responses you receive will

be surely come primarily from the constituents hit hardest by the high prices, yielding a very skewed measurement of public opinion.

The hysteria regarding the oil ''crisis'' of the day invariably clouds our judgment. It leads to proposals that lack all substance and justification such as the gas tax holiday. These ideas are motivated chiefly by personal electoral concerns rather than a sincere desire to help citizens. Using a conservative estimate of 20 mpg for my compact car, I would have to drive 725 miles a week this summer just to save $100. This is the kind of relief the American people need, really? Oh and, by the way, it would cost an estimated $9 billion when our nation is the largest debtor in the world. (I am not accusing you of supporting this proposal, but it illustrates my point.)

Instead let us look at a major cause of this problem; it is not speculators or Al-Qaeda. Over the period from 2000 when national prices were at approximately $1.50 per gallon till the year 2007 when prices were at approximately $2.75 per gallon, inflation is estimated at 17 to 40 percent. (This according to http://www.measuringworth.com.) Conservative numbers indicate $1.50 in 2000 is worth $1.80 in 2007, while aggressive estimates would value that same $1.50 at $2.11 in 2007. And as the average gas price in 2007 was at $2.75, simple arithmetic shows that inflation accounts for at least a quarter of the price increase and possibly as much as half of the increase.

Yet in the public arena, most still blame the increase on speculators or price-gouging oil companies or OPEC. Inflation is seldom mentioned even though we have just seen how integral a role it has played. This problem needs to be addressed. Our inflation in turn is caused chiefly by our growing national debt and the expensive foreign policy that it finances. I submit that entitlement spending is problematic too, but our military spending is much more easily curtailed because public opinion is not as deeply entrenched in support of it.

Although I personally believe we should bring the troops home from Iraq and Afghanistan, I know you disagree, and I realize that I will be unable to sway you on this issue. However, military spending can still be readily cut back in other areas. I think our global military presence is a great place to start. As of 2005, America held 737 foreign military bases. The simple question is why. Why do we need a military presence in Japan or Germany? This cannot be defended as merely part of the War on Terror, and yet these bases and others like them are costing the American taxpayer billions of dollars every year. This is an encroachment on the national sovereignty of other countries, but, more importantly, it is an exorbitant waste. If there is a legitimate reason for our costly global military presence, please inform me. But if not, you must agree that the financial benefit of shutting down these bases is too great to ignore. (Check out Nemesis by Chalmers Johnson for more information on this topic.)

I sincerely thank you for soliciting the opinions of your constituents. As you may have assumed by now, I have not been hard hit by high energy prices. I am going to be a college student in the fall, and I prefer riding my bike to driving my car. I hope that you acknowledge the role of inflation in today's energy crisis, and I urge you to look at the rationale for our global military deployment. Getting our fiscal house back in order will have a real and palpable benefit for the American people, and solutions like scaling back the military are the first step.

EDDIE, *Meridian*.

I work for a small semi-trailer manufacturer here in Boise. Our orders for new trailers have fallen off considerably. Existing orders are now being canceled at an alarming rate. Every Monday morning there is a number of trailers parked in front of our building from owner operators calling it quits. I ask all of my customers why and they all say the diesel fuel prices are the reason.

Today, in our weekly sales meeting, the owner told us we needed to get some orders on the schedule or the company will be laying off 100 people. We have already reduced our workforce by 50 since March. He went on to say that if it continues he will have to send 50 more home by the end of July. Like I said above, we are a small company, we had 400 employees total at the first of 2008. By the end of July, we could cut our work force by 50 percent. I have heard that since January 1st the trucking industry has lost around 800 trucks due to fuel prices. This is unacceptable and very unreasonable and our government just stands by and lets it happen.

GARY, *Boise*.

We need relief fast. These fuel and food costs are killing our home budget. The baby boomers have having to continue to work to pay for fuel. We are very concerned and we vote, so please help.

JOE and CHERI.

The oil-producing countries recent pursuit of nuclear power—and their interest in investing in British nuclear power is an interesting trend, I think.

CLAUDIA.

Like most Americans, the high cost of gas has limited my trips to visit family and conduct personal business—a necessity in rural Idaho.

The only real solution to our energy problem is to wean this country off oil. Increased domestic oil production would only be putting a band-aid on a gaping hole. It would not solve our energy needs and we would still be buying oil from abroad. It is also a finite resource so in a few years time whatever drop in the bucket ANWR might provide (no one knows how much oil resides there), will eventually be gone. The only real solution is investment in alternative energy. Government-provided grants and subsidies to innovative entrepreneurs would eventually solve our problems and sever the dependence on Venezuela and the Middle East once and for all.

At the very least, this country can ''tighten its belt'' with regard to conservation. As we all know, America uses more energy per capita than any other country. I have traveled abroad extensively and have thoroughly enjoyed the availability of public transportation—most of which is subsidized by the government and small hot water heaters.

Thank you for considering my thoughts.

COURTNEY, *Kamiah*.

Even though I have a secure job at the INL I do not consider myself to be rich I have seen many problems brought on by the energy/housing/banking fiascoes. I just saw a news article where people who have minimum wage jobs are having to quit because they cannot afford to drive to work!! Bread has doubled in price due to the new emphasis of the administration placed on ethonal production. My 401K plan has lost over $50,000 since January 1, 2008.

I challenge you to try to live as a 'normal' American. I have a $1,100 mortgage, a $500 payment for my daughter's college education, $250 in car insurance (for myself, my wife and two daughters), $300 for food (that is just for my wife and myself) and about $300 for gas. Why do not you challenge your fellow Congressman to this little test: Live like this for a month, no congressional [perks].

Assume you bring home $3,000/month:
$1,000 mortgage or rent
$500 college
$200 medical
$300 gas
$300 food
$250 car insurance
$400 credit card
Total: $2,950.00

In my exaggerated case, that does not leave much for any car repairs (did I mention your car is 10 years old and because of all the money worries, it has lost 50 percent of its value since Jan!)—So a new hybrid car is totally out of the question. Also, I forgot to tell you that you worked in construction and have to have a big truck (3/4 ton) to haul your tools and supplies around—no sissy two-seater hybrid for this job! Now that you see what a family in Idaho is probably facing.

Big oil wants the offshore oil leases opened made available. . . . Gee, from what I saw on C–SPAN the other night, big oil is buying and holding leases, but not drilling. This has been going on since I believe the speaker said 1999 or so. Is not that kinda like artificially controlling the supply? They want the leases, they have to work or forfeit them, no refund. We will not even mention the $56+ billion profit (Websters definition: Income minus expenses). And then they have the nerve to say they need the tax handouts because it is ''good for the economy'' and they need it to protect the environment. We just do not understand them! In a recent interview shown on TV, none of the big oil CEOs would support environmental advertisements.

The banks are making money investing in oil, etc. Then they charge 11–>30 percent for credit cards. Not every American is to blame for the housing/banking bust! I just looked up my credit union rates for 0–$999.00, they are paying 0.50 percent APY.

It is about time to put [partisan and parochial interests aside] and do what is right for the country. It does not matter if it is the idea of a Republican, Democrat, or Independent, if it is the right thing to do, support it!

After all of the ranting above, believe me that I still love and support America and what its real values are. But I do [believe that far too many people in power have collectively trashed America and are not being forced to fix it.]

JERRY.

My husband and I have been retired for almost four years. We make $2,200 a month. We have a house payment of $1,000 a month. When we retired, we were making plenty to keep us. Since we have retired, everything has gone up. The nearest grocery store (very small corner market) is 15 miles away. We have to drive 100 miles round trip to do any kind of shopping, doctors, etc. Our home is very rural, so when we built it 28 years ago it would have cost us $10,000 to run a natural gas line, so we opted for propane, which has risen to $3.00 a gallon. We have a wood stove to help, but the nearest wood to cut is 70 miles one way. My husband has bone on bone knees, and is in a lot of pain, so getting wood is going to get harder and harder. When we retired we figured on being able to draw Social Security at 62½. Now they have changed it to 66. My husband worked for 38 years and was able to retire while he is still young. He will be 60 in three days. Yes, we are able to live, but there is nothing extra. At least we are doing better than my parents making $1,200 a month and having to decide between eating, staying warm, and being able to buy their prescription drugs, (that before the

Medicare Part D program were free). We need to take care of our own. Use our own oil, feed our own people, keep the illegal aliens out because they are using more of our governments money than we are. I have my doubts you will ever read this, but it is worth a try.

TRISH.

I work for the federal government, but had to make a difficult choice last week. I had to decide on buying enough gasoline to get to work for the next two weeks or providing additional food for my family. I commute daily from 20 miles one way to work and do not have an option to move at this time. The need for gasoline won over the additional food. Please support Senator Crapo and Congressman Simpson as they work to provide real solutions to our increased costs for energy instead of merely blaming the current administration and promising to raise taxes as the only solutions.

TOM, *Ririe*.

I have just read through your website and have found only responses that support your conclusions. Are you afraid to post any dissent on the subject? Yes, gas prices are at a record high and yes, many people are seeing significant new bills and a reduction in their spendable income. Some, certainly, are no longer able to stay out of debt. Nonetheless, all of the solutions that you are proposing will do little to impact anyone's pocketbook or bottom line. Offshore drilling, whether it be in Florida or Alaska, will not ease the current situation. No new oil will flow out of those areas for years. If you allow such exploration, who do you think will pay for the new equipment and technology required to access such oil? I know who—either the consumers or the taxpayers, but probably, both.

More importantly, why are many Americans struggling to pay the increased cost of gas? How many Prius drivers are complaining? How many times did the Senate vote down legislation to force automakers to manufacture more fuel efficient vehicles?

On your website, you state, ''It is why I support legislation to fully utilize proven American oil and natural gas reserves in a way that preserves the environment for future generations.'' How are you going to fully utilize reserves and preserve the environment? Has there ever been an oil installation that preserves, or benefits the environment?

I am extremely happy that you support renewable energies. Idaho certainly has a great deal of renewable potential. We have great solar, wind, and water resources. Are you aware that Idaho, as a state, offers some of the most paltry incentives in the entire country? As a state, we do not even have a net-metering law.

Renewable energies are currently poised to be rapidly deployed, far faster than the decades required to extract the limited quantities of oil out of ANWR.

Before we vote to open vast areas to development, let us look forward to the future to determine if this is a prudent thing to do. At the very least, let us determine if it will even solve the issue at hand.

JAKE, *Driggs*.

Please check out this web site. We would love to have your signature. http://www.drillforamericanoil.com.

BOB.

I worked on building the Alaska Pipeline from 1972 to 1986 and have been back several times. I have been on every National Geographic and all the magazines, so I have seen oil as crude and the finished product. The refining is basically the same as in 1973. The cost is low to refine to gas stage. What I am getting at is what Ted Stevens said to Leo Lucas and I back in the 1980s when I lived next door to him on Leo's ranch. He said, ''There can be no crooked oilmen without crooked Senators and Congressmen. He went on to predict this ''crunch'' we are having as something that OPEC has always said would happen.

Maybe it is time to take it away from the oil people. We have more oil in Alaska than Saudi Arabia, same with North Dakota, Pennsylvania, and nobody has any idea how much is in Utah. But I would never go for drilling in ANWR.

That is something you cannot image. The beauty is stunning, although they say the impact would be like a sheet of plywood in the middle of a football field. I believe them to be liars. They have the best drillers in the world in Alaska. I have worked with all but a few of them. They can drill from elsewhere and get all the oil without going there, even if it is like the sheet of plywood. It will not stay that way. They are pigs and will ruin all they touch. Anyway, who would want a sheet of plywood in the middle of their football field?

For all they would get offshore would be dwarfed by it, anyway. Let us use our resources and tell OPEC that grain is $139 a bushel. Leave them alone. They hate us. If someone wanted me to stay away from them there is no way they would ever have to say it twice.

OLIVER, *Salmon*.

ADDITIONAL STATEMENTS

HONORING RECIPIENTS OF THE PRESIDENTIAL UNIT CITATION

● Mr. BUNNING. Mr. President, today I am honored to invite my colleagues to join me in congratulating seven of my constituents who are recipients of the distinguished Presidential Unit Citation. This rare and prestigious citation is given to military units for their outstanding bravery, gallantry and service as well as the unit's performance in accomplishing its mission under extreme and hazardous conditions. In January 2009 this heroic award was conferred upon the Alpha Troop, 11th Armored Cavalry Regiment for service in the Republic of South Vietnam.

The individuals who received this award include Mr. Dale H. Hollabaugh, Mr. James E. Jackson, Mr. Joseph D. Boone, Mr. Gregory R. Stumbo, Mr. Kenneth Mosley, Mr. Clifton T. Geerde, and Mr. Kenneth E. Fulkerson. In 1970, in War Zone C during the Vietnam conflict, the Alpha Troop, First Squadron, 11th Armored Cavalry Regiment performed heroically through a series of combat missions over several months. After a 5-year review by the Department of Defense, the unit was awarded this citation. It is an incredible honor to be a recipient of this award and I am humbled to be able to speak of these brave individuals.

We will never forget the brave citizens who fought to protect our freedoms during this time. It is with great honor that I recognize these citizens for what they have done and I know that their families and friends are proud to be a part of their lives.

I would like to thank these individuals for their contributions to the state of Kentucky and to the United States, and I wish them well in all of their future endeavors.●

REMEMBERING TIM WAPATO

● Mr. JOHNSON. Mr. President, I wish to honor one of the most dedicated advocates for American Indian tribes in my State of South Dakota and throughout the United States. On Sunday, April 19, 2009, Tim Wapato was called home. Tim has long served many issues important to Indian Country throughout his life and I have included his obituary below and ask that it be printed in the RECORD. An enrolled member of the Colville Confederated Tribe in Eastern Washington, he made his home in Rapid City, SD. My thoughts and prayers go out to his family, including his wife, my friend, Gay Kingman-Wapato, and their family. He will be greatly missed by everyone he touched on his journey through this world.

The information follows:

Sherman Timothy Wapato, 73, entered the Spirit World at his home in Rapid City, SD on Sunday, April 19, 2009 as a result of heart failure. He was an enrolled Member of the Colville Confederated Tribe in Eastern Washington.

Sherman Timothy Wapato was the second child of six children born to Paul and Elizabeth Wapato. During Tim's early years of schooling, the Family moved frequently, as Paul Wapato was an Evangelist Minister. Tim went to nine different elementary schools prior to settling down in the Methow Valley (Washington) for Jr. High and High School. The ''Wapato Boys'' were the only Indians attending Winthrop, H.S. and were admired for their abilities in school and in sports.

Tim graduated High School in 1953 in Winthrop, WA, where he excelled in sports and government. Tim was a popular student and was well known for his basketball prowess, good humor and leadership abilities. He was Class President as well as Homecoming King.

Tim then attended Washington State University and California State University at Los Angeles Majoring in Political Science, Public Administration and Police Administration.

In 1955, Tim enlisted in the U.S. Army and was honorably discharged in 1957 where he was in Communications and played basketball for the Army.

Tim moved to Los Angeles, California in 1958 where he joined the Los Angeles Police Department. (LAPD) With his quick-wit, coupled with passing a series of LAPD exams and obvious leadership abilities, at the young age of 34, Tim quickly rose to the rank of Lieutenant, LAPD. Tim was the youngest to achieve that rank at that age and at that time. Older Officers learned to ''Trust'' his Leadership and follow his supervision. He supervised up to 188 Officers depending upon the assignment and circumstances.

As a LAPD Lieutenant of Police, Tim served as Officer-in-Charge of Detective Special Investigative Teams handling homicide, robbery and narcotics; Sex Crimes; Vice-Unit Investigations; Equal Opportunity and Development, and the Affirmative Action Unit/Discrimination Complaint Unit. Tim also served as Patrol Division Watch Commander, Patrol Division Supervisor, and an Instructor at the Academy on robbery and homicide investigations, police-community relations and American Indian Culture awareness. He was a frequent Instructor at the Indian Police Academy at Roswell, New Mexico, training Officers to work on Indian Reservations. While Officer-In-Charge he was responsible for assessing the legal implications of each investigation, assignment of investigative personnel, and analysis, evaluation of status and crime trends and recommendations for strategic planning to address issues and programmatic concerns.

In 1972 and 1973, through the Intergovernmental Personnel Act, the LAPD loaned S. Timothy Wapato to the Colville Confederated Tribe for a Special Assignment to plan and design a Tribal Police Department and a Tribal Court. Tim completed the design for the Department with a fish and wild life enforcement section, fish and wildlife biology section, court system, and public highway safety program.

During the 21 years Tim served with the LAPD, Tim volunteered his off-duty time to work for the City of Los Angeles (LA) including the following; Chairman of the Los Angeles City-County Native American Commission, Member of the Council for Peace and Equality in Education, Member of the Board for the LA Indian Center, President, United American Indian Council, and President, American Indian Welcome House.

Sherman Timothy Wapato retired from the LAPD in 1979, after 21 years of service to the City of Los Angeles and after receiving numerous commendations for his work.

After retirement, Tim immediately took a post with the Columbia River Inter-Tribal Fish Commission (CRITFC) where he worked for 10 years, (1979–1989). Initially Tim was the Director of Fisheries Protection and Enforcement. In 1980 Tim was appointed by the Board of Directors to Executive Director of the Commission. He executed and administered grants and contracts, supervised over 65 legal, technical and administrative employees and was responsible for administering a $5.5 million annual budget. He directed the analysis, evaluation, formulation and implementation of policy, judicial and legislative initiatives, developed cooperative working agreements with international, national, federal state, and regional parties for the benefit of Tribal and intertribal interests in the areas of water rights, regulation and enforcement, treaty rights, hydropower fishing rights and resource management.

While Tim was at CRITFC, he was appointed by President Reagan in 1986 to serve on the U.S. Pacific Salmon Commission. President Reagan re-appointed Tim to negotiate the Treaty between Canada and the United States to serve a second term in 1988. As a Commissioner, Tim reported to U.S. Secretary of State and was responsible for implementing the International Treaty provisions between the U.S. and Canada. His peers elected Tim to be the Chairman of the International Treaty Council, (the full Commission comprised of Canadian and U.S. Commissioners) with the responsibility of U.S. Chief Negotiator in the annual negotiations on the Treaty with Canada. The result was the Pacific Salmon Treaty between the U.S. and Canada which acknowledged Tribes as sovereigns and equal co-managers.

In 1989 Tim accepted a Senior Executive Service, Political Appointment and became the Commissioner of the Administration for Native Americans in the Department of Health and Human Services (HHS). Tim led ANA from 1989–1993. As, Commissioner for ANA, Tim was responsible for formulating and administering a $34,000,000.00 budget to provide grants, contracts, technical assistance and training, interagency agreements and activities beneficial to ANA clients. He served as the principal advisor to the Sec. of the U.S. Department of Health and Human Services (HHS) on Native American Affairs, including Native Hawaiians, Samoans and other Pacific Islanders. Tim provided testimony before Congress, delivered keynote speeches at national, regional, tribal, federal and state meetings and worked on the reauthorization of the ANA Legislation within the Federal Govt., with Congress and with key Indian organizations. Tim saw the need for improved coordination for Indian Tribes and helped establish the Inter-Agency Council which served as liaison and coordination within HHS and among federal agencies to ensure effective integration of programs and policies affecting Native Americans.

While ANA Commissioner, Tim was also appointed to membership in the Senior Executive Service Advisory Board, U.S. Office of Personnel Management, and to the Native American Veterans Coordinating Council with the Department of Veterans Affairs.

Upon leaving Government Service in 1993, the Tribal Nations asked S. Timothy Wapato and his wife, A. Gay Kingman to develop and establish a National Indian Gaming Association (NIGA) Office in Washington, DC. Tim and Gay founded NIGA and through hard work and long hours developed NIGA into a powerful national organization for Indian Tribes. NIGA's DC office roots began in their home, discussions held frequently around the kitchen table, but the success of their work on the organization quickly expanded to increasingly larger offices on Capitol Hill. In 1995, the NIGA was the first Indian Organization ever to purchase and own property on Capitol Hill.

As Executive Director and chief management officer of NIGA, Tim provided overall leadership, direction and guidance to Indian Tribal Nations. He supervised employees, managed and guided all NIGA projects, developed and implemented operating policies and procedures for investment funds, and public relations, including working with Congress. Namely, Tim developed and directed a strategy for a coordinated effort among public relations staff, attorneys, lobbyists, and Indian Tribes to realize success with Congress and the Administration. Under his leadership, this coalition was effective in stopping attempts to pass harmful legislation in Congress; and strategies and recommendations were developed to support amendments beneficial to Tribes.

The national press called upon Tim often; again his quick wit and humor gained him enduring relationships with the media. In April 1994, NIGA won the coveted National AWARD FOR ''Creativity in Public Relations'' in New York City for the campaign/strategy implemented to educate the Public on Indian Gaming.

Besides the coordinated Communication effort, two major programs were developed under Tim's NIGA leadership to assist Tribes:

The ITN or Integrated Tribal Network, an electronic communication system, and the Institute for Tribal Government, an educational department within NIGA to offer courses and workshops to train and educate Tribes, States and staff of Casinos on a wide range of topics. In 1998, Tim first resigned from NIGA, wanting to make an attempt at a third retirement, but his resignation was not accepted by the Board. Later, Tim resigned again but remained faithfully committed to Indian Tribes but relocated to Rapid City, SD, so that he and Gay could be near family and take care of Gay's father, Gus Kingman, who lived to be 104 years old.

In his fourth retirement, Tim served as the Executive Director of the Inter-Tribal Bison Cooperative in Rapid City until he experienced a stroke in August of 2000.

Tim and Gay formed Kingman/Wapato & Associates, an Indian owned consulting, lobbying and technical assistance firm. Soon thereafter, the Great Plains Tribes asked them to help organize the Great Plains Tribal Chairman's Association where Gay continues to work as Executive Director.

Tim never let his health challenges hold him back; right up until his death, he continued to give speeches, expert advice and served on several national boards, including the National Center for American Indian Enterprise Development and the Institute for Tribal Government, Portland State University. He remained active in NIGA, National Congress of American Indians, Veterans Affairs, legislation politics,

and was a mentor to many young people as they continued the battles for Indian Tribes.

Tim was highly respected throughout the United States and touched many lives. He received many honors and was known for his brilliant mind, his wise advice, his humor, his vision, his capabilities, his ability to provide leadership in crisis and his strength of will. Though a tireless leader, he always made time and always had a kind word for his family and his extended family, of which he has legion. In his life's work, Tim had a skill for cutting through to the core issue, no matter how complex, then inspiring those around him to join hands to either take care of a problem or take advantage of an opportunity. It would be inadequate to label Tim simply as a visionary, because he himself would correct such a label and point out that together, we did not all just see or talk, rather we all made real things happen and stood our shared ground. That is Tim's truly unique legacy, providing guideposts to those who stand proudly in Tim's wake by having experienced a man—never daunted, habitually principled, strategically defiant, possessing great perspective yet a healthy appreciation for satire, and always hopeful.

Tim was preceded in death by his parents, Reverend Paul Wapato (1955) and Elizabeth Wapato (1994), his Sister, Esther KeAna Wapato (1965) and Phillip Francis Wapato (1961)

S. Timothy Wapato is survived by his wife, Gay Kingman, of Rapid City, SD; son Stephen Timothy Wapato (Megan), Wenatchee, WA and daughters KeAna Wapato Conrad and Theresa Wapato Borgia of Southern California; son Charles Robertson (Kathy), Vernon Robertson (Corina); and brothers Paul G. Wapato Jr. (Ruth), Spokane, WA, Titus R. Wapato, Santa Monica, CA, and James W. Wapato, Bouse, AZ. Together, Tim and Gay have 20 Grandchildren and 4 Great Grandchildren with one on the way. Over the years, Tim & Gay have mentored numerous young people and have a vast extended family who love and respect them.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:51 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House insists upon its amendment to the resolution (S. Con. Res. 13) setting forth the congressional budget for the United States Government for fiscal year 2010, revising the appropriate budgetary levels for fiscal year 2009, and setting forth the appropriate budgetary levels for fiscal years 2011 through 2014, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. SPRATT, Mr. BOYD, Ms. DELAURO, Mr. RYAN of Wisconsin, and Mr. HENSARLING as managers of the conference on the part of the House.

At 12:24 p.m., a message from the House of Representatives, delivered by Mr. Zapata, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 586. An act to direct the Librarian of Congress and the Secretary of the Smithsonian Institution to carry out a joint project at the Library of Congress and the National Museum of African American History and Culture to collect video and audio recordings of personal histories and testimonials of individuals who participated in the Civil Rights movement, and for other purposes.

H.R. 749. An act to amend the Federal Election Campaign Act of 1971 to permit candidates for election for Federal office to designate an individual who will be authorized to disburse funds of the authorized campaign committees of the candidate in the event of the death of the candidate.

H.R. 957. An act to authorize higher education curriculum development and graduate training in advanced energy and green building technologies.

H.R. 1580. An act to authorize the Administrator of the Environmental Protection Agency to award grants for electronic device recycling research, development, and demonstration projects, and for other purposes.

H.R. 1626. An act to make technical amendments to laws containing time periods affecting judicial proceedings.

H.R. 1679. An act to provide for the replacement of lost income for employees of the House of Representatives who are members of a reserve component of the armed forces who are on active duty for a period of more than 30 days, and for other purposes.

H.R. 1824. An act to provide assistance to Best Buddies to support the expansion and development of mentoring programs, and for other purposes.

The message also announced that the House agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 86. Concurrent resolution authorizing the use of Emancipation Hall in the Capitol Visitor Center for the unveiling of a bust of Sojourner Truth.

H. Con. Res. 101. Concurrent resolution providing for the acceptance of a statue of Ronald Wilson Reagan from the people of California for placement in the United States Capitol.

At 5:16 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 bills, in which it requests the concurrence of the Senate:

H.R. 1139. An act to amend the Omnibus Crime Control and Safe Streets Act of 1986 to enhance the COPS ON THE BEAT grant program, and for other purposes.

H.R. 1145. An act to implement a National Water Research and Development Initiative, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 749. An act to amend the Federal Election Campaign Act of 1971 to permit candidates for election for Federal office to designate an individual who will be authorized to disburse funds of the authorized campaign committees of the candidate in the event of the death of the candidate; to the Committee on Rules and Administration.

H.R. 957. An act to authorize higher education curriculum development and graduate training in advanced energy and green building technologies; to the Committee on Energy and Natural Resources.

H.R. 1139. An act to amend the Omnibus Crime Control and Safe Streets Act of 1968 to enhance the COPS ON THE BEAT grant program, and for other purposes; to the Committee on the Judiciary.

H.R. 1145. An act to implement a National Water Research and Development Initiative, and for other purposes; to the Committee on Environment and Public Works.

H.R. 1580. An act to authorize the Administrator of the Environmental Protection Agency to award grants for electronic device recycling research, development, and demonstration projects, and for other purposes; to the Committee on Environment and Public Works.

H.R. 1679. An act to provide for the replacement of lost income for employees of the House of Representatives who are members of a reserve component of the armed forces who are on active duty for a period of more than 30 days, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

H.R. 1824. An act to provide assistance to Best Buddies to support the expansion and development of mentoring programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 1664. An act to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SCHUMER, from the Committee on Rules and Administration:

Special Report entitled ''Report on the Resolution (S. Res. 73) Authorizing Expenditures by Committees of the Senate'' (Rept. No. 111–14).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. INOUYE for the Committee on Commerce, Science, and Transportation.

*April S. Boyd, of the District of Columbia, to be an Assistant Secretary of Commerce.

*Cameron F. Kerry, of Massachusetts, to be General Counsel of the Department of Commerce.

*Robert S. Rivkin, of Illinois, to be General Counsel of the Department of Transportation.

*Roy W. Kienitz, of Pennsylvania, to be Under Secretary of Transportation for Policy.

*Peter H. Appel, of Virginia, to be Administrator of the Research and Innovative Technology Administration, Department of Transportation.

*Dana G. Gresham, of the District of Columbia, to be an Assistant Secretary of Transportation.

*Joseph C. Szabo, of Illinois, to be Administrator of the Federal Railroad Administration.

*Sherburne B. Abbott, of Texas, to be an Associate Director of the Office of Science and Technology Policy.

*Coast Guard nomination of Vice Adm. David P. Pekoske, to be Vice Admiral.

*Coast Guard nomination of Rear Adm. John P. Currier, to be Vice Admiral.

*Coast Guard nomination of Capt. Robert E. Day, Jr., to be Rear Admiral (Lower Half).

*Coast Guard nomination of Rear Adm. Jody A. Breckenridge, to be Vice Admiral.

Mr. INOUYE. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

*Coast Guard nomination of Michael J. McNeil, to be Lieutenant Commander.

*Coast Guard nomination of Desarae A. Janszen, to be Lieutenant Commander.

By Mrs. BOXER for the Committee on Environment and Public Works.

*Regina McCarthy, of Massachusetts, to be an Assistant Administrator of the Environmental Protection Agency.

By Mr. LEAHY for the Committee on the Judiciary.

R. Gil Kerlikowske, of Washington, to be Director of National Drug Control Policy.

Ronald H. Weich, of the District of Columbia, to be an Assistant Attorney General.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 871. A bill to authorize the Secretary of the Interior to conduct a special resources study of the Honoliuli Internment Camp site in the State of Hawaii, to determine the suitability and feasibility of establishing a unit of the National Park System; to the Committee on Energy and Natural Resources.

By Mr. VOINOVICH:

S. 872. A bill to establish a Deputy Secretary of Homeland Security for Management, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. LUGAR:

S. 873. A bill to expand and improve Cooperative Threat Reduction Programs, and for other purposes; to the Committee on Armed Services.

By Mr. BINGAMAN (for himself and Mr. UDALL of New Mexico):

S. 874. A bill to establish El Rio Grande Del Norte National Conservation Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SPECTER (for himself, Mr. TESTER, and Mr. GRASSLEY):

S. 875. A bill to regulate the judicial use of presidential signing statements in the interpretation of Acts of Congress; to the Committee on the Judiciary.

By Mr. SPECTER (for himself and Mr. WHITEHOUSE):

S. 876. A bill to provide for the substitution of the United States in certain civil actions relating to electronic service providers and FISA; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 877. A bill to provide for the non-discretionary Supreme Court review of certain civil actions relating to the legality and constitutionality of surveillance activities; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself and Mr. VOINOVICH):

S. 878. A bill to amend the Federal Water Pollution Control Act to modify provisions relating to beach monitoring, and for other purposes; to the Committee on Environment and Public Works.

By Ms. COLLINS (for herself and Mr. LIEBERMAN):

S. 879. A bill to amend the Homeland Security Act of 2002 to provide immunity for reports of suspected terrorist activity or suspicious behavior and response; to the Committee on the Judiciary.

By Mr. LUGAR (for himself and Mr. BAYH):

S. 880. A bill to amend title XVIII of the Social Security Act to permit a Medicare beneficiary to elect to take ownership, or to decline ownership, of a certain item of complex durable medical equipment after the 13-month capped rental period ends; to the Committee on Finance.

By Ms. MURKOWSKI (for herself, Mr. BEGICH, Mr. AKAKA, and Mr. INOUYE):

S. 881. A bill to provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID (for Mr. KENNEDY (for himself and Mr. GRASSLEY)):

S. 882. A bill to amend the Federal Food, Drug, and Cosmetic Act to ensure the safety and quality of medical products and enhance the authorities of the Food and Drug Administration, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KERRY (for himself and Mr. GRAHAM):

S. 883. A bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the establishment of the Medal of Honor in 1861, America's highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States, to honor the American military men and women who have been recipients of the Medal of Honor, and to promote awareness of what the Medal of Honor represents and how ordinary Americans, through courage, sacrifice, selfless service and patriotism, can challenge fate and change the course of history; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BINGAMAN (for himself and Mr. GRASSLEY):

S. 884. A bill to amend title 23, United States Code, to remove privatized highway miles as a factor in apportioning highway funding; to the Committee on Environment and Public Works.

By Mr. BINGAMAN (for himself and Mr. GRASSLEY):

S. 885. A bill to amend the Internal Revenue Code of 1986 to provide special depreciation and amortization rules for highway and related property subject to long-term leases, and for other purposes; to the Committee on Finance.

By Mr. NELSON of Florida:

S. 886. A bill to establish a program to provide guarantees for debt issued by State catastrophe insurance programs to assist in the financial recovery from natural catastrophes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DURBIN (for himself and Mr. GRASSLEY):

S. 887. A bill to amend the Immigration and Nationality Act to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States and for other purposes; to the Committee on the Judiciary.

By Mr. SCHUMER:

S. 888. A bill to amend the Internal Revenue Code of 1986 to terminate certain incentives for oil and gas; to the Committee on Finance.

By Mr. SPECTER (for himself and Mr. CASEY):

S. 889. A bill to amend the Agricultural Adjustment Act to require the Secretary of Agriculture to determine the price of all milk used for manufactured purposes, which shall be classified as Class II milk, by using the national average cost of production, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. REID (for Mr. ROCKEFELLER):

S. 890. A bill to provide for the use of improved health information technology with respect to certain safety net health care providers; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWNBACK (for himself, Mr. DURBIN, and Mr. FEINGOLD):

S. 891. A bill to require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MENENDEZ:

S. 892. A bill to authorize the Secretary of Education to award grants to educational organizations to carry out programs about the Holocaust; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SCHUMER:

S. 893. A bill to establish the Office of Imported and Domestic Product Safety in the Department of Commerce and the Product Safety Coordinating Council to improve the management, coordination, promotion, and oversight of food and product safety responsibilities, to improve consumer and business access to food and product safety information, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CASEY (for himself and Mr. BAYH):

S. 894. A bill to provide for an annual comprehensive report on the status of United States efforts and the level of progress achieved to counter and defeat Al Qaeda and its related affiliates and undermine long-term support for the violent extremism that helps sustain Al Qaeda's recruitment efforts; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KOHL (for himself and Mr. VOINOVICH):

S. Res. 111. A resolution recognizing June 6, 2009, as the 70th anniversary of the tragic date when the M.S. St. Louis, a ship carrying Jewish refugees from Nazi Germany, returned to Europe after its passengers were refused admittance to the United States; to the Committee on the Judiciary.

By Mr. NELSON of Nebraska (for himself, Mr. SESSIONS, Mrs. HUTCHISON, Mr. COCHRAN, Mr. BAYH, Mr. CRAPO, Mr. BUNNING, Mr. ENZI, Mr. COBURN, Mr. LUGAR, Mr. CHAMBLISS, Mr. BURR, Mr. BROWN, Mr. CARPER, Mr. ALEXANDER, Mr. INHOFE, Mrs. LINCOLN, Mr. RISCH, Mr. BENNETT, Mr. THUNE, Mr. CASEY, Mr. HATCH, Mr. WARNER, Ms. MURKOWSKI, Mr. BEGICH, Mr. CONRAD, and Mr. JOHANNS):

S. Res. 112. A resolution designating February 8, 2010, as ''Boy Scouts of America Day'', in celebration of the 100th anniversary of the largest youth scouting organization in the United States; to the Committee on the Judiciary.

By Mr. WEBB (for himself and Mr. WARNER):

S. Res. 113. A resolution designating April 23, 2009, as ''National Adopt A Library Day''; considered and agreed to.

By Mrs. BOXER (for herself, Ms. SNOWE, Ms. MIKULSKI, Mrs. MURRAY, Mrs. GILLIBRAND, Ms. CANTWELL, Mrs. SHAHEEN, Mrs. FEINSTEIN, and Ms. COLLINS):

S. Con. Res. 19. A concurrent resolution expressing the sense of Congress that the Shi'ite Personal Status Law in Afghanistan violates the fundamental human rights of women and should be repealed; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 144

At the request of Mr. KERRY, the names of the Senator from North Carolina (Mr. BURR) and the Senator from South Carolina (Mr. DEMINT) were added as cosponsors of S. 144, a bill to amend the Internal Revenue Code of 1986 to remove cell phones from listed property under section 280F.

S. 301

At the request of Mr. GRASSLEY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 301, a bill to amend title XI of the Social Security Act to provide for transparency in the relationship between physicians and manufacturers of drugs, devices, biologicals, or medical supplies for which payment is made under Medicare, Medicaid, or SCHIP.

S. 307

At the request of Mr. WYDEN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 307, a bill to amend title XVIII of the Social Security Act to provide flexibility in the manner in which beds are counted for purposes of determining whether a hospital may be designated as a critical access hospital under the Medicare program and to exempt from the critical access hospital inpatient bed limitation the number of beds provided for certain veterans.

S. 310

At the request of Mrs. BOXER, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 310, a bill to amend the Public Health Service Act to ensure that safety net family planning centers are eligible for assistance under the drug discount program.

S. 354

At the request of Mr. WEBB, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 354, a bill to provide that 4 of the 12 weeks of parental leave made available to a Federal employee shall be paid leave, and for other purposes.

S. 395

At the request of Mrs. FEINSTEIN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 395, a bill to direct the Librarian of Congress and the Secretary of the Smithsonian Institution to carry out a joint project at the Library of Congress and the National Museum of African American History and Culture to collect video and audio recording of personal histories and testimonials of individuals who participated in the Civil Rights movement, and for other purposes.

S. 405

At the request of Mr. LEAHY, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 405, a bill to amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 456

At the request of Mr. DODD, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 456, a bill to direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop guidelines to be used on a voluntary basis to develop plans to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs, to establish school-based food allergy management grants, and for other purposes.

S. 468

At the request of Ms. STABENOW, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 468, a bill to amend title XVIII of the Social Security Act to improve access to emergency medical services and the quality and efficiency of care furnished in emergency departments of hospitals and critical access hospitals by establishing a bipartisan commission to examine factors that affect the effective delivery of such services, by providing for additional payments for certain physician services furnished in such emergency departments, and by establishing a Centers for Medicare & Medicaid Services Working Group, and for other purposes.

S. 482

At the request of Mr. FEINGOLD, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 482, a bill to require Senate candidates to file designations, statements, and reports in electronic form.

S. 491

At the request of Mr. WEBB, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 491, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 535

At the request of Mr. NELSON of Florida, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 535, a bill to amend title 10, United States Code, to repeal requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation, and for other purposes.

S. 546

At the request of Mr. REID, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 546, a bill to amend title 10, United States Code, to permit certain retired members of the uniformed services who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service or Combat-Related Special Compensation.

S. 557

At the request of Mr. MARTINEZ, the names of the Senator from Pennsylvania (Mr. CASEY) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 557, a bill to encourage, enhance, and integrate Silver Alert plans throughout the United States, to authorize grants for the assistance of organizations to find missing adults, and for other purposes.

S. 614

At the request of Mrs. HUTCHISON, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Vermont (Mr. SANDERS) were added as cosponsors of S. 614, a bill to award a Congressional Gold Medal to the Women Airforce Service Pilots (''WASP'').

S. 636

At the request of Mr. THUNE, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 636, a bill to amend the Clean

Air Act to conform the definition of renewable biomass to the definition given the term in the Farm Security and Rural Investment Act of 2002.

S. 639

At the request of Mr. INHOFE, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 639, a bill to amend the definition of commercial motor vehicle in section 31101 of title 49, United States Code, to exclude certain farm vehicles, and for other purposes.

S. 645

At the request of Mrs. LINCOLN, the names of the Senator from Idaho (Mr. RISCH) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of S. 645, a bill to amend title 32, United States Code, to modify the Department of Defense share of expenses under the National Guard Youth Challenge Program.

S. 654

At the request of Mr. BUNNING, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 654, a bill to amend title XIX of the Social Security Act to cover physician services delivered by podiatric physicians to ensure access by Medicaid beneficiaries to appropriate quality foot and ankle care.

S. 655

At the request of Mr. JOHNSON, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 655, a bill to amend the Pittman-Robertson Wildlife Restoration Act to ensure adequate funding for conservation and restoration of wildlife, and for other purposes.

S. 663

At the request of Mr. NELSON of Nebraska, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 663, a bill to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to establish the Merchant Mariner Equity Compensation Fund to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II.

S. 671

At the request of Mrs. LINCOLN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 671, a bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the Medicare program, and for other purposes.

S. 683

At the request of Mr. HARKIN, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from California (Mrs. BOXER) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 683, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 701

At the request of Mr. KERRY, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 701, a bill to amend title XVIII of the Social Security Act to improve access of Medicare beneficiaries to intravenous immune globulins (IVIG).

S. 714

At the request of Mr. WEBB, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 714, a bill to establish the National Criminal Justice Commission.

S. 731

At the request of Mr. NELSON of Nebraska, the names of the Senator from Alabama (Mr. SESSIONS), the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 731, a bill to amend title 10, United States Code, to provide for continuity of TRICARE Standard coverage for certain members of the Retired Reserve.

S. 779

At the request of Mr. LAUTENBERG, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Missouri (Mrs. MCCASKILL) were added as cosponsors of S. 779, a bill to amend titles 23 and 49, United States Code, to modify provisions relating to the length and weight limitations for vehicles operating on Federal-aid highways, and for other purposes.

S. 816

At the request of Mr. CRAPO, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. 816, a bill to preserve the rights granted under second amendment to the Constitution in national parks and national wildlife refuge areas.

S. 832

At the request of Mr. NELSON of Florida, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 832, a bill to amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes.

S. 864

At the request of Mr. DORGAN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 864, a bill to amend the Internal Revenue Code of 1986 to expand tax-free distributions from individual retirement accounts for charitable purposes.

S. 869

At the request of Mr. THUNE, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 869, a bill to require the Secretary of the Treasury to use any amounts repaid by a financial institution that is a recipient of assistance under the Troubled Assets Relief Program for debt reduction.

S. CON. RES. 14

At the request of Mrs. LINCOLN, the names of the Senator from Wyoming (Mr. ENZI) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. Con. Res. 14, a concurrent resolution supporting the Local Radio Freedom Act.

S. CON. RES. 18

At the request of Mr. FEINGOLD, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. Con. Res. 18, a concurrent resolution supporting the goals and ideals of World Malaria Day, and reaffirming United States leadership and support for efforts to combat malaria.

S. RES. 84

At the request of Mr. LEVIN, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. Res. 84, a resolution urging the Government of Canada to end the commercial seal hunt.

S. RES. 94

At the request of Mr. AKAKA, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. Res. 94, a resolution designating April 2009 as ''Financial Literacy Month''.

AMENDMENT NO. 996

At the request of Mr. INHOFE, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of amendment No. 996 proposed to S. 386, a bill to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

AMENDMENT NO. 1000

At the request of Mrs. BOXER, the names of the Senator from Virginia (Mr. WEBB) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of amendment No. 1000 proposed to S. 386, a bill to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

AMENDMENT NO. 1002

At the request of Mr. THUNE, the names of the Senator from Utah (Mr. BENNETT), the Senator from Wyoming (Mr. ENZI) and the Senator from Arizona (Mr. KYL) were added as cosponsors of amendment No. 1002 proposed to S. 386, a bill to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 871. A bill to authorize the Secretary of the Interior to conduct a special resources study of the Honoliuli Internment Camp site in the State of Hawaii, to determine the suitability

and feasibility of establishing a unit of the National Park System; to the Committee on Energy and Natural Resources.

Mr. INOUYE. Mr. President, I rise today to introduce a bill that would authorize the Secretary of the Interior to conduct a Special Resources Study of the Honouliuli Gulch and associated sites located in the State of Hawaii in order to determine the suitability and feasibility of designating these sites as a unit of the National Park System.

During World War II, over 1,000 Japanese Americans were incarcerated in at least eight locations on Hawaii. In a report completed in 2007, the Japanese Cultural Center of Hawaii documented these sites that include Honouliuli Gulch, Sand Island, and the US Immigration Station on Oahu, the Kilauea Military Camp on the Big Island, Haiku Camp and Wailuku County Jail on Maui, and the Kalaheo Stockade and Waialua County Jail on Kauai. These camps also held approximately 100 local residents of German and Italian ancestry.

Those detained included the leaders of the Japanese immigrant community in Hawaii, many of whom were taken from their homes and families in the hours after the attack on Pearl Harbor. The forced removal of these individuals began a nearly four year odyssey to a series of camps in Hawaii and on the continental US. Over 1,000 immediate family members of these men joined their husbands, fathers and relatives in mainland camps. The detainees were never formally charged and granted only token hearings. Many of the detainees' sons served with distinction in the US armed forces, including the legendary 100th Battalion, 442nd Regimental Combat Team and Military Intelligence Service.

This report found that both the Kilauea Military Camp and the Honouliuli sites feature historic resources and recommended that the sites be nominated for listing on the National Register for Historic Places. In 2008, the Japanese Cultural Center of Hawaii published a more detailed archeological reconnaissance of the Honouliuli site. This report found that there were numerous historic features that would qualify the site for National Historic Register and further recommended that the site be conserved. The Japanese Cultural Center of Hawaii is currently working with Monsanto, the landowner, to nominate the Honouliuli Gulch site to be listed on the National Historic Register.

So far I have received letters in support of this legislation from a range of local, regional and national organizations, including the Japanese American National Museum, Hawaiian Historical Society, Go For Broke National Education Center, Japan America Society of Hawaii, Honolulu Chapter of the Japanese Citizens League, Japanese Cultural Center of Hawaii, Honolulu Japanese Junior Chamber of Commerce, MIS Veterans Club of Hawaii, the United Japanese Society of Hawaii, Japanese American Citizens League, The Conservation Fund, Densho, National Trust for Historic Preservation, Japanese American National Heritage Coalition and the Friends of Minidoka.

This legislation will enable the National Park Service to study these important sites in my state and make recommendations to Congress regarding the best approach to conserve and manage these sites to tell this chapter in our Nation's history to current and future generations.

I would urge my colleagues to support this legislation.

By Mr. VOINOVICH:

S. 872. A bill to establish a Deputy Secretary of Homeland Security for Management, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. VOINOVICH. Mr. President, I rise today with my good friend and partner on the Oversight of Government Management Subcommittee, Senator AKAKA, to address the critical management challenges facing the Department of Homeland Security, DHS, by introducing the Effective Homeland Security Management Act of 2009. I am proud to have Senators CARPER and LEVIN also joining us in this important effort.

This legislation would elevate the role and responsibilities of the current DHS Under Secretary for Management to a Deputy Secretary of Homeland Security for Management while preserving the authority of the Secretary and Deputy Secretary of DHS as the first-and second-highest ranking DHS officials, respectively. Under the legislation, the individual appointed as the Deputy Secretary for Management would be the third highest ranking official at DHS and would serve a five year term in order to provide management continuity at DHS during times of leadership transition, such as following a presidential election like the one we just experienced.

In the Homeland Security Act of 2002, Congress established the position of Under Secretary for Management to oversee the management and administration of DHS. However, management issues have persisted at DHS since its creation. In 2003, the Government Accountability Office, GAO, included implementing and transforming DHS on its high-risk list of programs susceptible to waste, fraud, abuse, and mismanagement. Similarly, in December 2005, the DHS Inspector General issued a report warning of major management challenges facing DHS. The report noted that although progress has been made since DHS' inception, ''[i]ntegrating its many separate components in a single, effective, efficient, and economical Department remains one of DHS's biggest challenges.'' Further, DHS's own Performance and Accountability Report, released in November 2006, states that it did not meet its strategic goal of ''providing comprehensive leadership and management to improve the efficiency and effectiveness of the Department,'' further underscoring the need for good management. In 2007, the Homeland Security Advisory Council Culture Task Force Report also detailed persisting organizational challenges within DHS and prescribed leadership and management models designed to empower employees, foster collaboration, and encourage innovation. The third recommendation of the report was that DHS establish an operational leadership position. The report noted, ''[a]lignment and integration of the DHS component organizations is vital to the success of the DHS mission. The [Culture Task Force] believes there is a compelling need for the creation of a Deputy Secretary for Operations, DSO, who would report to the Secretary and be responsible for the high level Department-wide measures aimed at generating and sustaining seamless operational integration and alignment of the component organizations.''

For these reasons, as part of the Implementing Recommendations of the 9/11 Commission Act of 2007, Congress clarified that the role and responsibilities of the Under Secretary for Management would include serving as the Chief Management Officer and principal advisor to the Secretary on the management of DHS. In that legislation Congress also provided that the Under Secretary for Management would be responsible for strategic management and annual performance planning, identification and tracking of performance measures, and the management integration and transformation process in support of DHS operations and programs. The Implementing Recommendations of the 9/11 Commission Act of 2007 also established managerial and leadership qualifications for the Under Secretary for Management and increased the pay scale for that Under Secretary.

However, there continue to be significant management challenges associated with integrating DHS, whose creation represented the single largest restructuring of the Federal Government since the creation of the Department of Defense in 1947. In addition to its complex mission of securing the Nation from terrorism and natural hazards through protection, prevention, response, and recovery, leadership of DHS has the enormous task of unifying 200,000 employees from 22 disparate Federal agencies. This January, GAO again included implementing and transforming DHS on its high-risk list, noting that ''[a]lthough DHS has made progress in transforming into a fully functioning department, this transformation remains high risk because DHS has not yet developed a comprehensive plan to address the transformation, integration, management and mission challenges GAO identified since 2003. . . DHS has developed an Integrated Strategy for High Risk Management that outlines the department's process for, among other things,

assessing risks and proposing initiatives to address challenges, but the strategy lacks details for the transformation of DHS and integration of its management functions. DHS has also developed corrective action plans to address management challenges that contain several of the key elements GAO has identified for a corrective action plan . . . However, the plans generally do not contain measures to gauge performance and progress, nor do they identify the resources needed to carry out the corrective actions identified.''

As former Chairman and now Ranking Member of the Oversight of Government Management Subcommittee, improving the management structure at DHS has been one of my top priorities. The Subcommittee's Chairman, Senator AKAKA, and I have been committed to ensuring that DHS has the proper tools to make continual improvements in its operations. Because management challenges persist at DHS, I believe the existing Under Secretary for Management position at DHS's lacks sufficient authority to direct the type of sustained leadership and overarching management integration and transformation strategy that is needed department-wide, and Congress must elevate that Under Secretary's role. The legislation I offer today would do that and would provide the focused, high-level attention that will result in effective management reform. I believe this legislation is vital to DHS's success, and I urge my colleagues to join me in supporting this legislation.

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. 872

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 ''Effective Homeland Security Management Act of 2009''.

SEC. 2. DEPUTY SECRETARY OF HOMELAND SECURITY FOR MANAGEMENT.

(a) ESTABLISHMENT AND SUCCESSION.—Section 103 of the Homeland Security Act of 2002 (6 U.S.C. 113) is amended—

(1) in subsection (a)—

(A) in the subsection heading, by striking ''DEPUTY SECRETARY'' and inserting ''DEPUTY SECRETARIES'';

(B) by striking paragraph (6);

(C) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively; and

(D) by striking paragraph (1) and inserting the following:

''(1) A Deputy Secretary of Homeland Security.

''(2) A Deputy Secretary of Homeland Security for Management.''; and

(2) by adding at the end the following:

''(g) VACANCIES.—

''(1) VACANCY IN OFFICE OF SECRETARY.—

''(A) DEPUTY SECRETARY.—In case of a vacancy in the office of the Secretary, or of the absence or disability of the Secretary, the Deputy Secretary of Homeland Security may exercise all the duties of that office, and for the purpose of section 3345 of title 5, United States Code, the Deputy Secretary of Homeland Security is the first assistant to the Secretary.

''(B) DEPUTY SECRETARY FOR MANAGEMENT.—When by reason of absence, disability, or vacancy in office, neither the Secretary nor the Deputy Secretary of Homeland Security is available to exercise the duties of the office of the Secretary, the Deputy Secretary of Homeland Security for Management shall act as Secretary.

''(2) VACANCY IN OFFICE OF DEPUTY SECRETARY.—In the case of a vacancy in the office of the Deputy Secretary of Homeland Security, or of the absence or disability of the Deputy Secretary of Homeland Security, the Deputy Secretary of Homeland Security for Management may exercise all the duties of that office.

''(3) FURTHER ORDER OF SUCCESSION.—The Secretary may designate such other officers of the Department in further order of succession to act as Secretary.''.

(b) RESPONSIBILITIES.—Section 701 of the Homeland Security Act of 2002 (6 U.S.C. 341) is amended—

(1) in the section heading, by striking ''**UNDER SECRETARY**'' and inserting ''**DEPUTY SECRETARY OF HOMELAND SECURITY**'';

(2) in subsections (a) through (c) by striking ''Under Secretary for Management'' each place that term appears and inserting ''Deputy Secretary of Homeland Security for Management''.

(c) APPOINTMENT, EVALUATION, AND REAPPOINTMENT.—Section 701(c) of the Homeland Security Act of 2002 (6 U.S.C. 341) is amended—

(1) in the subsection heading, by striking ''AND EVALUATION'' and inserting '', EVALUATION, AND REAPPOINTMENT'';

(2) in the matter preceding paragraph (1), by striking ''shall'';

(3) in paragraph (1), by inserting ''shall'' after ''(1)'';

(4) in paragraph (2)—

(A) by inserting ''shall'' after ''(2)''; and

(B) by striking ''and'' after the semicolon;

(5) in paragraph (3)—

(A) by inserting ''shall'' after ''(3)''; and

(B) by striking the period and inserting a semicolon; and

(6) by adding at the end the following:

''(4) shall—

''(A) serve for a term of 5 years; and

''(B) be subject to removal by the President if the President—

''(i) finds that the performance of the Deputy Secretary of Homeland Security for Management is unsatisfactory; and

''(ii) communicates the reasons for removing the Deputy Secretary of Homeland Security for Management to Congress before such removal; and

''(5) may be reappointed in accordance with paragraph (1), if the Secretary has made a satisfactory determination under paragraph (3) for the 3 most recent performance years.''.

(d) REFERENCES.—References in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to the Under Secretary for Management of the Department of Homeland Security shall be deemed to refer to the Deputy Secretary of Homeland Security for Management.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) OTHER REFERENCE.—Section 702(a) of the Homeland Security Act of 2002 (6 U.S.C. 342(a)) is amended by striking ''Under Secretary for Management'' and inserting ''Deputy Secretary of Homeland Security for Management''.

(2) TABLE OF CONTENTS.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101(b)) is amended by striking the item relating to section 701 and inserting the following:

''Sec. 701. Deputy Secretary of Homeland Security for Management.''.

(3) EXECUTIVE SCHEDULE.—Section 5313 of title 5, United States Code, is amended by striking the item relating to the Under Secretary of Homeland Security for Management, and inserting the following:

''Deputy Secretary of Homeland Security for Management.''.

By Mr. LUGAR:

S. 873. A bill to expand and improve Cooperative Threat Reduction Programs, and for other purposes; to the Committee on Armed Services.

Mr. LUGAR. Mr. President, today I rise to introduce the Nunn-Lugar Cooperative Threat Reduction Improvement Act of 2009.

The proliferation of weapons of mass destruction remains the number one national security threat facing the United States and the international community. Our success in responding to this threat depends on cooperation with other nations and on maintaining a basic consensus on non-proliferation principles. The Nunn-Lugar Program has become the primary tool through which the U.S. works to safely destroy nuclear, chemical, and biological warfare capacity. Through Nunn-Lugar, the U.S. has eliminated more nuclear weapons than the combined arsenals of the United Kingdom, France, and China. When the Soviet Union dissolved Ukraine, Kazakhstan and Belarus emerged as the third, fourth and eighth largest nuclear weapons powers in the world. Today they are nuclear weapons free.

I am delighted that President Obama made the Nunn-Lugar Cooperative Threat Reduction Program such a high profile issue during his campaign. In 2005, then-Senator Obama and I traveled to Russia to see the Nunn-Lugar Program in action. We visited the Russian nuclear warhead storage facility at Saratov and the mobile missile dismantlement facility near Perm. This experience gives him a unique vantage point to take important steps to revitalize and expand the program.

The Nunn-Lugar Program has accumulated an impressive list of accomplishments. To date it has deactivated 7,504 strategic nuclear warheads, 742 intercontinental ballistic missiles, ICBMs, destroyed, 496 ICBM silos eliminated, 143 ICBM mobile launchers destroyed, 633 submarine launched ballistic missiles, SLBMs, eliminated, 476 SLBM launchers eliminated, 31 nuclear submarines capable of launching ballistic missiles destroyed, 155 bomber eliminated, 906 nuclear air-to-surface missiles, ASMs, destroyed, 194 nuclear test tunnels eliminated, 422 nuclear weapons transport train shipments secured, upgraded security at 24 nuclear weapons storage sites, and built and equipped 16 biological monitoring stations.

While originally focused on the states of the former Soviet Union,

Nunn-Lugar has also produced results outside of Russia. The program eliminated a formerly secret chemical weapons stockpile in Albania. Other governments, such as Pakistan, Afghanistan, Congo, the Philippines, and Indonesia are now inquiring about Nunn-Lugar assistance with dangerous weapons and materials.

Mr. President, last month the National Academy of Sciences, NAS, released a report on the future of the Nunn-Lugar Program. It provided a critically important set of recommendations that should guide the Obama Administration's efforts to expand the Nunn-Lugar Program around the world.

The report was required by the 2008 National Defense Authorization Act to recommend ways to strengthen and expand the Defense Department's Nunn-Lugar Cooperative Threat Reduction program. The report argues persuasively that the Nunn-Lugar Program should be expanded geographically, updated in form and function and supported as an active tool of foreign policy. Over the last 16 years Nunn-Lugar has been focused heavily on the destruction and dismantlement of massive Soviet weapons systems and the facilities that developed them. In the future, the program will be asked to address much more complex and diverse security threats. The changing security environment means that the magnitude of projects focused on former Soviet weapons threats are likely to be the exception and not the norm. As a result, the NAS report argues that the program must be less cumbersome and bureaucratic so it can be more agile, flexible, and responsive to ensure timely contributions across a larger number of countries. It concludes by saying ''that expanding the nation's [Nunn-Lugar] cooperative threat reduction programs beyond the former Soviet Union, as proposed by Congress, would enhance U.S. national security and global stability.'' The report argues that Nunn-Lugar ''should be expanded geographically, updated in form and function . . . and supported as an active tool of foreign policy by engaged leadership from the White House and the relevant cabinet secretaries.''

Specifically, the NAS Report recommends that the Pentagon take the following steps: Remove any remaining geographic limitations on the program and streamline contracting procedures. Request from Congress limited ''notwithstanding authority'' to give Nunn-Lugar the flexibility it needs for future engagements in unexpected locations. Request that Congress exempt the Nunn-Lugar Program from the Miscellaneous Receipts Act to enable the program to accept funds from foreign countries and to co-mingle those with program funds to accomplish nonproliferation and disarmament goals. Review the legal and policy underpinnings of the Nunn-Lugar Program because many are cumbersome, dated, limiting, and often diminish value and hinder success. In addition to supporting traditional arms control and nonproliferation goals, Nunn-Lugar should be used to advance other multilateral instruments such as the Proliferation Security Initiative and United Nations Security Council Resolution 1540. While the Nunn-Lugar Program grew through the 1990s there was little corresponding growth in the size of the staff that guided policy—the office must be expanded. Engage broader military components, including the Unified Combatant Commands, to ensure full coordination and effective implementation of Nunn-Lugar.

The majority of these items do not require legislation but rather simple Executive Branch management actions and improvements. As a result, I have written to Under Secretary of Defense for Policy, Michele Flournoy, and the new WMD Coordinator at the White House, Gary Samore, urging them to adopt these important recommendations. But the granting of limited notwithstanding authority for the Nunn-Lugar Program and its exemption from the Miscellaneous Receipts Act does require Congressional authorization. The bill I am introducing today is focused on accomplishing this task.

One of the most striking points made by the report's authors was that the Nunn-Lugar Program has suffered from a lack of leadership. It states that ''since 1995, the level of leadership in DoD has been downgraded from a high priority program managed by a Deputy Assistant Secretary of Defense for Cooperative Threat Reduction, and Special Assistant to the Secretary of Defense, to a CTR Policy Office under a Director for the CTR Program.'' An even more stark contrast is the time and diplomacy that former Secretaries Perry and Cohen committed to visiting project sites and engaging foreign capitals when compared to their successors. I am confident this is a trend that can be reversed quickly by the Obama administration with proper leadership. Under Secretary Flournoy, the Deputy Secretary of Defense, and Secretary Gates should make visiting Nunn-Lugar sites a high priority and offer their personal diplomacy to assisting the program in meetings its goals.

The Nunn-Lugar Program has made critically important contributions to US national security through the elimination of strategic weapons systems and platforms arrayed against us. Even as the threat changes, I am confident that it will continue to serve US interests with the right leadership and direction. I commend the members of the NAS committee for an insightful and invigorating set of recommendations. I ask my colleagues here in the Senate to support this legislation and I am hopeful that the Obama administration will use the report's recommendations as a resource as they move to expand the program.

In sum, we must take every measure possible in addressing threats posed by weapons of mass destruction. We must eliminate those conditions that restrict us or delay our ability to act. The US has the technical expertise and the diplomatic standing to dramatically benefit international security. American leaders must ensure that we have the political will and the resources to implement programs devoted to these ends.

By Mr. BINGAMAN (for himself and Mr. UDALL, of New Mexico):

S. 874. A bill to establish El Rio Grande Del Norte National Conservation Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to introduce El Río Grande Del Norte National Conservation Area Establishment Act. This legislation will designate approximately 235,980 acres of public land managed by the Bureau of Land Management in Taos and Río Arriba counties as a National Conservation Area. The conservation area includes two new wilderness areas—the 13,420-acre Cerro del Yuta Wilderness on the east-side and the 8,000-acre Río San Antonio Wilderness in the west.

The conservation area will protect and enhance cultural, ecological, and scenic resources in an area with premier recreational opportunities important to the region's economy. It incorporates the upper reaches of the Rio Grande Gorge, previously designated as a Wild and Scenic River, and protects elk wintering grounds and migratory corridors along the plateau between Ute Mountain to the east and San Antonio Mountain to the west. The conservation area will protect breeding habitat for other game species like deer and antelope and for birds of prey that hunt throughout the area, including peregrine falcons, golden eagles, and bald eagles. The riparian area along the Río Grande also provides important habitat for brown trout and the federally-listed endangered southwestern willow flycatcher.

The Cerro del Yuta Wilderness will add protections to Ute Mountain, a mountainous and forested extinct volcano which rises to more than 10,000 feet from an elevation of about 7,600 feet at its base. From its peak Ute Mountain offers views of the Sangre de Cristo Mountains to the east, the deep canyon walls of the Río Grande Gorge at its western base, and the high mesa sagebrush-grasslands interspersed with piñon juniper woodlands that form the majority of the conservation area to its west. Known as Tah Ha Bien to members of the Taos Pueblo and Cerro del Yuta to the earliest Hispanic settlers of the region, Ute Mountain was named for the historic Ute tribe that traversed this area along its route to the eastern plains. The mountain has a long history both geologically and culturally speaking, and evidence of human interaction with Ute Mountain can be still be found, including prehistoric hunting stations, historic

sheep herding camps, and important sacred sites on the mountain. As a relatively new addition to the public domain, the Bureau of Land Management has only begun to account for all the cultural resources that may be present on Ute Mountain.

The Río San Antonio Wilderness Area lies northwest of San Antonio Mountain and is currently managed as a Wilderness Study Area by the Bureau of Land Management. Composed of grassland vegetation similar to the majority of the conservation area, its unique character is shaped by the 200-foot-deep canyon formed by the waters of the Río San Antonio that bisects the wilderness area. The canyon provides important riparian habitat to wildlife and offers visitors opportunities for solitude and primitive and unconfined recreation. A favorite pastime of locals and visitors alike is the outstanding opportunity for fly fishing the Río San Antonio. By affirmatively designating this area as wilderness, we can help preserve its natural character that draws visitors to the area.

This legislation seeks to protect the valuable natural and cultural resources found in the area while also recognizing that the history of these lands is still being written by the local community, composed of Pueblo Indians, descendents of Hispanic and American settlers, and new generations of settlers drawn to the area for similar reasons as those who came before them. Residents maintain a strong connection to these public lands and are interested in preserving the traditional ways in which they have used them. A good example of this is the importance to the local community to ensure that the continued and sustainable collection of piñon nuts and firewood from the public lands is permitted. Based on this input, earlier drafts were revised to make specific mention that these uses are permissible within the conservation area. In addition, existing grazing within the conservation area will be preserved consistent with current management practices.

Visitors and residents of northern New Mexico also enjoy these public lands for recreational purposes, including hiking, camping, mountain biking, river rafting, skiing, hunting, fishing, photography and bird watching, among many others. The local economy benefits greatly from the tourists who visit this area to take in the scenic beauty and natural character of the region, and it is my hope that this designation will further highlight the region as a premier destination in the State, nationally and internationally.

This bill is the culmination of more than 2 years of work with members of the local community to craft language that achieves the balance vital to ensure a thriving economy, the preservation of the region's natural resources, and a sustained way of life for residents of northern New Mexico. Without the constructive input from the local community, this bill would look very different from the one that I am privileged to introduce today. I am also pleased that my colleague Senator TOM UDALL is a cosponsor of this legislation, and I look forward to working with him and other members of the Senate toward its ultimate passage.

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. 874

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 ''El Río Grande Del Norte National Conservation Area Establishment Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means El Río Grande Del Norte National Conservation Area established by section 3(a)(1).

(2) LAND GRANT COMMUNITY.—The term ''land grant community'' means a member of the Board of Trustees of confirmed and nonconfirmed community land grants within the Conservation Area.

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Conservation Area developed under section 3(d).

(4) MAP.—The term ''map'' means the map entitled ''El Río Grande Del Norte National Conservation Area'' and dated March 23, 2009.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—The term ''State'' means the State of New Mexico.

SEC. 3. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established El Río Grande Del Norte National Conservation Area in the State.

(2) AREA INCLUDED.—The Conservation Area shall consist of approximately 235,980 acres of public land in Taos and Rio Arriba counties in the State, as generally depicted on the map.

(b) PURPOSES.—The purposes of the Conservation Area are to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the cultural, archaeological, natural, scientific, geological, historical, biological, wildlife, educational, recreational, and scenic resources of the Conservation Area.

(c) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Conservation Area—

(A) in a manner that conserves, protects, and enhances the resources of the Conservation Area; and

(B) in accordance with—

(i) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

(ii) this Act; and

(iii) any other applicable laws.

(2) USES.—

(A) IN GENERAL.—The Secretary shall allow only such uses of the Conservation Area that the Secretary determines would further the purposes described in subsection (b).

(B) USE OF MOTORIZED VEHICLES.—

(i) IN GENERAL.—Except as needed for administrative purposes or to respond to an emergency, the use of motorized vehicles in the Conservation Area shall be permitted only on roads designated for use by motorized vehicles in the management plan.

(ii) NEW ROADS.—No additional road shall be built within the Conservation Area after the date of enactment of this Act unless the road is needed for public safety or natural resource protection.

(C) GRAZING.—The Secretary shall permit grazing within the Conservation Area, where established before the date of enactment of this Act—

(i) subject to all applicable laws (including regulations) and Executive orders; and

(ii) consistent with the purposes described in subsection (b).

(D) COLLECTION OF PIÑON NUTS AND FIREWOOD.—Nothing in this Act precludes the traditional collection of firewood and piñon nuts for noncommercial personal use within the Conservation Area—

(i) in accordance with any applicable laws; and

(ii) subject to such terms and conditions as the Secretary determines to be appropriate.

(E) UTILITY CORRIDOR UPGRADES.—Nothing in this Act precludes the Secretary from authorizing the upgrading of an existing utility corridor (including the widening of an existing easement) through the Conservation Area—

(i) in accordance with any applicable laws; and

(ii) subject to such terms and conditions as the Secretary determines to be appropriate.

(F) TRIBAL CULTURAL USES.—

(i) ACCESS.—The Secretary shall, in consultation with Indian tribes or pueblos—

(I) ensure the protection of religious and cultural sites; and

(II) provide occasional access to the sites by members of Indian tribes or pueblos for traditional cultural and customary uses, consistent with Public Law 95–341 (commonly known as the ''American Indian Religious Freedom Act'') (42 U.S.C. 1996).

(ii) TEMPORARY CLOSURES.—In accordance with Public Law 95–341 (commonly known as the ''American Indian Religious Freedom Act'') (42 U.S.C. 1996), the Secretary, on request of an Indian tribe or pueblo, may temporarily close to general public use 1 or more specific areas of the Conservation Area in order to protect traditional cultural and customary uses in those areas by members of the Indian tribe or the pueblo.

(d) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall develop a management plan for the Conservation Area.

(2) OTHER PLANS.—To the extent consistent with this Act, the plan may incorporate in the management plan the Rio Grande Corridor Management Plan in effect on the date of enactment of this Act.

(3) CONSULTATION.—The management plan shall be developed in consultation with—

(A) State and local governments;

(B) tribal governmental entities;

(C) land grant communities; and

(D) the public.

(4) CONSIDERATIONS.—In preparing and implementing the management plan, the Secretary shall consider the recommendations of Indian tribes and pueblos on methods for—

(A) ensuring access to religious and cultural sites;

(B) enhancing the privacy and continuity of traditional cultural and religious activities in the Conservation Area; and

(C) protecting traditional cultural and religious sites in the Conservation Area.

(e) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land that is within the boundary of the Conservation Area that is acquired by the United States shall—

(1) become part of the Conservation Area; and

(2) be managed in accordance with—

(A) this Act; and

(B) any other applicable laws.

(f) SPECIAL MANAGEMENT AREAS.—

(1) IN GENERAL.—The establishment of the Conservation Area shall not change the management status of any area within the boundary of the Conservation Area that is—

(A) designated as a component of the National Wild and Scenic Rivers System under the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.); or

(B) managed as an area of critical environmental concern.

(2) CONFLICT OF LAWS.—If there is a conflict between the laws applicable to the areas described in paragraph (1) and this Act, the more restrictive provision shall control.

SEC. 4. DESIGNATION OF WILDERNESS AREAS.

(a) IN GENERAL.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the following areas in the Conservation Area are designated as wilderness and as components of the National Wilderness Preservation System:

(1) CERRO DEL YUTA WILDERNESS.—Certain land administered by the Bureau of Land Management in Taos County, New Mexico, comprising approximately 13,420 acres as generally depicted on the map, which shall be known as the ''Cerro del Yuta Wilderness''.

(2) RÍO SAN ANTONIO WILDERNESS.—Certain land administered by the Bureau of Land Management in Rio Arriba County, New Mexico, comprising approximately 8,000 acres, as generally depicted on the map, which shall be known as the ''Río San Antonio Wilderness''.

(b) MANAGEMENT OF WILDERNESS AREAS.—Subject to valid existing rights, the wilderness areas designated by subsection (a) shall be administered in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that with respect to the wilderness areas designated by this Act—

(1) any reference to the effective date of the Wilderness Act shall be considered to be a reference to the date of enactment of this Act; and

(2) any reference in the Wilderness Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary.

(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land within the boundary of the wilderness areas designated by subsection (a) that is acquired by the United States shall—

(1) become part of the wilderness area in which the land is located; and

(2) be managed in accordance with—

(A) the Wilderness Act (16 U.S.C. 1131 et seq.);

(B) this Act; and

(C) any other applicable laws.

(d) GRAZING.—Grazing of livestock in the wilderness areas designated by subsection (a), where established before the date of enactment of this Act, shall be administered in accordance with—

(1) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and

(2) the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101–405).

(e) BUFFER ZONES.—

(1) IN GENERAL.—Nothing in this section creates a protective perimeter or buffer zone around any wilderness area designated by subsection (a).

(2) ACTIVITIES OUTSIDE WILDERNESS AREAS.—The fact that an activity or use on land outside any wilderness area designated by subsection (a) can be seen or heard within the wilderness area shall not preclude the activity or use outside the boundary of the wilderness area.

(f) RELEASE OF WILDERNESS STUDY AREAS.—Congress finds that, for purposes of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), the public land within the San Antonio Wilderness Study Area not designated as wilderness by this section—

(1) has been adequately studied for wilderness designation;

(2) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)); and

(3) shall be managed in accordance with this Act.

SEC. 5. GENERAL PROVISIONS.

(a) MAPS AND LEGAL DESCRIPTIONS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file the map and legal descriptions of the Conservation Area and the wilderness areas designated by section 4(a) with—

(A) the Committee on Energy and Natural Resources of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) FORCE OF LAW.—The map and legal descriptions filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct errors in the legal description and map.

(3) PUBLIC AVAILABILITY.—The map and legal descriptions filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(b) NATIONAL LANDSCAPE CONSERVATION SYSTEM.—The Conservation Area and the wilderness areas designated by section 4(a) shall be administered as components of the National Landscape Conservation System.

(c) FISH AND WILDLIFE.—Nothing in this Act affects the jurisdiction of the State with respect to fish and wildlife located on public land in the State, except that the Secretary, after consultation with the New Mexico Department of Game and Fish, may designate zones where, and establishing periods when, hunting shall not be allowed for reasons of public safety, administration, or public use and enjoyment.

(d) WITHDRAWALS.—Subject to valid existing rights, any Federal land within the Conservation Area and the wilderness areas designated by section 4(a), including any land or interest in land that is acquired by the United States after the date of enactment of this Act, is withdrawn from—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(e) TREATY RIGHTS.—Nothing in this Act enlarges, diminishes, or otherwise modifies any treaty rights.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. SPECTER (for himself, Mr. TESTER, and Mr. GRASSLEY):

S. 875. A bill to regulate the judicial use of presidential signing statements in the interpretation of Acts of Congress; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition today on behalf of myself, Senator GRASSLEY and Senator TESTER, to offer the Presidential Signing Statements Act of 2009. The purpose of this bill is to regulate the use of Presidential Signing Statements in the interpretation of Acts of Congress. This bill is similar in substance to two prior versions of this legislation: the Presidential Signing Statements Act of 2007, which I introduced on June 29, 2007; and the Presidential Signing Statements Act of 2006, which I introduced on July 26, 2006.

As I have stated before, I believe that this legislation is necessary to protect our constitutional system of checks and balances. This bill achieves that goal in the following ways.

First, it prevents the President from issuing a signing statement that alters the meaning of a statute by instructing federal and state courts not to rely on, or defer to, presidential signing statements as a source of authority when determining the meaning of any Act of Congress.

Second, it grants Congress the power to participate in any case where the construction or constitutionality of any Act of Congress is in question and a presidential signing statement for that Act was issued by allowing Congress to file an amicus brief and present oral argument in such a case; instructing that, if Congress passes a joint resolution declaring its view of the correct interpretation of the statute, the Court must admit that resolution into the case record; and providing for expedited review in such a case.

Since the days of President James Monroe, Presidents have issued statements when signing bills. It is widely agreed that there are legitimate uses for signing statements. For example, Presidents may use signing statements to instruct executive branch officials how to administer a law or to explain to the public the likely effect of a law. There may be a host of other legitimate uses.

It is clear, however, that the President cannot use a signing statement to rewrite the words of a statute, nor can he use a signing statement to selectively nullify those provisions he does not like. This much is clear from our Constitution. The Constitution grants the President a specific, defined role in enacting legislation. Article I, section 1 of the Constitution vests ''all legislative powers . . . in a Congress.'' Article I, section 7 of the Constitution provides that, when a bill is presented to the President, he may either sign it or veto it with his objections. He may also choose to do nothing, thus rendering a so-called pocket veto. But the President cannot veto part of a bill—he cannot veto certain provisions he does not like.

The Framers had good reason for constructing the legislative process as they did. According to The Records of the Constitutional Convention, the veto power was designed to protect citizens from a particular Congress that might enact oppressive legislation. However, the Framers did not want the veto power to be unchecked, and so, in Article I, section 7, they balanced it by allowing Congress to override a veto by 2/3 vote.

As I stated when I initially introduced this legislation in 2006, this is a finely structured constitutional procedure that goes straight to the heart of our system of checks and balances. Any action by the President that circumvents this procedure is an unconstitutional attempt to usurp legislative authority. If the President is permitted to re-write the bills that Congress passes and cherry pick which provisions he likes and does not like, he subverts the constitutional process designed by the Framers. The Supreme Court has affirmed that the Constitutional process for enacting legislation must be safeguarded. As the Court explained in INS v. Chahda, ''It emerges clearly that the prescription for legislative action in Article I, Section 1 and 7 represents the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure.'' 462 U.S. 919, 951, 1982.

It is well within Congress's power to enact rules of statutory interpretation intended to preserve this constitutional structure. This power flows from Article I, section 8, clause 18 of the Constitution, which gives Congress the power ''To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the U.S., or in any department or officer thereof.'' Rules of statutory interpretation are ''necessary and proper'' to execute the legislative power.

Several scholars have agreed: Jefferson B. Fordham, a former Dean of the University of Pennsylvania Law School said, ''[I]t is within the legislative power to lay down rules of interpretation for the future;'' Mark Tushnet, a Professor at Harvard Law School explained, ''In light of the obvious congressional power to prescribe a statute's terms (and so its meaning), congressional power to prescribe interpretive methods seems to me to follow;'' Michael Stokes Paulsen, an Associate Dean of the University of Minnesota Law School noted, ''Congress is the master of its own statutes and can prescribe rules of interpretation governing its own statutes as surely as it may alter or amend the statutes directly.'' Finally, J. Sutherland, the author of the leading multi-volume treatise for the rules of statutory construction has said, ''There should be no question that an interpretive clause operating prospectively is within legislative power.''

Indeed, recent experience shows why such legislation is ''necessary.'' The use of signing statements has risen dramatically in recent years. President Clinton issued 105 signing statements; President Bush issued 161. What is more alarming than the sheer numbers, is that President Bush's signing statements often raised constitutional concerns and other objections to several provisions of a law. The President used those statements in a way that threatened to render the legislative process a virtual nullity, making it completely unpredictable how certain laws will be enforced. Even where Congress managed to negotiate checks on executive power, the President used signing statements to override the legislative language and defy congressional intent.

Two prominent examples make the point. In 2006, I spearheaded the delicate negotiations on the PATRIOT Act Reauthorization, which included months of painstaking efforts to balance national security and civil liberties, disrupted by the dramatic disclosure of the Terrorist Surveillance Program. The final version of the bill featured a carefully crafted compromise necessary to secure the act's passage. Among other things, it included several oversight provisions designed to ensure that the FBI did not abuse special terrorism-related powers permitting it to make secret demands for business records. The President dutifully signed the measure into law, only to then enter a signing statement insisting he could withhold any information from Congress required by the oversight provisions if he decided that disclosure would ''impair foreign relations, national security, the deliberative process of the executive, or the performance of the executive's constitutional duties.''

The second example arose in 2005. Congress overwhelmingly passed Senator JOHN MCCAIN'S amendment to ban all U.S. personnel from inflicting ''cruel, inhuman or degrading'' treatment on any prisoner held by the United States. There was no ambiguity in Congress's intent; in fact, the Senate approved it 90 to 9. However, after signing the bill into law, the President quietly issued a signing statement asserting that his Administration would construe it ''in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power.''

Many understood this signing statement to undermine the legislation. In a January 4, 2006 article titled, ''Bush could bypass new torture ban: Waiver right is reserved,'' the Boston Globe cited an anonymous ''senior administration official'' as saying, ''the president intended to reserve the right to use harsher methods in special situations involving national security.''

As outrageous as these signing statements are, intruding on the Constitution's delegation of ''all legislative powers'' to the Congress, it is even more outrageous that Congress has done nothing to protect its constitutional powers. In 2006 and 2007, the legislation I introduced giving Congress standing to challenge the constitutionality of these signing statements failed to muster the veto-proof majority it would have surely required.

With a new administration, I believe the time has come to pass this important legislation. This bill does not seek to limit the President's power, and it does not seek to expand Congress's power. Rather, this bill simply seeks to safeguard our Constitution. In this Congress, it has a better chance of mustering a majority vote and being signed into law by the new President.

That said, two days after criticizing President Bush's signing statements, President Obama issued one of his own regarding the Omnibus Appropriations Act of 2009. Citing among others his ''commander in chief'' and ''foreign affairs'' powers, he refused to be bound by at least eleven specific provisions of the bill including one long-standing rider to appropriations bills designed to aid congressional oversight. As I told The Wall Street Journal, ''We are having a repeat of what Democrats bitterly complained about under President Bush.'' I hope this will be the exception rather than the rule.

In the meantime, this bill seeks to implement measures that will safeguard the constitutional structure of enacting legislation. In preserving this structure, this bill reinforces the system of checks and balances and separation of powers set out in our Constitution.

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. 875

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 ''Presidential Signing Statements Act of 2009''.

SEC. 2. DEFINITION.

As used in this Act, the term ''presidential signing statement'' means a statement issued by the President about a bill, in conjunction with signing that bill into law pursuant to Article I, section 7, of the Constitution.

SEC. 3. JUDICIAL USE OF PRESIDENTIAL SIGNING STATEMENTS.

In determining the meaning of any Act of Congress, no Federal or State court shall rely on or defer to a presidential signing statement as a source of authority.

SEC. 4. CONGRESSIONAL RIGHT TO PARTICIPATE IN COURT PROCEEDINGS OR SUBMIT CLARIFYING RESOLUTION.

(a) CONGRESSIONAL RIGHT TO PARTICIPATE AS AMICUS CURIAE.—In any action, suit, or proceeding in any Federal or State court (including the Supreme Court of the United States), regarding the construction or constitutionality, or both, of any Act of Congress in which a presidential signing statement was issued, the Federal or State Court shall permit the United States Senate, through the Office of Senate Legal Counsel, as authorized in section 701 of the Ethics in Government Act of 1978 (2 U.S.C. 288), or the United States House of Representatives, through the Office of General Counsel for the United States House of Representatives, or both, to participate as an amicus curiae, and to present an oral argument on the question of the Act's construction or constitutionality, or both. Nothing in this section shall be construed to confer standing on any party seeking to bring, or jurisdiction on

any court with respect to, any civil or criminal action, including suit for court costs, against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of a House of Congress, any office or agency of Congress, or any officer or employee of a House of Congress or any office or agency of Congress.

(b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING RESOLUTION.—In any suit referenced in subsection (a), the full Congress may pass a concurrent resolution declaring its view of the proper interpretation of the Act of Congress at issue, clarifying Congress's intent or clarifying Congress's findings of fact, or both. If Congress does pass such a concurrent resolution, the Federal or State court shall permit the United States Congress, through the Office of Senate Legal Counsel, to submit that resolution into the record of the case as a matter of right.

(c) EXPEDITED CONSIDERATION.—It shall be the duty of each Federal or State court, including the Supreme Court of the United States, to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

By Mr. SPECTER (for himself and Mr. WHITEHOUSE):

S. 876. A bill to provide for the substitution of the United States in certain civil actions relating to electronic service providers and FISA; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to reintroduce legislation that would substitute the United States in the place of electronic communications service providers who were sued for violating the Foreign Intelligence Surveillance Act, FISA, and other statutory and constitutional provisions.

FISA reform legislation passed the Senate in February and July of 2008, both times by a vote of 68 to 29, before being signed into law by President Bush on July 10, 2008. This legislation made many necessary changes to FISA to enhance our intelligence collection capabilities, but it also included a controversial provision giving retroactive immunity to telecommunications companies for their alleged cooperation with the warrantless surveillance program authorized by the President after September 11, 2001. The legislation stripped the Federal courts of jurisdiction to decide more than 40 consolidated cases involving claims of violations of FISA and related statutes, even though most Members of Congress had not been briefed on the program, and despite the fact that the judge handling the cases, Chief Judge Vaughn Walker of the Northern District of California, had questioned the legality of the program in a related opinion issued just days before the final Senate debate.

During the February and July FISA debates, I sought to keep the courts open as a way to check executive branch excesses. Through both a standalone bill, S. 2402, considered by the Senate Judiciary Committee and an amendment, SA 3927 to S. 2248, offered during the Senate's February debate on the FISA reform bill, I proposed to substitute the U.S. Government for the telephone companies facing lawsuits for their alleged cooperation with the Terrorist Surveillance Program, TSP. Just as in 2008, I propose legislation that would place the Government in the shoes of the telephone companies, with the same defenses no more and no less. Thus, under the bill, plaintiffs get their day in court and may hold the Government accountable for unlawful activity, if any, related to the surveillance program. At the same time, the carriers themselves avoid liability stemming from their efforts to be good citizens.

I fought hard in 2008 to keep the courts open on the question of the TSP, and urged my colleagues to improve the FISA bill. I continue that fight today with a new Administration in office. During the prior floor debate I said: ''Although I am prepared to stomach this bill, if I must, I am not yet ready to concede that the debate is over. Contrary to the conventional wisdom, I don't believe it is too late to make this bill better.''

As I observed on the floor last year, it is necessary for Congress to support intelligence collection efforts because of the continuing terrorist threat. No one wants to be blamed for another 9–11. Indeed, as I acknowledged during the debate, my own briefings on the telephone companies' cooperation with the Government convinced me of the program's value. Nevertheless, I tried to impress upon my colleagues the importance and historical context of our actions. I said:

We are dealing here with a matter that is of historic importance. I believe that years from now, historians will look back on this period from 9/11 to the present as the greatest expansion of Executive authority in history—unchecked expansion of authority. The President disregards the National Security Act of 1947 mandating notice to the Intelligence Committee; he doesn't do it. The President takes legislation that is presented by Congress and he signs it, and then he issues a signing statement disagreeing with key provisions. There is nothing Congress can do about it.

The Supreme Court of the United States has gone absent without leave on the issue, in my legal opinion. When the Detroit Federal judge found the terrorist surveillance program unconstitutional, it was [reversed] by the Sixth Circuit on a 2-to-1 opinion on grounds of lack of standing. Then the Supreme Court refused to review the case. But the very formidable dissenting opinion laid out all of the grounds where there was ample basis to grant standing. Now we have Chief Judge Walker declaring the [surveillance illegal]. The Congress ought to let the courts fulfill their constitutional function.

It is not too late to provide for judicial review of controversial post-9/11 intelligence surveillance activities. The cases before Judge Vaughn Walker are still pending and, even if he were to dismiss them under the statutory defenses dubbed retroactive immunity, Congress can and should permit the cases to be refiled against the Government, standing in the shoes of the carriers.

This legislation substitutes the U.S. in place of any electronic communication service provider who provided communications in connection with an intelligence activity that was: authorized by the President between September 11, 2001, and January 17, 2007; and designed to detect or prevent a terrorist attack against the U.S. In order for substitution to apply, the electronic communications service provider must have received a written request from the Attorney General or the head of an element of the intelligence community indicating that the activity was authorized by the President and determined to be lawful. If the provider assisted the Government beyond what was requested in writing, this legislation will provide no relief to the service provider.

The legislation also establishes a limited waiver of sovereign immunity that only applies to ''covered civil actions'' essentially, the 40 cases currently pending before the U.S. District Court in the Northern District of California. This is to prevent the Government from asserting immunity in the event it is substituted for the current defendants.

We can still pass legislation substituting the Government for the various telecom defendants and have a judicial assessment of the constitutionality and legality of the controversial surveillance. Such a judicial assessment is necessary to resolve the clash between the Executive and Legislative branches over the legality and constitutionality of the surveillance program.

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. 876

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT TO FISA.

Title III of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (Public Law 110-261) is amended by inserting at the end the following:

''SEC. 302. SUBSTITUTION OF THE UNITED STATES IN CERTAIN ACTIONS.

''(a) IN GENERAL.—

''(1) CERTIFICATION.—Notwithstanding any other provision of law, a Federal or State court shall substitute the United States for an electronic communication service provider with respect to any claim in a covered civil action as provided in this subsection, if the Attorney General certifies to that court that—

''(A) with respect to that claim, the assistance alleged to have been provided by the electronic communication service provider was—

''(i) provided in connection with an intelligence activity involving communications that was—

''(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

''(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

''(ii) described in a written request or directive from the Attorney General or the

head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

''(I) authorized by the President; and

''(II) determined to be lawful; or

''(B) the electronic communication service provider did not provide the alleged assistance.

''(2) SUBSTITUTION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), upon receiving a certification under paragraph (1), a Federal or State court shall—

''(i) substitute the United States for the electronic communication service provider as the defendant as to all claims designated by the Attorney General in that certification, consistent with the procedures under rule 25(c) of the Federal Rules of Civil Procedure, as if the United States were a party to whom the interest of the electronic communication service provider in the litigation had been transferred; and

''(ii) as to that electronic communication service provider—

''(I) dismiss all claims designated by the Attorney General in that certification; and

''(II) enter a final judgment relating to those claims.

''(B) CONTINUATION OF CERTAIN CLAIMS.—If a certification by the Attorney General under paragraph (1) states that not all of the alleged assistance was provided under a written request or directive described in paragraph (1)(A)(ii), the electronic communication service provider shall remain as a defendant.

''(C) DETERMINATION.—

''(i) IN GENERAL.—Substitution under subparagraph (A) shall proceed only after a determination by the Foreign Intelligence Surveillance Court that—

''(I) the written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider under paragraph (1)(A)(ii) complied with section 2511(2)(a)(ii)(B) of title 18, United States Code;

''(II) the assistance alleged to have been provided was undertaken by the electronic communication service provider acting in good faith and pursuant to an objectively reasonable belief that compliance with the written request or directive under paragraph (1)(A)(ii) was permitted by law; or

''(III) the electronic communication service provider did not provide the alleged assistance.

''(ii) CERTIFICATION.—If the Attorney General submits a certification under paragraph (1), the court to which that certification is submitted shall—

''(I) immediately certify the questions described in clause (i) to the Foreign Intelligence Surveillance Court; and

''(II) stay further proceedings in the relevant litigation, pending the determination of the Foreign Intelligence Surveillance Court.

''(iii) PARTICIPATION OF PARTIES.—In reviewing a certification and making a determination under clause (i), the Foreign Intelligence Surveillance Court shall permit any plaintiff and any defendant in the applicable covered civil action to appear before the Foreign Intelligence Surveillance Court pursuant to section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803).

''(iv) DECLARATIONS.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a determination made pursuant to clause (i) would harm the national security of the United States, the Foreign Intelligence Surveillance Court shall limit any public disclosure concerning such determination, including any public order following such an ex parte review, to a statement that the conditions of clause (i) have or have not been met, without disclosing the basis for the determination.

''(D) SPECIAL RULE.—Notwithstanding any other provision of this Act—

''(i) in any matter in which the Foreign Intelligence Surveillance Court denies dismissal on grounds that the statutory defenses provided in title VIII of the Foreign Intelligence Surveillance Act of 1978 are unconstitutional, the Attorney General shall be substituted pursuant to this paragraph; and

''(ii) if a claim is dismissed pursuant to title VIII of the Foreign Intelligence Surveillance Act of 1978 prior to date of enactment of this section, the claim against the United States shall be tolled for the period during which the claim was pending and may be refiled against the United States pursuant to rule 60(b) of the Federal Rules of Civil Procedure after the date of enactment of this section.

''(3) PROCEDURES.—

''(A) TORT CLAIMS.—Upon a substitution under paragraph (2), for any tort claim—

''(i) the claim shall be deemed to have been filed under section 1346(b) of title 28, United States Code, except that sections 2401(b), 2675, and 2680(a) of title 28, United States Code, shall not apply; and

''(ii) the claim shall be deemed timely filed against the United States if it was timely filed against the electronic communication service provider.

''(B) CONSTITUTIONAL AND STATUTORY CLAIMS.—Upon a substitution under paragraph (2), for any claim under the Constitution of the United States or any Federal statute—

''(i) the claim shall be deemed to have been filed against the United States under section 1331 of title 28, United States Code;

''(ii) with respect to any claim under a Federal statute that does not provide a cause of action against the United States, the plaintiff shall be permitted to amend such claim to substitute, as appropriate, a cause of action under—

''(I) section 704 of title 5, United States Code (commonly known as the Administrative Procedure Act);

''(II) section 2712 of title 18, United States Code; or

''(III) section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810);

''(iii) the statutes of limitation applicable to the causes of action identified in clause (ii) shall apply to any amended claim under that clause subject to the tolling requirements of paragraph (2)(D)(ii), and any such cause of action shall be deemed timely filed if any Federal statutory cause of action against the electronic communication service provider was timely filed; and

''(iv) for any amended claim under clause (ii) the United States shall be deemed a proper defendant under any statutes described in that clause, and any plaintiff that had standing to proceed against the original defendant shall be deemed an aggrieved party for purposes of proceeding under section 2712 of title 18, United States Code, or section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810).

''(C) DISCOVERY.—

''(i) IN GENERAL.—In a covered civil action in which the United States is substituted as party-defendant under paragraph (2), any plaintiff may serve third-party discovery requests to any electronic communications service provider as to which all claims are dismissed.

''(ii) BINDING THE GOVERNMENT.—If a plaintiff in a covered civil action serves deposition notices under rule 30(b)(6) of the Federal Rules of Civil Procedure or requests for admission under rule 36 of the Federal Rules of Civil Procedure upon an electronic communications service provider as to which all claims were dismissed, the electronic communications service provider shall be deemed a party-defendant for purposes rule 30(b)(6) or rule 36 and its answers and admissions shall be deemed binding upon the Government.

''(b) CERTIFICATIONS.—

''(1) IN GENERAL.—For purposes of substitution proceedings under this section—

''(A) a certification under subsection (a) may be provided and reviewed in camera, ex parte, and under seal; and

''(B) for any certification provided and reviewed as described in subparagraph (A), the court shall not disclose or cause the disclosure of its contents.

''(2) NONDELEGATION.—The authority and duties of the Attorney General under this section shall be performed by the Attorney General or a designee in a position not lower than the Deputy Attorney General.

''(c) SOVEREIGN IMMUNITY.—This section, including any Federal statute cited in this section that operates as a waiver of sovereign immunity, constitute the sole waiver of sovereign immunity with respect to any covered civil action.

''(d) CIVIL ACTIONS IN STATE COURT.—For purposes of section 1441 of title 28, United States Code, any covered civil action that is brought in a State court or administrative or regulatory bodies shall be deemed to arise under the Constitution or laws of the United States and shall be removable under that section.

''(e) RULE OF CONSTRUCTION.—Except as expressly provided in this section, nothing in this section may be construed to limit any immunity, privilege, or defense under any other provision of law, including any privilege, immunity, or defense that would otherwise have been available to the United States absent its substitution as party-defendant or had the United States been the named defendant.

''(f) EFFECTIVE DATE AND APPLICATION.—This section shall apply to any covered civil action pending on or filed after the date of enactment of this section.''.

By Mr. SPECTER:

S. 877. A bill to provide for the nondiscretionary Supreme Court review of certain civil actions relating to the legality and constitutionality of surveillance activities; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation that will mandate Supreme Court review of challenges to the warrantless wiretapping program authorized by President Bush after 9/11, commonly known as the Terrorist Surveillance Program or TSP.

While the Supreme Court generally exercises discretion as to whether it will review a case or grant ''certiorari,'' there are precedents for Congress to direct Supreme Court review on constitutional issues—including the statutes forbidding flag burning and requiring Congress to abide by Federal employment laws—and the gravity of this issue merits Congressional action.

In August 2006, Judge Anna Diggs Taylor of the U.S. District Court for

the Eastern District of Michigan issued a 43-page opinion finding the TSP unconstitutional. At the time, many applauded and many others criticized her decision, but we have yet to see appellate review on the merits. Instead, in July 2007, the U.S. Court of Appeals for the 6th Circuit overturned the district court's decision on other grounds. By a 2–1 vote, in ACLU v. NSA, it declined to rule on the legality of the program, finding that the plaintiffs lacked standing to bring the suit. The Supreme Court then declined to hear the case, even though the doctrine of standing has enough flexibility, as demonstrated by the dissent in the 6th Circuit, to have enabled it to take up this fundamental clash between Congress and the President.

With the Supreme Court abstaining, another lone district judge took a stand. In In re National Security Agency Telecommunications Records Litigation, Chief Judge Vaughn Walker in the Northern District of California considered a case brought by an Islamic charity that claims to have been a subject of the surveillance program. In a 56-page opinion he held that Congress's enactment of the Foreign Intelligence Surveillance Act of 1978, FISA, had constrained the President's inherent authority—if any—to conduct warrantless wiretapping: ''Congress appears clearly to have intended to—and did—establish the exclusive means for foreign intelligence surveillance activities to be conducted. Whatever power the executive may otherwise have had in this regard, FISA limits the power of the executive branch to conduct such activities.'' Nevertheless, this finding is preliminary.

Whatever Chief Judge Walker ultimately decides, my bill will permit any party who is disaffected by a subsequent decision in the Ninth Circuit to have the case heard by the Supreme Court by eliminating discretionary review. Under my bill, the Supreme Court would also have to review appeals concerning the constitutionality or legality of: the Terrorist Surveillance Program writ large; the statutory immunity for telecommunications providers created by Title II of the FISA Amendments Act of 2008; and any other intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending at such time as the activity was approved by a Federal court.

Relying on similar precedents, the bill requires the High Court to expedite its consideration of such cases. The bill, however, is limited to circumstances where the Court has not previously decided the question at issue. Thus, it does not create a permanent right of review for all similarly situated parties, but it does require the Court to take up the matter in the first instance.

Congress clearly has the power to require appellate review by the Supreme Court under Article III, Section 2 of the Constitution, and it has exercised this prerogative. For example, 28 U.S.C. § 3904 provides for direct appeal to the Supreme Court of decisions ''upon the constitutionality'' of the Congressional Accountability Act if the Court ''has not previously ruled on the question'' and requires the Court to ''expedite the appeal.'' Congress used nearly identical language to provide for direct appeal and expedited Supreme Court review of the constitutionality of a ban on flag burning in 18 U.S.C. § 700.

I propose similar action here. It is hard to conceive of a better case to have finally decided in the Supreme Court than one which challenges the legality of warrantless wiretapping—or the constitutionality of the retroactive statutory defenses passed by Congress last year.

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. 877

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MANDATORY SUPREME COURT REVIEW OF CERTAIN CIVIL ACTIONS.

Chapter 81 of title 28, United States Code, is amended by inserting at the end the following:

''SEC. 1260. MANDATORY SUPREME COURT REVIEW OF CERTAIN CIVIL ACTIONS CONCERNING SURVEILLANCE ACTIVITIES.

''(a) IN GENERAL.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over any appeal of an interlocutory or final judgment, decree, or order of a court of appeals in any case challenging the legality or constitutionality of—

''(1) the President's Surveillance Program, commonly known as the Terrorist Surveillance Program, as defined in section 301(a)(3) of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (Public Law 110–261);

''(2) the statutory defenses established in Section 802(a)(4) of the Foreign Intelligence Surveillance Act of 1978, as amended by title II of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (Public Law 110–261); or

''(3) any intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending at such time as the activity was approved by a Federal court.

''(b) EXPEDITED CONSIDERATION.—The Supreme Court shall advance on the docket any appeal referred to in subsection (a), and expedite the appeal to the greatest extent possible.''.

SEC. 2. CLERICAL AMENDMENT.

The chapter analysis for chapter 81 of title 28, United States Code, is amended by inserting at the end the following:

''Sec. 1260. Mandatory supreme court review of certain civil actions concerning surveillance activities.''.

By Ms. COLLINS (for herself and Mr. LIEBERMAN):

S. 879. A bill to amend the Homeland Security Act to provide immunity for reports of suspected terrorist activity or suspicious behavior and response; to the Committee on the Judiciary.

Ms. COLLINS. Mr. President, the recent terrorist attacks in Mumbai, India, are a sobering reminder that terrorists continue to threaten our Nation and civilized people throughout the world. An alert citizenry is our first line of defense against terrorist attacks, particularly attacks like those in Mumbai. Our laws must protect individuals from frivolous lawsuits when they report, in good faith, suspicious behavior that may indicate terrorist activity. That is why I am introducing legislation, with Senator LIEBERMAN, that will provide these important protections.

In the 2007 homeland security law, Chairman LIEBERMAN and I coauthored a provision to encourage people to report potential terrorist threats directed against transportation systems. This new legislation would expand those protections to reports of suspicious behavior in sectors other than transportation. For example, reports of suspicious activity could be equally important in detecting terrorist plans to attack ''soft targets'' like the hotels, restaurants, and religious institutions targeted in Mumbai.

Real life examples highlight the need for this bill. In December 2008, a Federal jury convicted 5 men from New Jersey of conspiring to murder American soldiers at Fort Dix. According to law enforcement officials, the report of an alert store clerk, who reported that a customer had brought in a video showing men firing weapons and shouting in Arabic, triggered their investigation. But for the report of this vigilant store clerk, law enforcement may not have disrupted this plot against Fort Dix.

That store clerk's action likely saved hundreds of lives. It also reveals a core truth of the dangerous times in which we live. Our safety depends on more than just police officers, intelligence analysts, and soldiers. It also depends on the alertness and civic responsibility of all Americans.

We must encourage citizens to be watchful and to report suspicious activity whenever it occurs. That imperative is even stronger in the aftermath of the November 2008 terrorist attacks in Mumbai, where it appears that the terrorists performed reconnaissance on a number of the targets before the actual attacks.

Senator LIEBERMAN and I recently convened two hearings in the Homeland Security Committee to examine lessons learned from those horrific attacks. These hearings have reinforced our long-standing concern that terrorists might shift their attention from high-value, high-security targets to less secure commercial facilities, where there is the potential for mass casualties and widespread panic. As we witnessed during the three-day siege of Mumbai, commercial facilities or ''soft

targets,'' such as the Taj Mahal, Trident, and Oberoi Hotels, are vulnerable, tempting targets.

Many of the Committee's witnesses during these hearings, including Charles Allen, DHS's Chief Intelligence Officer, Donald Van Duyn, the FBI's Chief Intelligence Officer, New York City Police Commissioner Raymond Kelley, and Al Orlob, Marriott International's Vice President for Corporate Security, endorsed the idea of expanding the 2007 law beyond the transportation sector. Indeed, Commissioner Kelley said that the 2007 law ''made eminently good sense'' and recommended ''that it be expanded [to other sectors] if at all possible.''

Unfortunately, we have seen that our legal system can be used to chill the willingness of citizens to come forward and report possible dangers. As widely reported by the media in 2006, US Airways removed 6 Islamic clerics from a flight after other passengers expressed concerns that some of the clerics had moved out of the their assigned seats and had requested, but were not using, seat belt extenders that could possibly double as weapons. In response to these concerns, US Airways officials removed these individuals from the plane so that they could further investigate.

For voicing their reasonable fears that these passengers could be rehearsing or preparing to execute a hijacking, these honestly concerned travelers found themselves as defendants in a civil rights lawsuit and accused of bigotry. The old adage about how ''no good deed goes unpunished'' is quite apt here.

The existence of this lawsuit clearly illustrates how unfair it is to allow private citizens to be intimidated into silence by the threat of litigation. Would the passengers have spoken up if they had anticipated that there would be a lawsuit filed against them? Even if such suits fail, they can expose citizens to heavy costs in time and legal fees.

The bill we introduce today would provide civil immunity in American courts for any person acting in good faith who reports any suspicious transaction, activity, or occurrence related to an act of terrorism. Specifically, the bill would encourage people to pass on information to Federal officials with responsibility for preventing, protecting against, disrupting, or responding to a terrorist act or to Federal, State, and local law enforcement officials without fear of being sued for doing their civic duty. Only disclosures made to those responsible officials would be protected by the legislation.

Once a report is received, those officials would be responsible for assessing its reasonableness and determining whether further action is required. If they take reasonable action to mitigate the reported threat, they, too, would be protected from lawsuits. Just as we should not discourage reporting suspicious incidents, we also should not discourage reasonable responses to them.

Let me make very clear that this bill does not offer any protection whatsoever if an individual makes a statement that he or she knows to be false. No one will be able to use this protection as cover for mischievous, vengeful, or biased falsehoods.

Our laws and legal system must not be hijacked to intimidate people into silence or to prevent our officials from responding to terrorist threats. Protecting citizens who make good faith reports—and that's an important condition in this bill—of potentially lethal activities is essential to maintaining our homeland security. Our bill offers protection in a measured way that discourages abuses from either side.

Each of us has an important responsibility in the fight against terrorism. It is not a fight that can be left to law enforcement alone. The police simply can't be everywhere. Whether at a hotel, a mall, or an arena, homeland security and law enforcement officials need all citizens to alert them to unattended packages and behavior that appears out of the ordinary.

Many national organizations, such as the Fraternal Order of Police, the National Sheriffs' Association, the National Troopers Coalition, and the National Association of Town Watch, support this legislation.

If someone ''sees something'' suspicious, Congress has an obligation to ensure that he or she will ''say something'' about it. This bill promotes and protects that civic duty. I urge my colleagues to support it.

There being no objection, the material was ordered to be placed in the RECORD, as follows;

NATIONAL TROOPERS COALITION
March 24, 2009.

Hon. SUSAN COLLINS,
Ranking Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR COLLINS: On behalf of the National Troopers Coalition and its 40,000 members comprised of State Troopers and Highway Patrol Officers, I am writing in support of your efforts to pass the ''See Something, Say Something Act''. We applaud your efforts to keep this country safe.

Our nation is currently at war against terrorists that want to destroy our country and disrupt our way of life. It is vital that we remain vigilant in our efforts to combat terrorism and keep our country safe. The See Something, Say Something Act, will provide necessary liability protections for citizens that report suspicious activity and for law enforcement officers that act upon these reports. We live in a litigious society and one should not be fearful of litigation when determining if he or she should report suspicious activities that could prevent catastrophic loss of life. What we have learned in our efforts to combat terrorism is that everyone needs to remain vigilant and report all suspicious activities.

We support your efforts to provide liability protections for citizens acting in good faith that report suspicious activity. We can not turn a ''blind eye'' to the terrorists we are fighting and we must encourage and support an ever vigilant society.

Respectfully,

A. BRADFORD CARD,
Federal Government Affairs (NTC), for:
Michael Edes, Chairman, National Troopers Coalition.

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, March 24, 2009.

Hon. SUSAN M. COLLINS,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR COLLINS: On behalf of the National Sheriffs' Association (NSA), I am writing to express our support for the See Something, Say something Act of 2009.

As you may know, the National Sheriffs' Association is the creator of the Neighborhood Watch Program which is one of the oldest and best-known citizen and law enforcement based crime prevention concepts in the United States. In the late 1960s, an increase in crime heightened the need for a crime prevention initiative focused on residential areas involving local citizens. We responded, creating the National Neighborhood Watch Program in 1972 to assist citizens and law enforcement.

For nearly four decades, particularly after the terrorist attacks in 2001, the nation's sheriffs have witnessed firsthand, citizens becoming more empowered by becoming active in homeland security efforts through participation in Neighborhood Watch. Thus, we understand and recognize the importance of encouraging citizen involvement and the role they play in ensuring homeland security.

The proposed measure would build on this concept by providing the needed legal protections to individuals who report suspicious activity to an authorized official, in good faith, that might reflect terrorist threats. Additionally, it would provide qualified immunity from civil liability for an authorized official who takes reasonable action in good faith to respond to the reported activity.

We thank you for your continued leadership and support of the nation's emergency responders.

Sincerely,

SHERIFF DAVID A. GOAD,
President.

NATIONAL ASSOCIATION OF TOWN WATCH,
Wynnewood, PA, March 24, 2009.

Hon. SUSAN M. COLLINS,
Washington, DC.

DEAR SENATOR COLLINS: On behalf of the National Association of Town Watch (NATW), I am writing to express our support for the See Something, Say Something Act of 2009.

The National Association of Town Watch is a nonprofit, crime prevention organization whose members include citizen crime watch groups, law enforcement agencies and other organizations across the country involved in organized, anticrime activities. NATW also sponsors the annual ''National Night Out'' crime prevention event which has grown to involve over 15,000 communities from all 50 states on the first Tuesday each August.

Since 1981, NATW has always promoted the concept of citizens working in close cooperation with their local law enforcement and serving as ''extra eyes and ears.'' The proposed legislation blends beautifully with NATW's mission. It is critical to legally protect individuals who report suspicious activity to an authorized official, in good faith, that might reflect terrorist threats. This legislation also would provide qualified immunity from civil liability for an authorized official who takes reasonable action in good faith to respond to the reported activity.

We thank you for bringing this legislation forward and for supporting law enforcement

and concerned citizens across our great nation.

Sincerely,

MATT A. PESKIN,
Executive Director.

NATIONAL FRATERNAL ORDER OF POLICE,
Washington, DC, April 22, 2009.

Hon. SUSAN M. COLLINS,
Ranking Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR COLLINS, On behalf of the membership of the Fraternal Order of Police, I am writing to advise you of our strong support for the bill you have introduced entitled the ''See Something, Say Something Act.''

Following the terrorist attacks on 11 September 2001 every American, especially law enforcement officers, have become more vigilant. Unfortunately, the increasingly litigious nature of our society may result in many citizens choosing to ''stay out of it''—even if they see something or someone suspicious. Citizens who have reported suspicious activity and law enforcement officers who have acted on these reports have been sued in Federal, State and local courts even though their concerns were reasonable and without malice. The result is that all of us may be more hesitant to report or act upon any suspicious behavior we might see.

Congress took a step in the right direction in 2007 when it passed legislation granting immunity from civil liability for citizens who report suspicious activity and law enforcement officers who act upon such reports involving threats to transportation security. Your bill would expand this immunity to cover all suspicious activity whether it is in a train station, a Federal building, or a sports stadium. This bill will not only protect vigilant individuals from frivolous lawsuits, but it also greatly increases our nation's security.

On behalf of the more than 327,000 members of the Fraternal Order of Police, I would like to thank you again for your leadership on this issue. If I can be of any further assistance, please do not hesitate to contact me, or Executive Director Jim Pasco, in my Washington office.

Sincerely,

CHUCK CANTERBURY,
National President.

By Ms. MURKOWSKI (for herself, Mr. BEGICH, Mr. AKAKA, and Mr. INOUYE):

S. 881. A bill to provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. MURKOWSKI. Mr. President, The Tlingit and Haida people, the first people of Southeast Alaska, were perhaps the first group of Alaska natives to organize for the purpose of asserting their aboriginal land claims. The native land claims movement in the rest of Alaska did not gain momentum until the 1960s when aboriginal land titles were threatened by the impending construction of the Trans Alaska Pipeline. In Southeast Alaska, the taking of Native lands for the Tongass National Forest and Glacier Bay National Monument spurred the Tlingit and Haida people to fight to recover their lands in the early part of the 20th Century.

One of the first steps in this battle came with the formation of the Alaska Native Brotherhood in 1912. In 1935, the Jurisdictional Act, which allowed the Tlingit and Haida Indians to pursue their land claims in the U.S. Court of Claims, was enacted by Congress.

After decades of litigation, the native people of Southeast Alaska received a cash settlement in 1968 from the Court of Claims for the land previously taken to create the Tongass National Forest and the Glacier Bay National Monument. Yes, there was a cash settlement of $7.5 million, but the Native people of Southeast Alaska have long believed that it did not adequately compensate them for the loss of their lands and resources.

Beware of the law of unintended consequences. When the native people of Southeast Alaska chose to pursue their land claims in court they could not have foreseen that Congress would ultimately settle the land claims of all of Alaska's native people through the Alaska Native Claims Settlement Act of 1971. Nor could they have foreseen that they would be disadvantaged in obtaining the return of their aboriginal lands because of their early, and ultimately successful, effort to litigate their land claims. Sadly this was the case.

The Alaska Native Claims Settlement Act of 1971 imposed a series of highly prescriptive limitations on the lands that Sealaska Corporation, the regional Alaska Native Corporation formed for Southeast Alaska, could select in satisfaction of the Tlingit and Haida land claim. None of the other 11 Alaska-based regional native corporations were subject to these limitations. Today, I join with my Alaska colleague, Sen. MARK BEGICH, cosponsored by Sens. DANIEL AKAKA and DANIEL INOUYE to introduce legislation to right this wrong.

For the most part, Sealaska Corporation has agreed to live within the constraints imposed by the 1971 legislation. It has taken conveyance of roughly 290,000 acres from the pool of lands it was allowed to select under the 1971 act. As Sealaska moves to finalize its land selections it has asked the Congress for flexibility to receive title to certain lands that it was not permitted to select under the prescriptive, and as Sealaska believes, discriminatory, limitations contained in the 1971 legislation.

The legislation we are introducing today would allow Sealaska to select its remaining entitlement from outside of the withdrawal areas permitted in the 1971 legislation. It allows the Native Corporation to select up to 3,600 acres of its remaining land entitlement from lands with sacred, cultural, traditional or historical significance throughout the Alaska Panhandle. Substantial restrictions will be placed on the use of these lands.

Up to 5,000 acres of land could be selected for non-timber related economic development. These lands are called ''Native Futures'' Sites in the bill. Other lands referred to as ''economic development lands'' in the bill could be used for timber related and non-timber related economic development. These lands are on Prince of Wales Island, on nearby Kosciusko Island.

Sealaska observes that if it were required to take title to lands within the constraints prescribed by the 1971 legislation it would take title to large swaths of roadless acres in pristine portions of the Tongass National Forest. The lands it proposes to take for economic uses under this legislation are predominantly in roaded and less sensitive areas of the Tongass National Forest.

The pools of lands that would be available to Sealaska under this legislation are depicted on a series of maps referred to in the bill. It must be emphasized that not all of the lands depicted on these maps will end up in Sealaska's ownership. Sealaska cannot receive title to lands in excess of its remaining acreage entitlement under the 1971 legislation and this legislation does not change that entitlement.

Early in the 110th Congress, several of our friends in the other body introduced H.R. 3560 to address these issues. Later in September 2008 I introduced legislation similar to this bill to give all parties time to thoroughly review the measure. Over the past two years, Sealaska, and the communities of Southeast Alaska have worked collaboratively in good faith to identify issues that may arise from the transfer of lands on which those communities have relied for subsistence and recreation out of the Tongass National Forest and into native corporation ownership. My colleagues in the Alaska congressional delegation and I have devoted a great deal of time in reaching out and encouraging comment from Southeast Alaska on this new bill. Sealaska has itself conducted numerous public meetings on the bill throughout the region. I believe that these efforts have helped us to formulate a bill that addresses the concerns we most frequently heard.

The legislation we are introducing today in the 111th Congress is different from the original bill in numerous respects. In some cases, the lands open to Sealaska selection have changed from those that were available in the first House bill to accommodate community concerns. For example, this bill, compared to last September's version, reduces the economic development timber land selection pool to about 78,000 acres from 80,000 to protect additional boat anchorages by retention of shoreline timber in Shipley Bay on northern Prince of Wales Island and at Cape Pole on southwest Kosciusko Island. It eliminates the Lacy Cover Native Futures Site on northern Chichagof Island, it provides full public access across sacred sites and historic trail conveyances near Yakutat and Kake. It addresses the concern of the Huna Indian Association for management of sacred sites in Glacier Bay and it deals with a complaint about the original

bill by the U.S. Forest Service. Our conversations have led to precedent setting commitment by the Sealaska Corporation to maintain public access to the economic development lands it receives on Prince of Wales Island for subsistence uses and recreational access. These commitments are laid out in section 4(d) of this bill.

Sealaska also has offered a series of commitments to ensure that the benefits of this legislation flow to the broader Southeast Alaska economy and not just to the Corporation and its native shareholders. These commitments are memorialized in a letter from Sealaska's chairman, Alaska State Senator Albert Kookesh, and its president and chief executive officer, Chris E. McNeil, Jr.

We all hope that after 38 years that this measure can advance to passage this Congress and resolve the last 65,000 to 85,000 acres of entitlement that southeast Alaska's 23,000 Native shareholders have long had a right to receive. It is impossible to expect Alaska's native corporations to provide meaningful assistance to Alaska's native community if they continue to be denied the lands that Congress intended them to receive to utilize to provide economic benefits for the native people's of the State. I hope this measure can pass and become law before the 40th anniversary of the claims settlement act in 2011. Justice delayed truly is justice denied.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no ojbection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 881

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 ''Southeast Alaska Native Land Entitlement Finalization Act''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds that—

(1)(A) in 1971, Congress enacted the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to recognize and settle the aboriginal claims of Alaska Natives to land historically used by Alaska Natives for traditional, cultural, and spiritual purposes; and

(B) that Act declared that the land settlement ''should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives'';

(2) the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)—

(A) authorized the distribution of approximately $1,000,000,000 and 44,000,000 acres of land to Alaska Natives; and

(B) provided for the establishment of Native Corporations to receive and manage the funds and that land to meet the cultural, social, and economic needs of Native shareholders;

(3) under section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611), each Regional Corporation, other than Sealaska Corporation (the Regional Corporation for southeast Alaska) (referred to in this Act as ''Sealaska''), was authorized to receive a share of land based on the proportion that the number of Alaska Native shareholders residing in the region of the Regional Corporation bore to the total number of Alaska Native shareholders, or the relative size of the area to which the Regional Corporation had an aboriginal land claim bore to the size of the area to which all Regional Corporations had aboriginal land claims;

(4)(A) Sealaska, the Regional Corporation for southeast Alaska, 1 of the Regional Corporations with the largest number of Alaska Native shareholders, with more than 21 percent of all original Alaska Native shareholders, did not receive land under section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611);

(B) the Tlingit and Haida Indian Tribes of Alaska was 1 of the entities representing the Alaska Natives of southeast Alaska before the date of enactment of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(C) Sealaska did not receive land in proportion to the number of Alaska Native shareholders, or in proportion to the size of the area to which Sealaska had an aboriginal land claim, in part because of a United States Court of Claims cash settlement to the Tlingit and Haida Indian Tribes of Alaska in 1968 for land previously taken to create the Tongass National Forest and Glacier Bay National Monument;

(5) the Court of Claims cash settlement of $7,500,000 did not—

(A) adequately compensate the Alaska Natives of southeast Alaska for the significant quantity of land and resources lost as a result of the creation of the Tongass National Forest and Glacier Bay National Monument or other losses of land and resources; or

(B) justify the significant disparate treatment of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1611);

(6)(A) while each other Regional Corporation received a significant quantity of land under sections 12 and 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611, 1613), Sealaska only received land under section 14(h) of that Act (43 U.S.C. 1613(h)), which provided a 2,000,000-acre land pool from which Alaska Native selections could be made for historic sites, cemetery sites, Urban Corporation land, Native group land, and Native Allotments;

(B) under section 14(h)(8) of that Act (43 U.S.C. 1613(h)(8)), after selections are made under paragraphs (1) through (7) of that section, the land remaining in the 2,000,000-acre land pool is allocated based on the proportion that the original Alaska Native shareholder population of a Regional Corporation bore to the original Alaska Native shareholder population of all Regional Corporations; and

(C) the only land entitlement of Sealaska derives from a proportion of leftover land remaining from the 2,000,000-acre land pool, estimated as of the date of enactment of this Act at approximately 1,700,000 acres;

(7) despite the small land base of Sealaska as compared to other Regional Corporations (less than 1 percent of the total quantity of land allocated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), Sealaska has—

(A) provided considerable benefits to shareholders; and

(B) been a significant economic force in southeast Alaska;

(8) pursuant to the revenue sharing provisions of section 7(i) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(i)), Sealaska has distributed more than $300,000,000 during the period beginning on January 1, 1971, and ending on December 31, 2005, to Native Corporations throughout the State of Alaska from the development of natural resources, which accounts for 42 percent of the total revenues shared under that section during that period;

(9) as a result of the small land entitlement of Sealaska, it is critical that the remaining land entitlement conveyances to Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) are fulfilled to continue to meet the economic, social, and cultural needs of the Alaska Native shareholders of southeast Alaska and the Alaska Native community throughout Alaska;

(10)(A) the conveyance requirements of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) for southeast Alaska limit the land eligible for conveyance to Sealaska to the original withdrawal areas surrounding 10 Alaska Native villages in southeast Alaska, which precludes Sealaska from selecting land located—

(i) in any withdrawal area established for the Urban Corporations for Sitka and Juneau, Alaska; or

(ii) outside the 10 Alaska Native village withdrawal areas; and

(B) unlike other Regional Corporations, Sealaska was not authorized to request land located outside the withdrawal areas described in subparagraph (A) if the withdrawal areas were insufficient to complete the land entitlement of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(11) 44 percent (820,000 acres) of the 10 Alaska Native village withdrawal areas established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) described in paragraph (10) are composed of salt water and not available for selection;

(12) of land subject to the selection rights of Sealaska, 110,000 acres are encumbered by gubernatorial consent requirements under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(13) the Forest Service and the Bureau of Land Management grossly underestimated the land entitlement of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), resulting in an insufficient area from which Sealaska could select land suitable for traditional, cultural, and socioeconomic purposes to accomplish a settlement ''in conformity with the real economic and social needs of Natives'', as required under that Act;

(14) the 10 Alaska Native village withdrawal areas in southeast Alaska surround the Alaska Native communities of Yakutat, Hoonah, Angoon, Kake, Kasaan, Klawock, Craig, Hydaburg, Klukwan, and Saxman;

(15) in each withdrawal area, there exist factors that limit the ability of Sealaska to select sufficient land, and, in particular, economically viable land, to fulfill the land entitlement of Sealaska, including factors such as—

(A) with respect to the Yakutat withdrawal area—

(i) 46 percent of the area is salt water;

(ii) 10 sections (6,400 acres) around the Situk Lake were restricted from selection, with no consideration provided for the restriction; and

(iii)(I) 70,000 acres are subject to a gubernatorial consent requirement before selection; and

(II) Sealaska received no consideration with respect to the consent restriction;

(B) with respect to the Hoonah withdrawal area, 51 percent of the area is salt water;

(C) with respect to the Angoon withdrawal area—

(i) 120,000 acres of the area is salt water;

(ii) Sealaska received no consideration regarding the prohibition on selecting land from the 80,000 acres located within the Admiralty Island National Monument; and

(iii)(I) the Village Corporation for Angoon was allowed to select land located outside the withdrawal area on Prince of Wales Island, subject to the condition that the Village Corporation shall not select land located on Admiralty Island; but

(II) no alternative land adjacent to the out-of-withdrawal land of the Village Corporation was made available for selection by Sealaska;

(D) with respect to the Kake withdrawal area—

(i) 64 percent of the area is salt water; and

(ii) extensive timber harvesting by the Forest Service occurred in the area before 1971 that significantly reduced the value of land available for selection by, and conveyance to, Sealaska;

(E) with respect to the Kasaan withdrawal area—

(i) 54 percent of the area is salt water; and

(ii) the Forest Service previously harvested in the area;

(F) with respect to the Klawock withdrawal area—

(i) the area consists of only 5 townships, as compared to the usual withdrawal area of 9 townships, because of the proximity of the Klawock withdrawal area to the Village of Craig, which reduces the selection area by 92,160 acres; and

(ii) the Klawock and Craig withdrawal areas are 35 percent salt water;

(G) with respect to the Craig withdrawal area, the withdrawal area consists of only 6 townships, as compared to the usual withdrawal area of 9 townships, because of the proximity of the Craig withdrawal area to the Village of Klawock, which reduces the selection area by 69,120 acres;

(H) with respect to the Hydaburg withdrawal area—

(i) 36 percent of the area is salt water; and

(ii) Sealaska received no consideration under the Haida Land Exchange Act of 1986 (Public Law No. 99–664; 100 Stat. 4303) for relinquishing selection rights to land within the withdrawal area that the Haida Corporation exchanged to the Forest Service;

(I) with respect to the Klukwan withdrawal area—

(i) 27 percent of the area is salt water; and

(ii) the withdrawal area is only 70,000 acres, as compared to the usual withdrawal area of 207,360 acres, which reduces the selection area by 137,360 acres; and

(J) with respect to the Saxman withdrawal area—

(i) 29 percent of the area is salt water;

(ii) Sealaska received no consideration for the 50,576 acres within the withdrawal area adjacent to the first-class city of Ketchikan that were excluded from selection;

(iii) Sealaska received no consideration with respect to the 1977 amendment to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) requiring gubernatorial consent for selection of 58,000 acres in that area; and

(iv) 23,888 acres are located within the Annette Island Indian Reservation for the Metlakatla Indian Tribe and are not available for selection;

(16) the selection limitations and guidelines applicable to Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)—

(A) are inequitable and inconsistent with the purposes of that Act because there is insufficient land remaining in the withdrawal areas to meet the traditional, cultural, and socioeconomic needs of the shareholders of Sealaska; and

(B) make it difficult for Sealaska to select—

(i) places of sacred, cultural, traditional, and historical significance; and

(ii) Alaska Native futures sites located outside the withdrawal areas of Sealaska;

(17)(A) the deadline for applications for selection of cemetery sites and historic places on land outside withdrawal areas established under section 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1613) was July 1, 1976;

(B)(i) as of that date, the Bureau of Land Management notified Sealaska that the total entitlement of Sealaska would be approximately 200,000 acres; and

(ii) Sealaska made entitlement allocation decisions for cultural sites and economic development sites based on that original estimate;

(C) as a result of the Alaska Land Transfer Acceleration Act (Public Law 108–452; 118 Stat. 3575) and subsequent related determinations and actions of the Bureau of Land Management, Sealaska will receive significantly more than 200,000 acres pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(D) Sealaska would prefer to allocate more of the entitlement of Sealaska to the acquisition of places of sacred, cultural, traditional, and historical significance; and

(E)(i) pursuant to section 11(a)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1610(a)(1)), Sealaska was not authorized to select under section 14(h)(1) of that Act (43 U.S.C. 1613(h)(1)) any site within Glacier Bay National Park, despite the abundance of cultural sites within that Park;

(ii) Sealaska seeks cooperative agreements to ensure that sites within Glacier Bay National Park are subject to cooperative management by Sealaska, Village and Urban Corporations, and federally recognized tribes with ties to the cultural sites and history of the Park; and

(iii) Congress—

(I) recognizes the existence of a memorandum of understanding between the National Park Service and the Hoonah Indian Association;

(II) does not intend to circumvent that memorandum of understanding; and

(III) intends to ensure that the memorandum of understanding and similar mechanisms for cooperative management in Glacier Bay are required by law;

(18)(A) the cemetery sites and historic places conveyed to Sealaska pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) are subject to a restrictive covenant not required by law that does not allow any type of management or use that would in any way alter the historic nature of a site, even for cultural education or research purposes;

(B) historic sites managed by the Forest Service are not subject to the limitations referred to in subparagraph (A); and

(C) those limitations hinder the ability of Sealaska to use the sites for cultural, educational, or research purposes for Alaska Natives and others;

(19) unless Sealaska is allowed to select land outside designated withdrawal areas in southeast Alaska, Sealaska will not be able—

(A) to complete the land entitlement selections of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(B) to secure ownership of places of sacred, cultural, traditional, and historical importance to the Alaska Natives of southeast Alaska;

(C) to maintain the existing resource development and management operations of Sealaska; or

(D) to provide continued economic opportunities for Alaska Natives in southeast Alaska;

(20) in order to realize cultural preservation goals while also diversifying economic opportunities, Sealaska should be authorized to select and receive conveyance of—

(A) sacred, cultural, traditional, and historic sites and other places of traditional cultural significance, including traditional and customary trade and migration routes, to facilitate the perpetuation and preservation of Alaska Native culture and history; and

(B) Alaska Native future sites to facilitate appropriate tourism and outdoor recreation enterprises;

(21) Sealaska has played, and is expected to continue to play, a significant role in the health of the southeast Alaska economy;

(22)(A) the rate of unemployment in southeast Alaska exceeds the statewide rate of unemployment on a non-seasonally adjusted basis; and

(B) in January 2008, the Alaska Department of Labor and Workforce Development reported the unemployment rate for the Prince of Wales–Outer Ketchikan census area at 20 percent;

(23) many southeast Alaska communities—

(A) are dependent on high-cost diesel fuel for the generation of energy; and

(B) desire to diversify their energy supplies with wood biomass alternative fuel and other renewable and alternative fuel sources;

(24) if the resource development operations of Sealaska cease on land appropriate for those operations, there will be a significant negative impact on—

(A) southeast Alaska Native shareholders;

(B) the cultural preservation activities of Sealaska;

(C) the economy of southeast Alaska; and

(D) the Alaska Native community that benefits from the revenue-sharing requirements under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(25) on completion of the conveyances of land to Sealaska to fulfill the full land entitlement of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the encumbrances on 327,000 acres of Federal land created by the withdrawal of land for selection by Native Corporations in southeast Alaska would be removed, which will facilitate thorough and complete planning and efficient management relating to national forest land in southeast Alaska by the Forest Service.

(b) PURPOSE.—The purpose of this Act is to address the inequitable treatment of Sealaska by allowing Sealaska to select the remaining land entitlement of Sealaska under section 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1613) from designated Federal land in southeast Alaska located outside the 10 southeast Alaska Native village withdrawal areas.

SEC. 3. SELECTIONS IN SOUTHEAST ALASKA.

(a) SELECTION BY SEALASKA.—

(1) IN GENERAL.—Notwithstanding section 14(h)(8)(B) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(8)(B)), Sealaska is authorized to select and receive conveyance of the remaining land entitlement of Sealaska under that Act (43 U.S.C. 1601 et seq.) from Federal land located in southeast Alaska from each category described in subsection (b).

(2) NATIONAL PARK SERVICE.—The National Park Service is authorized to enter into a cooperative management agreement described in subsection (c)(2) for the purpose, in part, of recognizing and perpetuating the values of the National Park Service, including those values associated with the Tlingit homeland and culture, wilderness, and ecological preservation.

(b) CATEGORIES.—The categories referred to in subsection (a) are the following:

(1)(A) Economic development land from the area of land identified on the map entitled ''Sealaska ANCSA Land Entitlement Rationalization Pool'', dated March 9, 2009, and labeled ''Attachment A''.

(B) A nonexclusive easement to Sealaska to allow—

(i) access on the forest development road and use of the log transfer site identified in paragraphs (3)(c) and (3)(d) of the patent numbered 50–85–0112 and dated January 4, 1985;

(ii) access on the forest development road identified in paragraphs (2)(a) and (2)(b) of the patent numbered 50–92–0203 and dated February 24, 1992; and

(iii) access on the forest development road identified in paragraph (2)(a) of the patent numbered 50–94–0046 and dated December 17, 1993.

(2) Sites with sacred, cultural, traditional, or historic significance, including traditional and customary trade and migration routes, archeological sites, cultural landscapes, and natural features having cultural significance, subject to the condition that—

(A) not more than 2,400 acres shall be selected for this purpose, from land identified on—

(i) the map entitled ''Places of Sacred, Cultural, Traditional and Historic Significance'', dated March 9, 2009, and labeled ''Attachment B''; and

(ii) the map entitled ''Traditional and Customary Trade and Migration Routes'', dated March 9, 2009, and labeled ''Attachment C'', which includes an identification of—

(I) a conveyance of land 25 feet in width, together with 1-acre sites at each terminus and at 8 locations along the route, with the route, location, and boundaries of the conveyance described on the map inset entitled ''Yakutat to Dry Bay Trade and Migration Route'', dated March 9, 2009, and labeled ''Attachment C'';

(II) a conveyance of land 25 feet in width, together with 1-acre sites at each terminus, with the route, location, and boundaries of the conveyance described on the map inset entitled ''Bay of Pillars to Port Camden Trade and Migration Route'', dated March 9, 2009, and labeled ''Attachment C''; and

(III) a conveyance of land 25 feet in width, together with 1-acre sites at each terminus, with the route, location, and boundaries of the conveyance described on the map inset entitled ''Portage Bay to Duncan Canal Trade and Migration Route,'' dated March 9, 2009, and labeled ''Attachment C''; and

(B) an additional 1,200 acres may be used by Sealaska to acquire places of sacred, cultural, traditional, and historic significance, archeological sites, traditional, and customary trade and migration routes, and other sites with scientific value that advance the understanding and protection of Alaska Native culture and heritage that—

(i) as of the date of enactment of this Act, are not fully identified or adequately documented for cultural significance; and

(ii) are located outside of a unit of the National Park System.

(3) Alaska Native futures sites with traditional and recreational use value, as identified on the map entitled ''Native Futures Sites'', dated March 9, 2009, and labeled ''Attachment D'', subject to the condition that not more than 5,000 acres shall be selected for those purposes.

(c) SITES IN CONSERVATION SYSTEM UNITS.—

(1) IN GENERAL.—No site with sacred, cultural, traditional, or historic significance that is identified in the document labeled ''Attachment B'' and located within a unit of the National Park System shall be conveyed to Sealaska pursuant to this Act.

(2) COOPERATIVE AGREEMENTS.—

(A) IN GENERAL.—The Director of the National Park Service shall offer to enter into a cooperative management agreement with Sealaska, other Village Corporations and Urban Corporations, and federally recognized Indian tribes with cultural and historical ties to Glacier Bay National Park, in accordance with the requirements of subparagraph (B).

(B) REQUIREMENTS.—A cooperative agreement under this paragraph shall—

(i) recognize the contributions of the Alaska Natives of southeast Alaska to the history, culture, and ecology of Glacier Bay National Park and the surrounding area;

(ii) ensure that the resources within the Park are protected and enhanced by cooperative activities and partnerships among federally recognized Indian tribes, Village Corporations and Urban Corporations, Sealaska, and the National Park Service;

(iii) provide opportunities for a richer visitor experience at the Park through direct interactions between visitors and Alaska Natives, including guided tours, interpretation, and the establishment of culturally relevant visitor sites; and

(iv) provide appropriate opportunities for ecologically sustainable visitor-related education and cultural interpretation within the Park—

(I) in a manner that is not in derogation of the purposes and values of the Park (including those values associated with the Park as a Tlingit homeland); and

(II) in a manner consistent with wilderness and ecological preservation.

(C) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director of the National Park Service shall submit to Congress a report describing each activity for cooperative management of each site described in subparagraph (A) carried out under a cooperative agreement under this paragraph.

SEC. 4. CONVEYANCES TO SEALASKA.

(a) TIMELINE FOR CONVEYANCE.—

(1) IN GENERAL.—Not later than 1 year after the date of selection of land by Sealaska under paragraphs (1) and (3) of section 3(b), the Secretary of the Interior (referred to in this Act as the ''Secretary'') shall complete the conveyance of the land to Sealaska.

(2) SIGNIFICANT SITES.—Not later than 2 years after the date of selection of land by Sealaska under section 3(b)(2), the Secretary shall complete the conveyance of the land to Sealaska.

(b) EXPIRATION OF WITHDRAWALS.—On completion of the selection by Sealaska and the conveyances to Sealaska of land under subsection (a) in a manner that is sufficient to fulfill the land entitlement of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)—

(1) the original withdrawal areas set aside for selection by Native Corporations in southeast Alaska under that Act (as in effect on the day before the date of enactment of this Act) shall be rescinded; and

(2) land located within a withdrawal area that is not conveyed to a southeast Alaska Regional Corporation or Village Corporation shall be returned to the unencumbered management of the Forest Service as a part of the Tongass National Forest.

(c) LIMITATION.—Sealaska shall not select or receive under this Act any conveyance of land pursuant to paragraph (1) or (3) of section 3(b) located within—

(1) any conservation system unit;

(2) any federally designated wilderness area; or

(3) any land use designation I or II area.

(d) APPLICABLE EASEMENTS AND PUBLIC ACCESS.—

(1) IN GENERAL.—The conveyance to Sealaska of land pursuant to paragraphs (1) and (2)(A)(ii) of section 3(b) that is located outside a withdrawal area designated under section 16(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1615(a)) shall be subject to—

(A) a reservation for easements for public access on the public roads depicted on the document labeled ''Attachment E'' and dated March 9, 2009;

(B) a reservation for easements along the temporary roads designated by the Forest Service as of the date of enactment of this Act for the public access trails depicted on the document labeled ''Attachment E'' and dated March 9, 2009;

(C) any valid preexisting right reserved pursuant to section 14(g) or 17(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g), 1616(b)); and

(D)(i) the right of noncommercial public access for subsistence uses, consistent with title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111 et seq.), and recreational access without liability to Sealaska; and

(ii) the right of Sealaska to regulate access for public safety, cultural, or scientific purposes, environmental protection, and uses incompatible with natural resource development, subject to the condition that Sealaska shall post on any applicable property, in accordance with State law, notices of any such condition.

(2) EFFECT.—No right of access provided to any individual or entity (other than Sealaska) by this subsection—

(A) creates any interest of such an individual or entity in the land conveyed to Sealaska in excess of that right of access; or

(B) provides standing in any review of, or challenge to, any determination by Sealaska regarding the management or development of the applicable land.

(e) CONDITIONS ON SACRED, CULTURAL, AND HISTORIC SITES.—The conveyance to Sealaska of land selected pursuant to section 3(b)(2)—

(1) shall be subject to a covenant prohibiting any commercial timber harvest or mineral development on the land;

(2) shall not be subject to any additional restrictive covenant based on cultural or historic values, or any other restriction, encumbrance, or easement, except as provided in sections 14(g) and 17(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g), 1616(b)); and

(3) shall allow use of the land as described in subsection (f).

(f) USES OF SACRED, CULTURAL, TRADITIONAL, AND HISTORIC SITES.—Any sacred, cultural, traditional, or historic site or trade or migration route conveyed pursuant to this Act may be used for—

(1) preservation of cultural knowledge and traditions associated with such a site;

(2) historical, cultural, and scientific research and education;

(3) public interpretation and education regarding the cultural significance of those sites to Alaska Natives;

(4) protection and management of the site to preserve the natural and cultural features of the site, including cultural traditions, values, songs, stories, names, crests, and clan usage, for the benefit of future generations; and

(5) site improvement activities for any purpose described in paragraphs (1) through (4), subject to the condition that the activities are consistent with the sacred, cultural, traditional, or historic nature of the site.

(g) TERMINATION OF RESTRICTIVE COVENANTS.—

(1) IN GENERAL.—Each restrictive covenant regarding cultural or historical values with respect to any interim conveyance or patent for a historic or cemetery site issued to

Sealaska pursuant to the regulations contained in sections 2653.3 and 2653.11 of title 43, Code of Federal Regulations (as in effect on the date of enactment of this Act), in accordance with section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)), terminates on the date of enactment of this Act.

(2) REMAINING CONDITIONS.—Land subject to a covenant described in paragraph (1) on the day before the date of enactment of this Act shall be subject to the conditions described in subsection (e).

(3) RECORDS.—Sealaska shall be responsible for recording with the land title recorders office of the State of Alaska any modification to an existing conveyance of land under section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) as a result of this Act.

(h) CONDITIONS ON ALASKA NATIVE FUTURES LAND.—Each conveyance of land to Sealaska selected under section 3(b)(3) shall be subject only to—

(1) a covenant prohibiting any commercial timber harvest or mineral development; and

(2) the restrictive covenants, encumbrances, or easements under sections 14(g) and 17(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g), 1616(b)).

SEC. 5. MISCELLANEOUS.

(a) STATUS OF CONVEYED LAND.—Each conveyance of Federal land to Sealaska pursuant to this Act, and each action carried out to achieve the purpose of this Act, shall be considered to be conveyed or acted on, as applicable, pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(b) ENVIRONMENTAL MITIGATION AND INCENTIVES.—Notwithstanding subsection (e) and (h) of section 4, all land conveyed to Sealaska pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and this Act shall be considered to be qualified to receive or participate in, as applicable—

(1) any federally authorized carbon sequestration program, ecological services program, or environmental mitigation credit; and

(2) any other federally authorized environmental incentive credit or program.

(c) NO MATERIAL EFFECT ON FOREST PLAN.—

(1) IN GENERAL.—The implementation of this Act, including the conveyance of land to Sealaska, alone or in combination with any other factor, shall not require an amendment of, or revision to, the Tongass National Forest Land and Resources Management Plan before the first revision of that Plan scheduled to occur after the date of enactment of this Act.

(2) BOUNDARY ADJUSTMENTS.—The Secretary of Agriculture shall implement any land ownership boundary adjustments to the Tongass National Forest Land and Resources Management Plan resulting from the implementation of this Act through a technical amendment to that Plan.

(d) NO EFFECT ON EXISTING INSTRUMENTS, PROJECTS, OR ACTIVITIES.—

(1) IN GENERAL.—Nothing in this Act or the implementation of this Act revokes, suspends, or modifies any permit, contract, or other legal instrument for the occupancy or use of Tongass National Forest land, or any determination relating to a project or activity that authorizes that occupancy or use, that is in effect on the day before the date of enactment of this Act.

(2) TREATMENT.—The conveyance of land to Sealaska pursuant to this Act shall be subject to the instruments and determinations described in paragraph (1) to the extent that those instruments and determinations authorize occupancy or use of the land so conveyed.

(e) TECHNICAL CORRECTIONS.—

(1) TRIBAL FOREST PROTECTION.—Section 2(a)(2) of the Tribal Forest Protection Act of 2004 (25 U.S.C. 3115a(a)(2)) is amended—

(A) in subparagraph (A), by inserting ‘‘, or is conveyed to an Alaska Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)’’ before the semicolon; and

(B) in subparagraph (B)(i)—

(i) in subclause (I), by striking ‘‘or’’ at the end; and

(ii) by adding at the end the following:

‘‘(III) is owned by an Alaska Native Corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and is forest land or formerly had a forest cover or vegetative cover that is capable of restoration; or’’.

(2) NATIONAL HISTORIC PRESERVATION.—Section 301 of the National Historic Preservation Act (16 U.S.C. 470w) is amended by striking paragraph (14) and inserting the following:

‘‘(14)(A) ‘Tribal lands’ means—

‘‘(i) all land within the exterior boundaries of any Indian reservation;

‘‘(ii) all dependent Indian communities; and

‘‘(iii) land held by an incorporated Alaska Native group, a Regional Corporation, or a Village Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

‘‘(B) Nothing in this paragraph validates, invalidates, or otherwise affects any claim regarding the existence of Indian country (as defined in section 1151 of title 18, United States Code) in the State of Alaska.’’.

SEC. 6. MAPS.

(a) AVAILABILITY.—Each map referred to in this Act shall be maintained on file in—

(1) the office of the Chief of the Forest Service; and

(2) the office of the Secretary.

(b) CORRECTIONS.—The Secretary or the Chief of the Forest Service may make any necessary correction to a clerical or typographical error in a map referred to in this Act.

(c) TREATMENT.—No map referred to in this Act shall be considered to be an attempt by the Federal Government to convey any State or private land.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act and the amendments made by this Act.

By Mr. REID (for Mr. KENNEDY (for himself and Mr. GRASSLEY):

S. 882. A bill to amend the Federal Food, Drug, and Cosmetic Act to ensure the safety and quality of medical products and enhance the authorities of the Food and Drug Administration, and for other purposes; to the Committee on Health, Education, Labor and Pensions.

Mr. GRASSLEY. Mr. President, over the last 5 years I have conducted extensive oversight of the Food and Drug Administration. As a result of my oversight activities, I identified serious problems at the FDA that included: the quashing of scientific opinion within the agency; delays in informing the public of emerging safety problems; too cozy a relationship between the FDA and the industries it is supposed to regulate; and a failure to be adequately transparent and accountable to the public.

The FDA will require strong leadership to rebuild public confidence and tackle the cultural and organizational problems that have plagued the agency.

Strong leadership alone, however, will not fix all the problems.

The agency needs additional tools, resources, and authorities to fulfill its mission of protecting the health and safety of the American people.

In September 2007, the Congress passed the Food and Drug Administration Amendments Act to provide FDA some of the needed tools, resources, and authorities.

This legislation was a positive step forward in strengthening the agency and restoring the public's trust in the FDA, but Congress's work is not done.

Today, I am here to talk about another FDA bill.

In the summer of 2007, I started examining FDA's program for inspections of foreign pharmaceutical manufacturing plants.

I expressed concerns to the FDA regarding, among other things, inspection funding, emerging exporters, and severe weaknesses in the inspection process.

An increasing amount of the drugs and active pharmaceutical ingredients Americans use are being manufactured in foreign countries, primarily in China and India.

Yet as reported by the Government Accountability Office in November 2007, the Food and Drug Administration does not know how many foreign establishments are subject to inspection and the agency conducts relatively few foreign inspections each year.

According to the FDA, from fiscal year 2002 through fiscal year 2007, the agency conducted fewer than 1,400 inspections of foreign pharmaceutical facilities.

And these inspections were often conducted in countries with few reported quality concerns.

In China, the world's largest producer of active pharmaceutical ingredients, and where we have seen increasing reports of contaminated products, only 11 inspections were conducted during fiscal year 2007—that is way too few.

During the same year, FDA conducted 14 inspections in Switzerland, 18 in Germany, and 24 in France—all countries with advanced regulatory infrastructures.

In addition, FDA officials estimated that the agency inspected foreign class II device makers every 27 years and foreign class III device makers every 6 years.

Class III devices are devices that support or sustain human life or present a potentially unreasonable risk of illness or injury, such as pacemakers and heart defibrillators.

In January 2008, we saw too well what happens when we have a broken inspection system.

Baxter International Inc. temporarily suspended production of its

blood thinner Heparin because of an increase in reports of adverse events that may be associated with its drug. Then recalls were announced. There were serious concerns about whether or not this country would have enough Heparin to meet patient needs as a result of the contamination. After several months, FDA's investigation found that the active ingredient in Heparin, which was made at a facility in China, was contaminated. And the serious adverse events in patients who received Heparin were linked to the contaminated blood thinner.

The recalls and investigation of contaminated Heparin highlighted significant weaknesses in FDA's oversight of the production and supply chain and emphasized the need to improve FDA's protection of the safety of products made in this country and abroad.

The FDA is charged with ensuring the safety and efficacy of drugs, pharmaceutical ingredients, and devices produced around the world despite its inadequate budget for inspections, in particular foreign inspections.

It is troubling that the FDA is grossly under-resourced at a time when foreign production of drugs and active pharmaceutical ingredients is growing at record rates.

Last Congress, I introduced the Drug and Device Accountability Act of 2008 with Senator KENNEDY, chairman of the Committee on Health, Education, Labor, and Pensions. The Congress did not have an opportunity to act on that legislation. So today Senator KENNEDY and I are introducing the Drug and Device Accountability Act of 2009.

Senator KENNEDY is not able to join me on the Senate floor, but I thank him for his cooperation and work with my office on this important legislation.

I also want to take this opportunity to express my appreciation for his commitment and efforts over the years to reform and improve the FDA.

I am going to spend the next few minutes highlighting some of the things the Drug and Device Accountability Act of 2009 would do.

This bill would augment FDA's resources through the collection of inspection fees.

It also expands the agency's authority for ensuring the safety of drugs and medical devices, including foreign manufactured drugs and devices by expanding FDA's authority to inspect foreign manufacturers and importers; allowing the FDA to issue subpoenas; and allowing the FDA to detain a device or drug when its inspectors have reason to believe the product is adulterated or misbranded.

In addition, the bill would require individuals responsible for submitting a drug or device application or a report related to safety or efficacy to certify that the application or report complies with applicable regulations and is not false or misleading. Civil as well as criminal penalties could be imposed for false or misleading certifications.

I believe this is an important provision given the troubling findings over the last few years; that is, that some companies have withheld important safety information from the FDA or buried that information in their submissions to the agency.

In addition, in light of recent serious allegations that have been raised by scientists within the FDA regarding the agency's handling of medical device reviews, the bill calls for an Institute of Medicine study to examine FDA's system for clearing and approving devices for marketing.

During President Obama's weekly address last month, the President stated, ''There are certain things only a government can do. And one of those things is ensuring that the foods we eat, and the medicines we take, are safe and do not cause us harm.''

I concur, and the Drug and Device Accountability Act is an opportunity for Congress to help FDA do a better job of ensuring that our increasingly foreign-produced drug and device supply is safe and effective.

I look forward to working with my colleagues in the Senate and with the Obama administration to ensure that FDA has the necessary tools and resources to meet its oversight responsibilities.

By Mr. KERRY (for himself and Mr. GRAHAM):

S. 883. A bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the establishment of the Medal of Honor in 1861, America's highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States, to honor the American military men and women who have been recipients of the Medal of Honor, and to promote awareness of what the Medal of Honor represents and how ordinary Americans, through courage, sacrifice, selfless service and patriotism, can challenge fate and change the course of history; to the Committee on Banking, Housing, and Urban Affairs.

Mr. KERRY. Mr. President, today along with Senator GRAHAM, I am introducing the Medal of Honor Commemorative Coin Act of 2009 to assist the Congressional Medal of Honor Foundation in raising the funds it needs to promote the qualities which the Medal of Honor embodies—courage, sacrifice, selfless service, and patriotism.

The Medal of Honor was first authorized by Congress in 1861 and represents our Nation's highest award for valor in action against an enemy force. The medal symbolizes the value we, as a Nation, place on the power of one individual to make a difference in extraordinary circumstances through selfless actions of bravery. Although the Medal of Honor was created for the Civil War, Congress made it a permanent decoration in 1863. Since then, fewer than 3,500 Medals of Honor have been awarded to members of the U.S. Armed Forces—approximately half during the Civil War. Today, there are only 111 living recipients. These select few exemplify the values of our great nation through their incredible acts of bravery and commitment to our country.

The Congressional Medal of Honor Foundation was formed in 1999. This 501(c)(3) not-for-profit organization promotes heroism and selflessness among our Nation's youth by perpetuating the Medal of Honor's legacy through increased awareness, education, scholarships, behavior, and example. The commemorative coins will be legal tender, emblematic of the spirit of the Medal of Honor, giving the holder a physical reminder of the American tradition of selfless service and sacrifice. These coins will be minted for the year 2011, marking the 150th anniversary of the Medal of Honor's initial authorization by Congress.

Today, in Iraq and Afghanistan, American soldiers not only serve their country selflessly but do so in an exemplary manner. In this time of war and sacrifice it is of utmost importance that we show the people fighting for their country how much we value their service.

This is the medal won by Sergeant First Class Paul R. Smith. Under attack at the Baghdad International Airport, Sergeant Smith quickly organized the defense on the ground to engage a company-sized enemy force. He showed no concern for his own personal safety when he mounted a personnel carrier and manned a .50 caliber machine gun while under fire from the enemy and was mortally wounded in doing so. His valor lead to the defeat of the enemy and saved the lives of numerous injured members of his platoon.

This is the medal won by Captain Humbert Roque Versace. During an intense attack by the Viet Cong in the Xuyen Providence Captain Versace was wounded while engaging the enemy. Although he fought against capture through injury and hostility he was taken prisoner. While incarcerated Captain Versace exemplified the Code of Conduct as a prisoner of war, attempted to escape three times and never gave in to the brutal interrogations all while maintaining command over his fellow American soldiers that were also imprisoned setting an extraordinary example.

This is the medal won by Marine Corps Second Lieutenant Robert Dale Reem, who on the night of November 6, 1950, after leading three separate assaults on an enemy position in the vicinity of Chinhung-ni, Korea, threw himself on top of an enemy grenade that landed amidst his men.

Since 1863 this country has been honoring its greatest heroes by decorating them with the Congressional Medal of Honor. This is an elite group of men and women who make us proud everyday of the U.S. Armed Forces and the protection they afford us. We should show our thanks in the best manner possible.

I ask all my colleagues to support this legislation.

By Mr. BINGAMAN (for himself and Mr. GRASSLEY):

S. 884. A bill to amend title 23, United States Code, to remove privatized highway miles as a factor in apportioning highway funding; to the Committee on Environment and Public Works.

Mr. BINGAMAN. Mr. President, when our States and cities lease their tolled highways to private parties, American taxpayers almost always experience significant fee increases at the toll booth. But our taxpayers' contribution does not end there. Under current tax law, the Federal Treasury subsidizes private lessors through exceedingly generous depreciation and amortization deductions. Meanwhile, Federal funding continues to flow to the state government—as though the highway had never been privatized. Today, I rise to introduce two bills that would put an end to this fleecing of the American taxpayer. I am pleased that Senator GRASSLEY, the Ranking Member of the Senate Finance Committee, is joining me in introducing both bills.

I'd like to take a moment to set the stage, by explaining where we find ourselves. There is no denying the seriousness of our nation's surface transportation funding challenges. Among the solutions that have been offered are so-called Public-Private Partnerships, or PPPs. Under one PPP model, a state or local government leases existing highways to a private party, often on a very long-term basis. We have already seen two existing highways sold off to private companies. In 2004, Chicago sold Macquarie of Australia concession rights to the Chicago Skyway for 99 years, in exchange for $1.8 billion. In 2006, Indiana sold concession rights to the Indiana Toll Road to a partnership between Cintra of Spain and Macquarie for 75 years, in exchange for $3.8 billion. Both deals have generated significant interest from the press and the financial community. Now, investors are approaching state and local governments across the country, seeking a piece of what is believed to be a very lucrative pie. For instance, last year Governor Ed Rendell proposed a $12.8 billion deal for a 75-year sale of concession rights to the Pennsylvania Turnpike, which, if ratified, would represent the largest privatization of highway infrastructure in U.S. history.

While I agree that States should have some latitude to determine how to operate their own highways, that doesn't mean that the Federal taxpayer should subsidize leasing these highways. But as we uncovered at a Finance Subcommittee on Energy, Natural Resources and Infrastructure hearing that I convened last year, the Federal government—and taxpayers in all states—now subsidizes these PPPs through exceedingly generous tax provisions. To take advantage of the Tax Code's 15-year cost recovery period for highway infrastructure, a private lessor must obtain constructive ownership of the road. Constructive ownership is generally attained by entering a lease that exceeds the 45-year period that the Bureau of Economic Affairs, BEA, says is a road's ''useful life.'' Once they attain this constructive ownership, the private lessor can recover most of its costs over the first 15 years of the lease—or one-third as long as BEA says the highway infrastructure can be expected to last. The end result? Private operators demand exceptionally long lease lengths, to ensure they can take advantage of the Tax Code's subsidy.

These Tax Code provisions are of interest not just because the Senate must prudently shepherd our Nation's tax revenues, but also because there are considerable transportation policy dangers to these very long-term leases. Chicago signed a 99-year lease for the Skyway, a road that, at the time of the lease, had only a 47 operating history. Indiana signed a 75-year lease for its Toll Road, a highway that, at the time of the lease, had only a 49 history. With respect to a critical artery of transportation, how can a State or city possibly predict its future needs for a period that is twice that artery's operating history? It is impossible to envision how transportation will change in the next hundred years. As a point of reference, the Model T is 101 years old—can we even pretend to imagine what the next century will bring? These very long lease lengths are all the more troubling because these deals often contain non-compete clauses, which make it difficult for public transportation agencies to address safety and congestion problems on highways and adjacent streets.

It is true that private lessors are merely following the letter of the law. But when cost-recovery rules subsidize forms of investment that contravene the public interest, Congress should change those rules. Indeed, public policy concerns have already led Congress to alter cost-recovery rules for other assets, such as luxury cars, sport utility vehicles, and sports franchises.

Senator GRASSLEY and I agree that to protect the American taxpayer, such an alteration is also necessary here. It's time for the tax tail to stop wagging the dog, by cutting off Federal tax subsidies to companies that privatize existing American highways. Our first bill, the Transportation Access for All Americans Act, would do just that. It would allow a private operator of an existing highway to depreciate costs associated with tangible highway infrastructure on a 45-year period, in line with Bureau of Economic Analysis estimates, and to amortize the intangible right to collect tolls on a schedule that is no shorter than the lease's actual length. By making these changes to the Tax Code, our bill eliminates the unjustifiable subsidy that the U.S. taxpayer is now asked to provide directly to the private operators.

Our second bill, S. 885, the Transportation Equity for All Americans Act, deals with the highway funding that is provided for a privatized road. As I understand it, when a road is privatized, all responsibility for maintaining the road, collecting tolls, paying the investors' profit, and so forth are taken on by the private entity. It simply makes no sense that the road should continue to qualify for highway funding if the road is privately operated. Similarly, it makes no sense that the formulae that distribute the Federal highway funding should reflect any credit for privatized roads—it would be like the users paying twice, once at the toll booth and again in the taxes they already pay to use the Nation's highways.

Under current law, all roads, including interstate highways, national highways, and other major state and local roads in the federal-aid system are included in the calculation of the federal highway funds. The lane-miles and vehicle-miles-traveled on all these roads are used directly to apportion the federal highway funds for the Interstate Maintenance Program, the National Highway Program, and the Surface Transportation Program. The calculation currently includes roads that are publicly or privately operated. Our second bill is very simple; it subtracts from these calculations the lane-miles and vehicle-miles-traveled for any privatized highway, thus eliminating the double payments. The bill also corrects the Equity Bonus program to reflect properly the changes in the formula calculations.

This year Congress must reauthorize the Federal surface transportation programs. I look forward to working with Finance Chairman BAUCUS and Senator GRASSLEY and EPW Chairman BOXER and Senator INHOFE to complete a new transportation bill that meets the needs of my State and the Nation.

Mr. President, I ask unanimous consent that the text of the bill and a bill summary be printed in the RECORD.

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

S. 884

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 ''Transportation Equity for All Americans Act''.

SEC. 2. REMOVAL OF PRIVATIZED HIGHWAY MILES.

(a) IN GENERAL.—Section 104(b) of title 23, United States Code, is amended by adding at the end the following:

''(6) PRIVATIZED HIGHWAY MILES.—

''(A) DEFINITION OF PRIVATIZED HIGHWAY.—In this paragraph, the term 'privatized highway' means a highway subject to an agreement giving a private entity—

''(i) control over the operation of the highway; and

''(ii) ownership over the toll revenues collected from the operation of the highway.

''(B) EXCLUSION.—For the purposes of paragraphs (1), (3), and (4), the lane miles and vehicle miles traveled on a privatized highway

that is otherwise an included highway shall be excluded from consideration as factors in the formula for apportionment of funds under this title.''.

(b) EQUITY BONUS.—Section 105 of title 23, United States Code, is amended by adding at the end the following:

''(g) PRIVATIZED HIGHWAYS.—Calculations under this section shall be made without taking into account the exclusion under section 104(b)(6) of certain lane miles and vehicle miles traveled from consideration as factors in the formula for apportionment of funds pursuant to this title.''.

BILL SUMMARY—TRANSPORTATION ACCESS FOR ALL AMERICANS ACT

The Internal Revenue Code generally characterizes a lease of assets as an outright purchase of those assets if the lessee has acquired all the benefits and burdens of ownership for a term that significantly exceeds their expected remaining useful life (as generally determined by the Bureau of Economic Analysis). The Bureau of Economic Analysis estimates the service life of highways and streets to be 45 years. For Federal income tax purposes, a lessor with such constructive ownership is allowed to recover its costs through depreciation and amortization deductions. Notwithstanding BEA's 45-year estimate, the Tax Code currently permits the value of the lease of tangible infrastructure to be depreciated on a 15-year schedule, on a 150% declining-balance basis. The intangible franchise right to collect tolls is currently recovered over a 15-year period, regardless of the lease length. The Act would amend Section 168(g)(2) of the Internal Revenue Code so that a taxpayer that leases an existing highway on a sufficiently longterm basis can depreciate the tangible infrastructure on a 45-year schedule, on a straight-line basis. The Act would also amend Section 197(f) of the Internal Revenue Code so that the lessor of an existing highway can amortize the intangible franchise right to collect tolls over the greater of a 15-year period or the actual length of the lease.

BILL SUMMARY—TRANSPORTATION EQUITY FOR ALL AMERICANS ACT

The bill would amend sections 104(b) and 105 of title 23, USC, pertaining to Federal-aid highways apportionment factors and the equity bonus program. Section 104(b) provides the manner in which the Secretary apportions the sums authorized to be appropriated for expenditure on the Interstate and National Highway System program, the Congestion Mitigation and Air Quality Improvement program, the highway safety improvement program, and the Surface Transportation program for that fiscal year, among the several States. The amendment to section 104(b) would remove lane miles and vehicle miles traveled on a ''privatized highway'' from the formula factors for the National Highway System, the Surface Transportation program, and the Interstate Maintenance component.

Section 105, the equity bonus program, provides that the Secretary allocate among the States amounts sufficient to ensure that no State receives a percentage of the total apportionments for the fiscal year for specific programs that is less than the calculated State percentage. The amendment to section 105 would provide that, notwithstanding section 104(b)(6), lane miles and vehicle miles traveled on a ''privatized highway'' are not excluded from the calculations under this section.

By Mr. BINGAMAN (for himself and Mr. GRASSLEY):

S. 885. A bill to amend the Internal Revenue Code of 1986 to provide special depreciation and amortization rules for highway and related property subject to long-term leases, and for other purposes; to the Committee of Finance.

Mr. BINGAMAN. 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 placed in the RECORD, as follows:

S. 885

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 ''Transportation Access for All Americans Act''.

SEC. 2. DEPRECIATION AND AMORTIZATION RULES FOR HIGHWAY AND RELATED PROPERTY SUBJECT TO LONG-TERM LEASES.

(a) ACCELERATED COST RECOVERY.—

(1) IN GENERAL.—Section 168(g)(1) of the Internal Revenue Code of 1986 (relating to alternative depreciation system for certain property) is amended by striking ''and'' at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any applicable leased highway property,''.

(2) RECOVERY PERIOD.—The table contained in subparagraph (C) of section 168(g)(2) of such Code is amended by redesignating clause (iv) as clause (v) and by inserting after clause (iii) the following new clause:

''(iv) Applicable leased highway property ..... 45 years.''.

(3) APPLICABLE LEASED HIGHWAY PROPERTY DEFINED.—

(A) IN GENERAL.—Section 168(g) of such Code is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) APPLICABLE LEASED HIGHWAY PROPERTY.—For purposes of paragraph (1)(E)—

''(A) IN GENERAL.—The term 'applicable leased highway property' means property to which this section otherwise applies which—

''(i) is subject to an applicable lease, and

''(ii) is placed in service before the date of such lease.

''(B) APPLICABLE LEASE.—The term 'applicable lease' means a lease or other arrangement—

''(i) which is between the taxpayer and a State or political subdivision thereof, or any agency or instrumentality of either, and

''(ii) under which the taxpayer—

''(I) leases a highway and associated improvements,

''(II) receives a right-of-way on the public lands underlying such highway and improvements, and

''(III) receives a grant of a franchise or other intangible right permitting the taxpayer to receive funds relating to the operation of such highway.''.

(B) CONFORMING AMENDMENT.—Subparagraph (F) of section 168(g)(1) (as redesignated by subsection (a)(1)) is amended by striking ''paragraph (7)'' and inserting ''paragraph (8)''.

(b) AMORTIZATION OF INTANGIBLES.—Section 197(f) of the Internal Revenue Code of 1986 (relating to special rules for amortization of intangibles) is amended by adding at the end the following new paragraph:

''(11) INTANGIBLES RELATING TO APPLICABLE LEASED HIGHWAY PROPERTY.—In the case of any section 197 intangible property which is subject to an applicable lease (as defined in section 168(g)(8)(B)), the amortization period under this section shall not be less than the term of the applicable lease. For purposes of the preceding sentence, rules similar to the rules of section 168(i)(3)(A) shall apply in determining the term of the applicable lease.''.

(c) NO PRIVATE ACTIVITY BOND FINANCING OF APPLICABLE LEASES.—Section 147(e) of the Internal Revenue Code of 1986 is amended by inserting '', or to finance any applicable lease (as defined in section 168(g)(8)(B))'' after ''premises''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to leases entered into after the date of the enactment of this Act.

By Mr. DURBIN (for himself and Mr. GRASSLEY):

S. 887. A bill to amend the Immigration and Nationality Act to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States and for other purposes; to the Committee on the Judiciary.

Mr. DURBIN. 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. 887

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''H–1B and L–1 Visa Reform Act of 2009''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.

TITLE I—H–1B VISA FRAUD AND ABUSE PROTECTIONS

Subtitle A—H–1B Employer Application Requirements

Sec. 101. Modification of application requirements.
Sec. 102. New application requirements.
Sec. 103. Application review requirements.

Subtitle B—Investigation and Disposition of Complaints Against H–1B Employers

Sec. 111. General modification of procedures for investigation and disposition.
Sec. 112. Investigation, working conditions, and penalties.
Sec. 113. Waiver requirements.
Sec. 114. Initiation of investigations.
Sec. 115. Information sharing.
Sec. 116. Conforming amendment.

Subtitle C—Other Protections

Sec. 121. Posting available positions through the Department of Labor.
Sec. 122. H–1B government authority and requirements.
Sec. 123. Requirements for information for H–1B and L–1 nonimmigrants.
Sec. 124. Additional Department of Labor employees.
Sec. 125. Technical correction.
Sec. 126. Application.

TITLE II—L–1 VISA FRAUD AND ABUSE PROTECTIONS

Sec. 201. Prohibition on outplacement of L–1 nonimmigrants.
Sec. 202. L–1 employer petition requirements for employment at new offices.
Sec. 203. Cooperation with Secretary of State.
Sec. 204. Investigation and disposition of complaints against L–1 employers.
Sec. 205. Wage rate and working conditions for L–1 nonimmigrant.

Sec. 206. Penalties.
Sec. 207. Prohibition on retaliation against L–1 nonimmigrants.
Sec. 208. Reports on L–1 nonimmigrants.
Sec. 209. Technical amendments.
Sec. 210. Application.
Sec. 211. Report on L–1 blanket petition process.

TITLE I—H–1B VISA FRAUD AND ABUSE PROTECTIONS

Subtitle A—H–1B Employer Application Requirements

SEC. 101. MODIFICATION OF APPLICATION REQUIREMENTS.

(a) GENERAL APPLICATION REQUIREMENTS.—Subparagraph (A) of section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended to read as follows:

''(A) The employer—

''(i) is offering and will offer to H–1B nonimmigrants, during the period of authorized employment for each H–1B nonimmigrant, wages that are determined based on the best information available at the time the application is filed and which are not less than the highest of—

''(I) the locally determined prevailing wage level for the occupational classification in the area of employment;

''(II) the median average wage for all workers in the occupational classification in the area of employment; and

''(III) the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics survey; and

''(ii) will provide working conditions for such H–1B nonimmigrant that will not adversely affect the working conditions of other workers similarly employed.''.

(b) INTERNET POSTING REQUIREMENT.—Subparagraph (C) of such section 212(n)(1) is amended—

(1) by redesignating clause (ii) as subclause (II);

(2) by striking ''(i) has provided'' and inserting the following:

''(ii)(I) has provided''; and

(3) by inserting before clause (ii), as redesignated by paragraph (2) of this subsection, the following:

''(i) has posted on the Internet website described in paragraph (3), for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that includes a description of—

''(I) the wages and other terms and conditions of employment;

''(II) the minimum education, training, experience, and other requirements for the position; and

''(III) the process for applying for the position; and''.

(c) WAGE DETERMINATION INFORMATION.—Subparagraph (D) of such section 212(n)(1) is amended by inserting ''the wage determination methodology used under subparagraph (A)(i),'' after ''shall contain''.

(d) APPLICATION OF REQUIREMENTS TO ALL EMPLOYERS.—

(1) NONDISPLACEMENT.—Subparagraph (E) of such section 212(n)(1) is amended—

(A) in clause (i)—

(i) by striking ''90 days'' both places it appears and inserting ''180 days''; and

(ii) by striking ''(i) In the case of an application described in clause (ii), the'' and inserting ''The''; and

(B) by striking clause (ii).

(2) RECRUITMENT.—Subparagraph (G)(i) of such section 212(n)(1) is amended by striking ''In the case of an application described in subparagraph (E)(ii), subject'' and inserting ''Subject''.

(e) REQUIREMENT FOR WAIVER.—Subparagraph (F) of such section 212(n)(1) is amended to read as follows:

''(F) The employer shall not place, outsource, lease, or otherwise contract for the services or placement of H–1B nonimmigrants with another employer unless the employer of the alien has been granted a waiver under paragraph (2)(E).''.

SEC. 102. NEW APPLICATION REQUIREMENTS.

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting after clause (ii) of subparagraph (G) the following:

''(H)(i) The employer has not advertised any available position specified in the application in an advertisement that states or indicates that—

''(I) such position is only available to an individual who is or will be an H–1B nonimmigrant; or

''(II) an individual who is or will be an H–1B nonimmigrant shall receive priority or a preference in the hiring process for such position.

''(ii) The employer has not solely recruited individuals who are or who will be H–1B nonimmigrants to fill such position.

''(I) If the employer employs 50 or more employees in the United States, the sum of the number of such employees who are H–1B nonimmigrants plus the number of such employees who are nonimmigrants described in section 101(a)(15)(L) may not exceed 50 percent of the total number of employees.

''(J) If the employer, in such previous period as the Secretary shall specify, employed 1 or more H–1B nonimmigrants, the employer shall submit to the Secretary the Internal Revenue Service Form W-2 Wage and Tax Statement filed by the employer with respect to the H–1B nonimmigrants for such period.''.

SEC. 103. APPLICATION REVIEW REQUIREMENTS.

(a) TECHNICAL AMENDMENT.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)), as amended by section 102, is further amended in the undesignated paragraph at the end, by striking ''The employer'' and inserting the following:

''(K) The employer.''.

(b) APPLICATION REVIEW REQUIREMENTS.—Subparagraph (K) of such section 212(n)(1), as designated by subsection (a), is amended—

(1) by inserting ''and through the Department of Labor's website, without charge.'' after ''D.C.'';

(2) by striking ''only for completeness'' and inserting ''for completeness and clear indicators of fraud or misrepresentation of material fact,'';

(3) by striking ''or obviously inaccurate'' and inserting '', presents clear indicators of fraud or misrepresentation of material fact, or is obviously inaccurate'';

(4) by striking ''within 7 days of'' and inserting ''not later than 14 days after''; and

(5) by adding at the end the following: ''If the Secretary's review of an application identifies clear indicators of fraud or misrepresentation of material fact, the Secretary may conduct an investigation and hearing in accordance with paragraph (2).''.

Subtitle B—Investigation and Disposition of Complaints Against H–1B Employers

SEC. 111. GENERAL MODIFICATION OF PROCEDURES FOR INVESTIGATION AND DISPOSITION.

Subparagraph (A) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by striking ''(A) Subject'' and inserting ''(A)(i) Subject'';

(2) by striking ''12 months'' and inserting ''24 months'';

(3) by striking the last sentence; and

(4) by adding at the end the following:

''(ii)(I) Upon the receipt of such a complaint, the Secretary may initiate an investigation to determine if such a failure or misrepresentation has occurred.

''(II) The Secretary may conduct surveys of the degree to which employers comply with the requirements of this subsection and may conduct annual compliance audits of employers that employ H–1B nonimmigrants.

''(III) The Secretary shall—

''(aa) conduct annual compliance audits of not less than 1 percent of the employers that employ H–1B nonimmigrants during the applicable calendar year;

''(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are H–1B nonimmigrants; and

''(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.''.

SEC. 112. INVESTIGATION, WORKING CONDITIONS, AND PENALTIES.

Subparagraph (C) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i)—

(A) in the matter preceding subclause (I)—

(i) by striking ''a condition of paragraph (1)(B), (1)(E), or (1)(F)'' and inserting ''a condition under subparagraph (A), (B), (C)(i), (E), (F), (G)(i)(I), (H), (I), or (J) of paragraph (1)''; and

(ii) by striking ''(1)(C)'' and inserting ''(1)(C)(ii)''; and

(B) in subclause (I)—

(i) by striking ''$1,000'' and inserting ''$2,000''; and

(ii) by striking ''and'' at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and ''and'';

(D) by adding at the end the following:

''(III) an employer that violates such subparagraph (A) shall be liable to the employees harmed by such violations for lost wages and benefits.''; and

(2) in clause (ii)

(A) in subclause (I)—

(i) by striking ''may'' and inserting ''shall''; and

(ii) by striking ''$5,000'' and inserting ''$10,000''; and

(B) in subclause (II), by striking the period at the end and inserting a semicolon and ''and'';

(C) by adding at the end the following:

''(III) an employer that violates such subparagraph (A) shall be liable to the employees harmed by such violations for lost wages and benefits.''; and

(3) in clause (iii)—

(A) in the matter preceding subclause (I), by striking ''90 days'' both places it appears and inserting ''180 days'';

(B) in subclause (I)—

(i) by striking ''may'' and inserting ''shall''; and

(ii) by striking ''and'' at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and ''and''; and

(D) by adding at the end the following:

''(III) an employer that violates subparagraph (A) of such paragraph shall be liable to the employees harmed by such violations for lost wages and benefits.'';

(4) in clause (iv)—

(A) by inserting ''to take, fail to take, or threaten to take or fail to take, a personnel action, or'' before ''to intimidate'';

(B) by inserting ''(I)'' after ''(iv)''; and

(C) by adding at the end the following:

''(II) An employer that violates this clause shall be liable to the employees harmed by such violation for lost wages and benefits.''; and

(5) in clause (vi)—

(A) by amending subclause (I) to read as follows:

''(I) It is a violation of this clause for an employer who has filed an application under this subsection—

''(aa) to require an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer (the Secretary shall determine whether a required payment is a penalty, and not liquidated damages, pursuant to relevant State law); and

''(bb) to fail to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

''(AA) the opportunity to participate in health, life, disability, and other insurance plans;

''(BB) the opportunity to participate in retirement and savings plans; and

''(CC) cash bonuses and noncash compensation, such as stock options (whether or not based on performance).''; and

(B) in subclause (III), by striking ''$1,000'' and inserting ''$2,000''.

SEC. 113. WAIVER REQUIREMENTS.

(a) IN GENERAL.—Subparagraph (E) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended to read as follows:

''(E)(i) The Secretary of Labor may waive the prohibition in paragraph (1)(F) if the Secretary determines that the employer seeking the waiver has established that—

''(I) the employer with whom the H–1B nonimmigrant would be placed has not displaced, and does not intend to displace, a United States worker employed by the employer within the period beginning 180 days before and ending 180 days after the date of the placement of the nonimmigrant with the employer;

''(II) the H–1B nonimmigrant will not be controlled and supervised principally by the employer with whom the H–1B nonimmigrant would be placed; and

''(III) the placement of the H–1B nonimmigrant is not essentially an arrangement to provide labor for hire for the employer with whom the H–1B nonimmigrant will be placed.

''(ii) The Secretary shall grant or deny a waiver under this subparagraph not later than 7 days after the Secretary receives the application for such waiver.''.

(b) REQUIREMENT FOR RULES.—

(1) RULES FOR WAIVERS.—The Secretary of Labor shall promulgate rules, after notice and a period for comment, for an employer to apply for a waiver under subparagraph (E) of section 212(n)(2) of such Act, as amended by subsection (a).

(2) REQUIREMENT FOR PUBLICATION.—The Secretary of Labor shall submit to Congress and publish in the Federal Register and other appropriate media a notice of the date that rules required by paragraph (1) are published.

SEC. 114. INITIATION OF INVESTIGATIONS.

Subparagraph (G) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i), by striking ''if the Secretary'' and all that follows and inserting ''with regard to the employer's compliance with the requirements of this subsection.'';

(2) in clause (ii), by striking ''and whose identity'' and all that follows through ''failure or failures.'' and inserting ''the Secretary of Labor may conduct an investigation into the employer's compliance with the requirements of this subsection.'';

(3) in clause (iii), by striking the last sentence;

(4) by striking clauses (iv) and (v);

(5) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi), respectively;

(6) in clause (iv), as so redesignated, by striking ''meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months'' and inserting ''comply with the requirements under this subsection, unless the Secretary of Labor receives the information not later than 24 months'';

(7) by amending clause (v), as so redesignated, to read as follows:

''(v) The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. A determination by the Secretary under this clause shall not be subject to judicial review.'';

(8) in clause (vi), as so redesignated, by striking ''An investigation'' and all that follows through ''the determination.'' and inserting ''If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination.''; and

(9) by adding at the end the following:

''(vii) If the Secretary of Labor, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (C).''.

SEC. 115. INFORMATION SHARING.

Subparagraph (H) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended to read as follows:

''(H) The Director of United States Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by employers of H–1B nonimmigrants as part of the adjudication process that indicates that the employer is not complying with visa program requirements for H–1B nonimmigrants. The Secretary may initiate and conduct an investigation and hearing under this paragraph after receiving information of noncompliance under this subparagraph.''.

SEC. 116. CONFORMING AMENDMENT.

Subparagraph (F) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by striking ''The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer.''.

Subtitle C—Other Protections

SEC. 121. POSTING AVAILABLE POSITIONS THROUGH THE DEPARTMENT OF LABOR.

(a) DEPARTMENT OF LABOR WEBSITE.—Paragraph (3) of section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended to read as follows:

''(3)(A) Not later than 90 days after the date of the enactment of the H–1B and L–1 Visa Reform Act of 2009, the Secretary of Labor shall establish a searchable Internet website for posting positions as required by paragraph (1)(C). Such website shall be available to the public without charge.

''(B) The Secretary may work with private companies or nonprofit organizations to develop and operate the Internet website described in subparagraph (A).

''(C) The Secretary may promulgate rules, after notice and a period for comment, to carry out the requirements of this paragraph.''.

(b) REQUIREMENT FOR PUBLICATION.—The Secretary of Labor shall submit to Congress and publish in the Federal Register and other appropriate media a notice of the date that the Internet website required by paragraph (3) of section 212(n) of such Act, as amended by subsection (a), will be operational.

(c) APPLICATION.—The amendments made by subsection (a) shall apply to an application filed on or after the date that is 30 days after the date described in subsection (b).

SEC. 122. H–1B GOVERNMENT AUTHORITY AND REQUIREMENTS.

(a) IMMIGRATION DOCUMENTS.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

''(l) EMPLOYER TO PROVIDE IMMIGRATION PAPERWORK EXCHANGED WITH FEDERAL AGENCIES.—Not later than 21 business days after receiving a written request from a former, current, or future employee or beneficiary, an employer shall provide such employee or beneficiary with the original (or a certified copy of the original) of all petitions, notices, and other written communication exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department that is related to an immigrant or nonimmigrant petition filed by the employer for such employee or beneficiary.''.

(b) REPORT ON JOB CLASSIFICATION AND WAGE DETERMINATIONS.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall prepare a report analyzing the accuracy and effectiveness of the Secretary of Labor's current job classification and wage determination system. The report shall—

(1) specifically address whether the systems in place accurately reflect the complexity of current job types as well as geographic wage differences; and

(2) make recommendations concerning necessary updates and modifications.

SEC. 123. REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

''(s) REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.—

''(1) IN GENERAL.—Upon issuing a visa to an applicant for nonimmigrant status pursuant to subparagraph (H)(i)(b) or (L) of section 101(a)(15) who is outside the United States, the issuing office shall provide the applicant with—

''(A) a brochure outlining the obligations of the applicant's employer and the rights of the applicant with regard to employment under Federal law, including labor and wage protections;

''(B) the contact information for appropriate Federal agencies or departments that offer additional information or assistance in clarifying such obligations and rights; and

''(C) a copy of the application submitted for the nonimmigrant under section 212(n) or the petition submitted for the nonimmigrant under subsection (c)(2)(A), as appropriate.

''(2) Upon the issuance of a visa to an applicant referred to in paragraph (1) who is inside the United States, the issuing officer of the Department of Homeland Security shall provide the applicant with the material described in clauses (i), (ii), and (iii) of subparagraph (A).''.

SEC. 124. ADDITIONAL DEPARTMENT OF LABOR EMPLOYEES.

(a) IN GENERAL.—The Secretary of Labor is authorized to hire 200 additional employees to administer, oversee, investigate, and enforce programs involving nonimmigrant employees described in section 101(a)(15)(H)(i)(B).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 125. TECHNICAL CORRECTION.

Section 212 of the Immigration and Nationality Act is amended by redesignating the second subsection (t), as added by section 1(b)(2)(B) of the Act entitled ''An Act to amend and extend the Irish Peace Process Cultural and Training Program Act of 1998'' (Public Law 108–449 (118 Stat. 3470)), as subsection (u).

SEC. 126. APPLICATION.

Except as specifically otherwise provided, the amendments made by this title shall apply to applications filed on or after the date of the enactment of this Act.

TITLE II—L–1 VISA FRAUD AND ABUSE PROTECTIONS

SEC. 201. PROHIBITION ON OUTPLACEMENT OF L–1 NONIMMIGRANTS.

(a) IN GENERAL.—Subparagraph (F) of section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended to read as follows:

''(F)(i) Unless an employer receives a waiver under clause (ii), an employer may not employ an alien, for a cumulative period of more than 1 year, who—

''(I) will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L); and

''(II) will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent, including pursuant to an outsourcing, leasing, or other contracting agreement.''

''(ii) The Secretary of Homeland Security may grant a waiver of the requirements of clause (i) for an employer if the Secretary determines that the employer has established that—

''(I) the employer with whom the alien referred to in clause (i) would be placed has not displaced and does not intend to displace a United States worker employed by the employer within the period beginning 180 days after the date of the placement of such alien with the employer;

''(II) such alien will not be controlled and supervised principally by the employer with whom the nonimmigrant would be placed; and

''(III) the placement of the nonimmigrant is not essentially an arrangement to provide labor for hire for an unaffiliated employer with whom the nonimmigrant will be placed, rather than a placement in connection with the provision or a product or service for which specialized knowledge specific to the petitioning employer is necessary.

''(iii) The Secretary shall grant or deny a waiver under clause (ii) not later than 7 days after the date that the Secretary receives the application for the waiver.''.

(b) REGULATIONS.—The Secretary of Homeland Security shall promulgate rules, after notice and a period for comment, for an employer to apply for a waiver under subparagraph (F)(ii) of section 214(c)(2), as added by subsection (a).

SEC. 202. L–1 EMPLOYER PETITION REQUIREMENTS FOR EMPLOYMENT AT NEW OFFICES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

''(G)(i) If the beneficiary of a petition under this paragraph is coming to the United States to open, or be employed in, a new office, the petition may be approved for up to 12 months only if—

''(I) the alien has not been the beneficiary of 2 or more petitions under this subparagraph during the immediately preceding 2 years; and

''(II) the employer operating the new office has—

''(aa) an adequate business plan;

''(bb) sufficient physical premises to carry out the proposed business activities; and

''(cc) the financial ability to commence doing business immediately upon the approval of the petition.

''(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits an application to the Secretary of Homeland Security that contains—

''(I) evidence that the importing employer meets the requirements of this subsection;

''(II) evidence that the beneficiary of the petition is eligible for nonimmigrant status under section 101(a)(15)(L);

''(III) a statement summarizing the original petition;

''(IV) evidence that the importing employer has fully complied with the business plan submitted under clause (i)(I);

''(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

''(VI) evidence that the importing employer, for the entire period beginning on the date on which the petition was approved under clause (i), has been doing business at the new office through regular, systematic, and continuous provision of goods and services;

''(VII) a statement of the duties the beneficiary has performed at the new office during the approval period under clause (i) and the duties the beneficiary will perform at the new office during the extension period granted under this clause;

''(VIII) a statement describing the staffing at the new office, including the number of employees and the types of positions held by such employees;

''(IX) evidence of wages paid to employees;

''(X) evidence of the financial status of the new office; and

''(XI) any other evidence or data prescribed by the Secretary.

''(iii) A new office employing the beneficiary of an L–1 petition approved under this paragraph shall do business only through regular, systematic, and continuous provision of goods and services for the entire period for which the petition is sought.

''(iv) Notwithstanding clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security, in the Secretary's discretion, may approve a subsequently filed petition on behalf of the beneficiary to continue employment at the office described in this subparagraph for a period beyond the initially granted 12-month period if the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods and services for the 6 months immediately preceding the date of extension petition filing and demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances, as determined by the Secretary in the Secretary's discretion.''.

SEC. 203. COOPERATION WITH SECRETARY OF STATE.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, is further amended by adding at the end the following:

''(H) For purposes of approving petitions under this paragraph, the Secretary of Homeland Security shall work cooperatively with the Secretary of State to verify the existence or continued existence of a company or office in the United States or in a foreign country.''.

SEC. 204. INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST L–1 EMPLOYERS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 202 and 203, is further amended by adding at the end the following:

''(I)(i) The Secretary of Homeland Security may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(L) with regard to the employer's compliance with the requirements of this subsection.

''(ii) If the Secretary receives specific credible information from a source who is likely to have knowledge of an employer's practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer's compliance with the requirements of this subsection. The Secretary may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

''(iii) The Secretary shall establish a procedure for any person desiring to provide to the Secretary information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary and completed by or on behalf of the person.

''(iv) No investigation described in clause (ii) (or hearing described in clause (vi) based on such investigation) may be conducted with respect to information about a failure to comply with the requirements under this subsection, unless the Secretary receives the information not later than 24 months after the date of the alleged failure.

''(v) Before commencing an investigation of an employer under clause (i) or (ii), the Secretary shall provide notice to the employer of the intent to conduct such investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

''(vi) If the Secretary, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide the interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

''(vii) If the Secretary, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (L).

''(viii)(I) The Secretary may conduct surveys of the degree to which employers comply with the requirements under this section.

''(II) The Secretary shall—

''(aa) conduct annual compliance audits of not less than 1 percent of the employers that employ nonimmigrants described in section 101(a)(15)(L) during the applicable fiscal year;

''(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are nonimmigrants described in 101(a)(15)(L); and

''(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.''.

SEC. 205. WAGE RATE AND WORKING CONDITIONS FOR L–1 NONIMMIGRANT.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, 203, and 204, is further amended by adding at the end the following:

''(J)(i) An employer that employs a nonimmigrant described in section 101(a)(15)(L) for a cumulative period of time in excess of 1 year shall—

''(I) offer such nonimmigrant, during the period of authorized employment, wages, based on the best information available at the time the application is filed, which are not less than the highest of—

''(aa) the locally determined prevailing wage level for the occupational classification in the area of employment;

''(bb) the median average wage for all workers in the occupational classification in the area of employment; and

''(cc) the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics survey; and

''(II) provide working conditions for such nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

''(ii) If an employer, in such previous period specified by the Secretary of Homeland Security, employed 1 or more such nonimmigrants, the employer shall provide to the Secretary of Homeland Security the Internal Revenue Service Form W–2 Wage and Tax Statement filed by the employer with respect to such nonimmigrants for such period.

''(iii) It is a failure to meet a condition under this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

''(I) to require such a nonimmigrant to pay a penalty for ceasing employment with the employer before a date mutually agreed to by the nonimmigrant and the employer; or

''(II) to fail to offer to such a nonimmigrant, during the nonimmigrant's period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

''(aa) the opportunity to participate in health, life, disability, and other insurance plans;

''(bb) the opportunity to participate in retirement and savings plans; and

''(cc) cash bonuses and noncash compensation, such as stock options (whether or not based on performance).

''(iv) The Secretary of Homeland Security shall determine whether a required payment under clause (iii)(I) is a penalty (and not liquidated damages) pursuant to relevant State law.''.

(b) REGULATIONS.—The Secretary of Homeland Security shall promulgate rules, after notice and a period of comment, to implement the requirements of subparagraph (J) of section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as added by subsection (a). In promulgating these rules, the Secretary shall take into consideration any special circumstances relating to intracompany transfers.

SEC. 206. PENALTIES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 202, 203, 204, and 205, is further amended by adding at the end the following:

''(K)(i) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a failure by an employer to meet a condition under subparagraph (F), (G), (J), or (L) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

''(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $2,000 per violation) as the Secretary determines to be appropriate;

''(II) the Secretary may not, during a period of at least 1 year, approve a petition for that employer to employ 1 or more aliens as such nonimmigrants; and

''(III) in the case of a violation of subparagraph (J) or (L), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.

''(ii) If the Secretary finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph (F), (G), (J). or (L) or a willful misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

''(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate;

''(II) the Secretary may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants; and

''(III) in the case of a violation of subparagraph (J) or (L), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.''.

SEC. 207. PROHIBITION ON RETALIATION AGAINST L–1 NONIMMIGRANTS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, 203, 204, 205, and 206, is further amended by adding at the end the following:

''(L)(i) It is a violation of this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L) to take, fail to take, or threaten to take or fail to take, a personnel action, or to intimidate, threaten, restrain, coerce, blacklist, discharge, or discriminate in any other manner against an employee because the employee—

''(I) has disclosed information that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

''(II) cooperates or seeks to cooperate with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

''(ii) In this subparagraph, the term 'employee' includes—

''(I) a current employee;

''(II) a former employee; and

''(III) an applicant for employment.''.

SEC. 208. REPORTS ON L–1 NONIMMIGRANTS.

Section 214(c)(8) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(8)) is amended by inserting ''(L),'' after ''(H),''.

SEC. 209. TECHNICAL AMENDMENTS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.

SEC. 210. APPLICATION.

The amendments made by sections 201 through 207 shall apply to applications filed on or after the date of the enactment of this Act.

SEC. 211. REPORT ON L–1 BLANKET PETITION PROCESS.

(a) REQUIREMENT FOR REPORT.—Not later than 6 months after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security shall submit to the appropriate committees of Congress a report regarding the use of blanket petitions under section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)). Such report shall assess the efficiency and reliability of the process for reviewing such blanket petitions, including whether the process includes adequate safeguards against fraud and abuse.

(b) APPROPRIATE COMMITTEES OF CONGRESS.—In this section the term ''appropriate committees of Congress'' means—

(1) the Committee on Homeland Security and Governmental Affairs of the Senate;

(2) the Committee on the Judiciary of the Senate;

(3) the Committee on Homeland Security of the House of Representatives; and

(4) the Committee on the Judiciary of the House of Representatives.

By Mr. SPECTER (for himself and Mr. CASEY):

S. 889. A bill to amend the Agricultural Adjustment Act to require the Secretary of Agriculture to determine the price of all milk used for manufactured purposes, which shall be classified as Class II milk, by using the national average cost of production, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. SPECTER. Mr. President, I seek recognition to speak on legislation I am introducing with Senator CASEY that will require the Secretary of Agriculture to determine the price of all manufactured milk, classified as Class II milk, using the national average cost of production. At a time when the dairy farmers in Pennsylvania and across the country are seeing record low prices for their milk, this legislation is necessary to bring the price of milk back to a level where farmers can earn a living and provide for their families.

Over the past year, farmers in my state have seen the average price for a hundredweight, cwt, of milk drop from around $24 in July 2008, to hovering around $10 this February. This dramatic price decrease has been the result of a perfect storm of factors, including record high fuel prices last summer, which increased the cost of feed and other supplies, and a decrease in demand for dairy products abroad, where cases of melamine in milk have caused a severe drop in demand.

Last year, Sen. CASEY and I worked diligently to increase the Milk Income Loss Contract, MILC, Program in the 2008 Farm Bill. We were successful in

including a cost of production increase to all MILC payments. These direct payments from the federal government are triggered when the price of milk per cwt falls below $16.94. When the average price of milk for a given month falls below this trigger, farmers are paid 45 percent of the difference between the actual price of milk and the trigger price. With the 2008 Farm bill's inclusion of the cost of production to these payments, farmers are seeing higher MILC payments than they otherwise would.

However, this is not enough. I have heard numerous reports from my constituents that the price of milk has fallen so low that they are fearful of having to sell their farms in order to provide for their families. Many of the dairy farms in Pennsylvania are small, family-owned farms, which, once sold, will be lost forever. We cannot let this happen. The dairy industry is critical not only to Pennsylvania's economy, but to the economy of the U.S. and to the security of our nation.

The Federal Milk Marketing Improvement Act will not only use a national average cost of production to determine Class II milk, but will also keep the Secretary of Agriculture engaged in protecting farmers from falling milk prices. This legislation would require the Secretary to adjust the value of milk four times a year, ensuring that price volatilities in the fuel sector will not unfairly hurt this industry, as we have seen it do in the past year.

Finally, this legislation provides an exemption for new dairy producers, up to 3 million pounds of milk during the first year of production, to encourage growth in the industry. With recent losses across the country of so many dairy farms, this provision is important to spurring new farmers and producers to enter the dairy industry.

I look forward to working with my colleagues to advance this and other legislation which will help a vital industry to this country. Our dairy farmers are the backbone of the agricultural community, and they deserve our support.

By Mr. REID (for Mr. ROCKEFELLER):

S. 890. A bill to provide for the use of improved health information technology with respect to certain safety net health care providers; to the Committee on Health, Education, Labor, and Pensions.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the Health Information Technology Public Utility Act, legislation I have recently introduced to facilitate nationwide adoption of electronic health records, EHRs, particularly among small, rural providers. This legislation will build on the successful open source models for EHRs developed by the Department of Veterans Affairs and the Indian Health Service—as well as the open source exchange model recently expanded among federal agencies through the Nationwide Health Information Network-Connect initiative.

Health information technology, IT, that is interoperable and meaningful is a necessary tool to improve the quality of health care Americans receive and make our health care system more efficient. It is the cornerstone of health care communication and coordination between patients and providers and among providers in order delivery high-quality medical care. Several of the mechanisms embedded in this technology—clinical decisions support, interoperability—achieve the long-term policy goals we are considering as part of our broader health reform discussions. It is clear that coordination and communication among providers, improved efficiencies in resource use, streamlined administration and billing, and increased access to meaningful data about quality improvement and improved health outcomes will not be possible without meaningful use of this technology among all providers.

However, access to affordable technology is the primary reason why providers across the nation do not invest in this valuable tool. The licensing fees of proprietary software are expensive and beyond the reach of many of health care providers—particularly small, rural providers. Moreover, the federal government has spent substantial taxpayer dollars in the development of open source technology—with the Department of Veterans Affairs and the Indian Health Service, IHS, national leaders in open source electronic health record, EHR, development and implementation. Both the Veterans Health Administration's VistA software and the Indian Health Services' Resource and Patient Management System, RPMS, are affordable and dependable systems that have been in place for decades.

Most recently, the health IT funding included in the American Recovery and Reinvestment Act, ARRA, although substantial, is likely to fall short of offering affordable options to all providers. In fact, CBO estimates that, even with funding and incentives in the ARRA, 30 percent of hospitals and 10 percent of physicians will not have adopted health IT by 2019. And, there are some providers that are ineligible for funding under ARRA altogether.

The Health Information Technology Public Utility Act will address this problem by increasing access to open source software through a public utility model. The public utility model proposed in this bill would be administered by a Federal Consolidated Health Information Technology Board under the umbrella of the ONCHIT, separate from the Policy and Standards Committees. Members of this Board would represent relevant agencies across the federal government. The Board would be responsible for linking efforts of current and new VistA and RPMS user groups, and updating VistA and RPMS open source software (including provider-based EHRs, personal health records, and other software modules) on a timely basis.

The legislation also establishes a new 21st Century Health Information Technology Grant Program to provide funding to public and not-for-profit safety net providers to cover the costs of implementation and initial maintenance of VistA and/or RPMS systems. Grants will focus on eligible hospitals and clinics, with some additional funding for demonstrations in long-term care, home health, and hospice.

The Health Information Technology Public Utility Act fills a crucial gap in health IT affordability and accessibility. This legislation does not replace commercial software; instead, it complements the private industry in this field—by making health information technology a realistic option for all providers and by making it possible for the benefits of health IT to accrue to all patients and I urge my colleagues to join me in support of this important policy.

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. 890

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 ''Health Information Technology (IT) Public Utility Act of 2009''.

SEC. 2. DEFINITIONS.

In this Act:

(1) BOARD.—The term ''Board'' means the Federal Consolidated Health Information Technology Board established under section 3.

(2) RPMS.—The term ''RPMS'' means the Resource and Patient Management System of the Indian Health Service.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Veterans Affairs.

(4) VISTA.—The term ''VistA'' means the VistA software program utilized by the Department of Veterans Affairs.

SEC. 3. FEDERAL CONSOLIDATED HEALTH INFORMATION TECHNOLOGY BOARD.

(a) ESTABLISHMENT.—To facilitate the implementation of electronic health record systems among safety-net health care providers (particularly small, rural providers) there shall be established within the Office of the National Coordinator for Health Information Technology of the Department of Health and Human Services, a Federal Consolidated Health Information Technology Board.

(b) BOARD OF DIRECTORS.—The Board shall be administered by a board of directors that shall be composed of the following individuals or their designees:

(1) The Secretary.

(2) The Under Secretary for Health of the Department of Veterans Affairs.

(3) The Director of the Indian Health Service.

(4) The Secretary of Defense.

(5) The Secretary of Health and Human Services.

(6) The Director of the Agency for Healthcare Research and Quality.

(7) The Administrator of the Health Resources and Services Administration.

(8) The Chairman of the Federal Communications Commission.

(c) DUTIES.—The Board shall—

(1) provide ongoing communication with existing VistA and RPMS user groups to ensure that there is constant interoperability between such groups and to provide for the sharing of innovative ideas and technology;

(2) update VistA and RPMS open source software (including health care provider-based electronic health records, personal health records, and other software modules) on a timely basis;

(3) implement and administer the 21st Century HIT Grant Program under section 4, including providing for notice in the Federal Register as well as—

(A) determining specific health information technology grant needs based on health care provider settings;

(B) developing benchmarks for levels of implementation in each year that 21st Century grant funding is provided; and

(C) providing ongoing VistA and RPMS technical assistance to grantees under such program (either through the provision of direct technical support or through the awarding of competitive contracts to other qualified entities);

(D) develop mechanisms to integrate VistA and RPMS with records and billing systems utilized under the Medicaid and State children's health insurance programs under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 and 1397aa et seq.);

(4) establish a child-specific electronic health record, consistent with the parameters to be set for child electronic health records as provided for in the American Recovery and Reinvestment Act of 2009, to be used in the Medicaid and State children's health insurance programs under titles XIX and XXI of the Social Security Act, and under other Federal children's health programs determined appropriate by the board of directors;

(5) develop and integrate quality and performance measurement into the VistA and RPMS modules;

(6) integrate the 21st Century HIT Grant Program under section 4 with the Federal Communications Commission's Rural Health Care Pilot Program, with Department of Veterans Affairs hospital systems, and with other Federal health information technology health initiatives; and

(7) carry out other activities determined appropriate by the board of directors.

(d) ANNUAL AUDITS.—The Comptroller General of the United States shall annually conduct an audit of the activities of the Board during the year and submit the results of such audits to the appropriate committees of Congress.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 4. 21ST CENTURY HEALTH INFORMATION TECHNOLOGY (HIT) GRANTS.

(a) ESTABLISHMENT.—The Board shall establish a grant program, to be known as the 21st Century Health Information Technology (HIT) Grant program, to award competitive grants to eligible safety-net health care providers to enable such providers to fully implement VistA or RPMS with respect to the patients served by such providers.

(b) ELIGIBILITY.—

(1) IN GENERAL.—To be eligible to receive a grant under subsection (a), an entity shall—

(A) be—

(i) a public or nonprofit health care provider (as defined in section 254(h)(7)(B) of the Communications Act of 1934 (47 U.S.C. 254(h)(7)(B)), including—

(I) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

(II) a community health center receiving a grant under section 330 of the Public Health Service Act (42 U.S.C. 254) or a health center that provides health care to migrants;

(III) a local health department or agency, including a dedicated emergency department of rural for-profit hospitals;

(IV) a community mental health center;

(V) a nonprofit hospitals;

(VI) a rural health clinics, including a mobile clinic;

(VII) a consortia of health care providers, that consists of 1 or more of the entities described in clauses (i) through (vi); and

(VIII) a part-time eligible entity that is located in an otherwise ineligible facility (as described in section 5(b); or

(ii) a free clinic (as defined in paragraph (4); and

(B) submit to the Board as application at such time, in such manner, and containing such information as the Board may require.

(2) NON-ELIGIBLE ENTITIES.—

(A) IN GENERAL.—An entity shall not be eligible to receive a grant under this section if such entity is a for-profit health care entity (except as provided for in paragraph (1)(A)), or any other type of entity that is not described in such paragraph, including—

(i) an entity described in paragraph (1)(A) that is implementing an existing electronic health records system;

(ii) an entity that is receiving grant funding under the Federal Communication Commission Rural Health Pilot Program;

(iii) an entity receiving funding for health information technology through a Medicaid transformation grant under title XIX of the Social Security Act (42 U.S.C. 1936 et seq.);

(iv) a private physician office or clinic;

(v) a nursing home or other long-term care facility (such as an assisted living facility);

(vi) an emergency medical service facility;

(vii) a residential substance abuse treatment facility;

(viii) a hospice;

(ix) a for-profit hospital;

(x) a home health agency;

(xi) a blood bank;

(xii) a social service agency; and

(xiii) a community center, vocational rehabilitation center, or youth center.

(B) OTHER ENTITIES.—An entity shall not be eligible to receive a grant under this section if such entity is receiving Medicare or Medicaid incentive funding under any of the amendments made by title IV of division B of the American Recovery and Reinvestment Act of 2009.

(3) PREFERENCE.—In awarding grant under this section the Board shall give preference to applicants that—

(A) are located in geographical areas that have a greater likelihood of serving the same patients and utilizing interoperability to promote coordinated care management; or

(B) demonstrate the greatest need for such award (as determined by the Secretary).

(4) DEFINITION.—In this subsection, the term ''free clinic'' means a safety-net health care organization that—

(A) utilizes volunteers to provide a range of medical, dental, pharmacy, or behavioral health services to economically disadvantaged individuals the majority of whom are uninsured or underinsured; and

(B) is a community-based tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, or that operates as a program component or affiliate of such a 501(c)(3) organization.

An entity that is otherwise a free clinic under this paragraph, but that charge a nominal fee to patients, shall still be considered to be a free clinics if the entity delivers essential services regardless of the patient's ability to pay.

(c) USE OF FUNDS.—An entity shall use amounts received under a grant under this section to fully implement the VistA or RPMS with respect to the patients served by such entity. Such implementation shall include at least the meaningful use (as defined by the Secretary of Health and Human Services) of such systems, including any ongoing updates and changes to such definition.

(d) TERM AND RENEWAL.—A grant under this section shall be for a period of not to exceed 5 years and may be renewed, as determined appropriate by the Board, based on the achievement of benchmarks required by the Board.

(e) ANNUAL REPORTING.—

(1) BY GRANTEES.—Not later than 1 year after the date on which an entity receives a grant under this section, and annually during each year in which such entity has received funds under such grant, such entity shall submit to the Board a report concerning the activities carried out under the grant.

(2) BY BOARD.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Board shall submit to the appropriate committees of Congress a report concerning the activities carried out under this section, including—

(A) a description of the grants that have been awarded under this section and the purposes of such grants;

(B) specific implementation information with respect to activities carried out by grantees;

(C) the costs and savings achieved under the program under this section;

(D) a description of any innovations developed by health care providers as a result of the implementation of activities under this grant;

(E) a description of the results of grant activities on patient care quality measurement (including reductions in medication errors and the provision of care management);

(F) a description of the extent of electronic health record use across health care provider settings;

(G) a description of the extent to which integration of VistA and RPMS with Medicaid and State children's health insurance program billing has been achieved; and

(H) any other information determined necessary by the Board.

(f) ANNUAL AUDITS.—The Comptroller General of the United States shall annually conduct an audit of the grant program carried out under this section and submit the results of such audits to the Board and the appropriate committees of Congress.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $2,000,000,000 for each of fiscal years 2010 and 2011; and

(2) $1,000,000,000 for each of fiscal years 2012 through 2014.

SEC. 5. 21ST CENTURY HEALTH INFORMATION TECHNOLOGY DEMONSTRATION PROGRAM FOR INELIGIBLE ENTITIES.

(a) IN GENERAL.—The Board may use not to exceed 10 percent of the amount appropriate for each fiscal year under section 4(g) to award competitive grants to eligible long-term care providers for the conduct of demonstration projects to implement VistA or RPMS with respect to the individuals served by such providers.

(b) ELIGIBILITY.—

(1) IN GENERAL.—To be eligible to receive a grant under subsection (a), an entity shall—

(A) be a—

(i) nursing home or other long-term care facility (such as an assisted living facility);

(ii) a hospice; or

(iii) a home health agency; and

(B) submit to the Board as application at such time, in such manner, and containing such information as the Board may require, including a description of the manner in which the applicant will use grant funds to implement VistA or RPMS with respect to the individuals served by such applicant to achieve one or more of the following:

(i) Improve care coordination and chronic disease management.

(ii) Reduce hospitalizations.

(iii) Reduce patient churning between the hospital, nursing home, hospice, and home health entity.

(iv) Increase the ability of long-term care patients to remain in their homes and communities.

(v) Improve patient completion, and provider execution, of advance directives.

(2) NONELIGIBILITY.—An entity shall not be eligible to receive a grant under this section if such entity is receiving Medicare or Medicaid incentive funding under any of the amendments made by title IV of division B of the American Recovery and Reinvestment Act of 2009.

(c) USE OF FUNDS.—An entity shall use amounts received under a grant under this section to implement the VistA or RPMS with respect to the individuals served by such entity. Such implementation shall include at least the meaningful use (as defined by the Secretary of Health and Human Services) of such systems, including any ongoing updates and changes to such definition.

(d) DURATION.—A grant under this section shall be for a period of not to exceed 3 years, as determined appropriate by the Board.

(e) REPORTING.—The Board, as part of the report submitted under section 4(e)(2), shall provide comprehensive information on the activities conducted under grants awarded under this section.

By Mr. BROWNBACK (for himself, Mr. DURBIN, and Mr. FEINGOLD):

S. 891. A bill to require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. BROWNBACK. Mr. President, I rise before you today to speak on an issue that I have brought to the Senate Floor before and have been watching for quite some time now. I would like to submit for the record the Congo Conflict Minerals Act of 2009.

This bill will require U.S.-registered companies selling products using columbite-tantalite, coltan, cassiterite, or wolframite, or derivatives of these minerals, to annually disclose to the Securities and Exchange Commission the country of origin of those minerals. If the country of origin is the Democratic Republic of Congo or neighboring countries, the company would need to disclose the mine of origin.

These minerals are the ''conflict diamonds'' of Congo, however rather than ending up in jewelry these minerals are ending up in our electronics products.

This is not the first time this issue has been raised. Only last year Senator DURBIN and I introduced S3058, the Conflict Coltan and Cassiterite Act, which prohibited the importation of certain products that contained or are derived from columbite-tantalite or cassiterite mined or extracted in the Democratic Republic of the Congo. While the bill did not go anywhere, the issue itself has gained attention. We have taken a strong hard look at last year's bill and have done our best to improve on it.

In the current legislation we call for transparency and accountability throughout the supply-chain of these minerals. By making this supply-chain more translucent, we ultimately can help save millions of innocent Congolese lives who find themselves caught in the middle of this conflict, a conflict based on the control of these minerals. Some in industry have already started down this road and are even in front of the curve with their efforts, but we still need to strive to do a better job of showing transparency and we need to do it quickly.

It is no secret that the exploitation of minerals is taking place and funding the conflict in Congo. In its final report, released on December 12, 2008, the United Nations Group of Experts on the Democratic Republic of the Congo found that official exports of columbite-tantalite, cassiterite, wolframite, and gold are grossly undervalued and that various illegal armed groups in the eastern region of the Democratic Republic of Congo continue to profit greatly from these natural resources by coercively exercising control over mining sites from where they are extracted and locations along which they are transported for export.

I have said this before and I will say it again, this murky, conflict-funding supply-chain of minerals in eastern Congo has been the heart of darkness for that country too long and I am not the only one who believes that.

Last month the Democratic Republic of Congo's U.N. Ambassador Faida Mitifu spoke in New York during a panel discussion on media coverage of sexual violence against Congolese women. When the issue of minerals in eastern Congo was raised, Ambassador Mitifu said the exploitation of mineral resources is the driving force behind the conflict.

Her exact quote ''the minerals have truly been the driving force behind this war. It has been dressed with different clothes, but truly the minerals are the driving force.'' She went onto say the history of exploitation and conflict dates back to the Congo's colonial history with Belgium.

She is right. The mismanagement of natural resources has long cast a gloom over the Democratic Republic of Congo. The exploitation of these natural resources that began during the reign of King Leopold has endured for over 100 years. During this 24-year tyranny of Congo, King Leopold exploited the local population by turning it into a slave colony, extracting the resource of the day—rubber, while over 13 million Congolese died.

In his book the ''Heart of Darkness'' Joseph Conrad describes King Leopold's colonial project in the Congo ''the vilest scramble for loot that ever disfigured the history of human conscience.'' But have we seen history change at all? Well let me share with you some of the lives ravaged by this ongoing conflict.

This small 3½-year-old boy became one of the millions of victims of displacement and malnourishment. His family fled into the jungle from a rebel group that had burnt their village to the ground in just outside the village of Kitchanga in North Kivu.

They lived in the jungle and had been constantly on the move. Food became scarce and meals became as sporadic as 2 to 3 a week. He fell sick and developed a cough. When his mother brought him to the local health clinic, they were immediately referred to an international humanitarian organization in the area. There, this young boy was diagnosed with malaria, tuberculosis, and anemia.

His doctors then discovered he had been eating only what his mother could gather in jungle and ate only once every three to four days. They immediately began his treatments, which his small, frail body was struggling to accept.

While this small 2–year-old boy had a similar story, however more disheartening. His family had fled into the jungle when the rebels attacked their village. After 3 months of seeking shelter in the jungle, his mother finally brought him to a local health clinic where he too was referred to the international humanitarian organization there. The only diagnosis the doctors could come up with was malaria. However when this photo was taken his body was rejecting the treatments, he no longer cried-out in hunger or pain, he no longer responded to anything.

The issue of rape in the Congo is quite possibly the worst in the world. We used to call it a ''tool of war'' but now it's not even due to the war. Because it has been taking place there for so long, it has nearly become an accepted behavior and one where impunity reigns free.

Last year I spoke with Dr. Mukwege from Panzi Hospital in the city of Bukavu in the South Kivu Province of Congo. Panzi Hospital is the leading treatment hospital of rape and sexual violence survivors in Congo. Dr. Mukwege sat in my office and told me of how he was seeing as many as 10 new rape survivors who needed treatment a week.

He then pulled out a map and circled the areas where majority of his patients were coming from and explained that those areas were the key mining areas for coltan and cassiterite in South Kivu. He said that rebels controlled these areas because of the mineral wealth and that with their control of these areas came their lawlessness and with lawlessness came the impunity of rape.

Rape, displacement, insecurity, forced labor, child soldiers, curable illnesses left untreated, and deaths of 1,500 people a day are only a few of the human indignities directly and indirectly surrounding this struggle for control of the minerals in eastern Congo. However there is no room for turning a blind eye on this matter when we all must be actors in this supply-chain—from miner to consumer.

American greatness has always been founded on our fundamental goodness. We need to be a nation where the strong protect the weak and people of privilege assist those in poverty. It says a lot about the kind of America we all should work for when we speak out against this type of tragedy and commit ourselves to those who are suffering there.

Mr. FEINGOLD. Mr. President, today I am pleased to join Senators BROWNBACK and DURBIN as an original cosponsor of the Congo Conflict Minerals Act of 2009. The purpose of this bill is to bring greater attention and transparency to the way in which the trade in three minerals—columbite-tantalite, cassiterite, or wolframite—is intertwined with the ongoing violence, displacement and human rights abuses in the eastern Democratic Republic of Congo. The metals derived from these three minerals are used widely in the electronic products that we use daily, from cell phones to laptops to digital cameras. By working to ensure the raw materials used in those products are not benefiting armed groups, we can have a positive impact on ending armed conflict and human rights abuses in the Congo.

Specifically, this bill charges the State Department to support the work of the United Nations Group of Experts to further investigate and provide companies with guidance on the links between natural resources and the financing of armed groups. It also charges the State Department with developing a strategy to help break these linkages, while helping governments in the region to establish the necessary frameworks and institutions to monitor and regulate the cross-border trade of these minerals. Then, this bill requires U.S.-registered companies selling products containing those three minerals to disclose the country of origin of those minerals and, if they come from Congo or neighboring countries, to give further information, including the mine of origin. This requirement will compel companies to take responsibility for their suppliers and thus bring greater transparency to the trade in these minerals, which may enable more targeted actions down the road. Finally, this bill encourages USAID to expand programs seeking to improve the conditions and livelihood prospects for communities affected by this violence in Congo. We must not forget that the long-term goal is not to shut this trade down, but to support a conflict-free mining economy that benefits the Congolese people.

The United Nations Group of Experts has reported over the years that various illegal armed groups in eastern Congo profit greatly from the region's vast natural resources. In February 2008, the Group of Experts stated, ''individuals and entities buying mineral output from areas of the eastern part of the Democratic Republic of Congo with a strong rebel presence are violating the sanctions regime when they do not exercise due diligence to ensure their mineral purchases do not provide assistance to illegal armed groups.'' They defined due diligence as determining the precise identify of the deposits from which the minerals have been mined, establishing whether or not these deposits are controlled and/or taxed by illegal armed groups, and refusing to buy minerals known to originate—or suspected to originate—from deposits controlled/taxed by these armed groups. In December 2008, the United Nations Security Council unanimously adopted Resolution 1857, broadening existing sanctions relating to Congo to include individuals or entities supporting the illegal armed groups through the illicit trade of natural resources. The resolution also encouraged member countries to ensure that companies handling minerals from Congo exercise due diligence with their suppliers.

The U.S. has invested financial resources and diplomacy over recent years in trying to bring peace and stability to eastern Congo, and there have been some successes. However, our efforts have ultimately been hindered by a failure to directly address the underlying causes of conflict. A study by the Government Accountability Office released in 2007 found that U.S. efforts in Congo are undermined by weak governance and mismanagement of natural resources. The plunder and unregulated trade of eastern Congo's rich mineral base continues to make war a profitable enterprise. This legislation attempts to finally confront and address that problem. It commits the United States government and those companies under our jurisdiction to shed light on the dynamics of eastern Congo's mineral economy and to take actions to reduce its exploitation by armed groups. This can be an important step—perhaps even a transitional one—as we work with our regional partners to help them establish and implement better frameworks for regulation and oversight.

Some may say the bill goes too far, while others may argue that this bill does not go far enough; that it has loopholes and lacks sufficient ''teeth.'' This bill is not perfect. However, we must realize the conflict mineral problem is a complex one. This legislation is just a first step to bring greater transparency to that problem, which will then enable more comprehensive, robust and targeted measures down the road. At the same time, we must tread carefully because there are many communities in eastern Congo whose livelihoods are intertwined with the mining economy. All-out prohibitions or blanket sanctions could be counterproductive and negatively affect the very people we seek to help. I am confident that this bill is sensitive to that complex reality. It tasks the Government Accountability Office, within two years, with assessing any problems resulting from the implementation of this Act, determining any adverse impacts on local Congolese communities, and making recommendations for improving its effectiveness. It also urges USAID to expand its programs to work with these communities and improve their livelihood prospects.

I also realize that some others may argue that this bill goes too far; that it imposes impractical or onerous requirements on companies who end-use these minerals. Similar arguments were made in the early days of the Kimberley Process. I appreciate that these three minerals often pass through extensive supply chains and processing stages before the relevant metals are used in technological products. Bringing transparency to those supply chains may not be easy, but it is something we can and should expect of industry when certain commodities are known to be fueling human rights violations. Industry itself has acknowledged this. In February 2009, the Electronic Industry Citizenship Coalition, which includes several major U.S. electronic companies, put out a statement saying that companies can and should uphold responsible practices in their operations and work with suppliers to meet social and environmental standards with respect to the raw materials used in the manufacture of their products. That was a bold statement and I want to work with companies to make it a reality with respect to Congo.

I traveled in 2007 to eastern Congo and saw firsthand the grave suffering of people who have lived through a decade of conflict and humanitarian crisis. The numbers are staggering: an estimated 5.4 million deaths over the last decade—making it the deadliest conflict since the Second World War. In addition, millions of people are still displaced from their homes, living in squalid camps where children are subject to forced recruitment and women suffer unspeakable levels of sexual violence. In my travels to many parts of Africa over the years, the suffering of women and girls in eastern Congo particularly stands out. I met with women and girls there who had been gang raped, often leaving them with horrific physical and psychological damage. I met with women who had lost their husbands, their homes, and their livelihoods and yet against all odds they refused to give up—if only for the sake of their children. I believe this bill will make attaining peace for these women and their families a little easier and that is one of the reasons why I am supporting it.

In 2006, under the leadership of then-Senator Obama and Senator

BROWNBACK, the U.S. Congress passed the Democratic Republic of Congo Relief, Security and Democracy Promotion Act. That bill committed the United States to work comprehensively toward peace, prosperity and good governance in the Congo. The Congo Conflict Minerals Act of 2009 seeks to move us a step closer toward those goals. I urge my colleagues to support it, and thank Senators BROWNBACK and DURBIN for their leadership on this important issue.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 111—RECOGNIZING JUNE 6, 2009, AS THE 70TH ANNIVERSARY OF THE TRAGIC DATE WHEN THE M.S. ST. LOUIS, A SHIP CARRYING JEWISH REFUGEES FROM NAZI GERMANY, RETURNED TO EUROPE AFTER ITS PASSENGERS WERE REFUSED ADMITTANCE TO THE UNITED STATES

Mr. KOHL (for himself and Mr. VOINOVICH) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 111

Whereas on May 13, 1939, the ocean liner M.S. St. Louis departed from Hamburg, Germany for Havana, Cuba with 937 passengers, most of whom were Jewish refugees fleeing Nazi persecution;

Whereas the Nazi regime in Germany in the 1930s implemented a program of violent persecution of Jews;

Whereas the Kristallnacht, or Night of Broken Glass, pogrom of November 9 through 10, 1938, signaled an increase in violent anti-Semitism;

Whereas after the Cuban Government, on May 27, 1939, refused entry to all except 28 passengers on board the M.S. St. Louis, the M.S. St. Louis proceeded to the coast of south Florida in hopes that the United States would accept the refugees;

Whereas the United States refused to allow the M.S. St. Louis to dock and thereby provide a haven for the Jewish refugees;

Whereas the Immigration Act of 1924 placed strict limits on immigration;

Whereas a United States Coast Guard cutter patrolled near the M.S. St. Louis to prevent any passengers from jumping to freedom;

Whereas following denial of admittance of the passengers to Cuba, the United States, and Canada, the M.S. St. Louis set sail on June 6, 1939 for return to Antwerp, Belgium with the refugees; and

Whereas 254 former passengers of the M.S. St. Louis died under Nazi rule: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes that June 6, 2009, marks the 70th anniversary of the tragic date when the M.S. St. Louis returned to Europe after its passengers were refused admittance to the United States and other countries in the Western Hemisphere;

(2) honors the memory of the 937 refugees aboard the M.S. St. Louis, most of whom were Jews fleeing Nazi oppression, and 254 of whom subsequently died during the Holocaust;

(3) acknowledges the suffering of those refugees caused by the refusal of the United States, Cuban, and Canadian governments to provide them political asylum; and

(4) recognizes the 70th anniversary of the M.S. St. Louis tragedy as an opportunity for public officials and educators to raise awareness about an important historical event, the lessons of which are relevant to current and future generations.

Mr. KOHL. Mr. President, seventy two years ago the M.S. *St. Louis*, a German ocean liner, sailed from Hamburg, Germany to Havana, Cuba with 937 passengers, mostly Jewish refugees searching for the freedom and safety of the American dream. Those passengers left their homes because of state supported anti-semitism including violent pogroms, expulsion from public schools and service, and arrest and imprisonment solely because of Jewish heritage. Some passengers were released from prisons at Buchenwald and Dachau only because they were immigrating out of the country. With their freedom and safety stripped away by Nazi persecution, these refugees sailed for Cuba, a way station to wait for entry visas to the U.S.

When the M.S. *St. Louis* arrived in Cuba, only 28 passengers were allowed to disembark. Corruption and political maneuvering within the Cuban government invalidated the transit visas of the other passengers. Those individuals waited with great hope for a remedy that would provide refuge far from Nazi persecution. Before returning to Europe, the ship sailed towards Miami in hopes of a solution. The ship sailed so close to Florida that the passengers could see the lights of Miami. One survivor remembers his father commenting that ''Florida's golden shores, so near, might as well be 4,000 miles away for all the good it did them.''

The US Immigration and Nationality Act of 1924 strictly limited the number of immigrants admitted to the U.S. each year and in 1939 the waiting list for German-Austrian immigration was several years long. While the press was largely sympathetic to the plight of the passengers of the M.S. *St. Louis*, no extraordinary measures were taken to permit the refugees to enter the United States. The passengers were told that they must ''await their turns on the waiting list and qualify for and obtain immigration visas''.

On June 6 the M.S. *St. Louis* sailed back to Europe with nearly all of its original passengers. Refuge for the passengers was eventually obtained in Great Britain, the Netherlands, Belgium, and France. World War II started three months later and those countries, with the exception of Great Britain, fell to Nazi occupation. Two hundred and fifty-four of those passengers died during the Holocaust and many others suffered under Nazi persecution and in concentration camps.

During this week when we remember the Holocaust, it is appropriate and right to acknowledge the voyage of the M.S. *St. Louis* and the lives and the dreams of those refugees who made a trip towards freedom only to be returned to Europe. This Senate Resolution acknowledges the 70th anniversary of the voyage of the M.S. *St. Louis* and honors the memory of those passengers, 254 of who died during the Holocaust. This resolution also provides an opportunity for public officials and educators to reflect on this historic event and lessons that are relevant to current and future generations.

SENATE RESOLUTION 112—DESIGNATING FEBRUARY 8, 2010, AS ''BOY SCOUTS OF AMERICA DAY'', IN CELEBRATION OF THE 100TH ANNIVERSARY OF THE LARGEST YOUTH SCOUTING ORGANIZATION IN THE UNITED STATES

Mr. NELSON of Nebraska (for himself, Mr. SESSIONS, Mrs. HUTCHISON, Mr. COCHRAN, Mr. BAYH, Mr. CRAPO, Mr. BUNNING, Mr. ENZI, Mr. COBURN, Mr. LUGAR, Mr. CHAMBLISS, Mr. BURR, Mr. BROWN, Mr. CARPER, Mr. ALEXANDER, Mr. INHOFE, Mrs. LINCOLN, Mr. RISCH, Mr. BENNETT, Mr. THUNE, Mr. CASEY, Mr. HATCH, Mr. WARNER, Ms. MURKOWSKI, Mr. BEGICH, Mr. CONRAD, and Mr. JOHANNS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 112

Whereas the Boy Scouts of America was incorporated by the Chicago publisher William Boyce on February 8, 1910, after William Boyce learned of the Scouting movement during a visit to London;

Whereas, on June 21, 1910, a group of 34 national representatives met, developed organization plans, and opened a temporary national headquarters for the Boy Scouts of America in New York;

Whereas the purpose of the Boy Scouts of America is to teach the youth of the United States patriotism, courage, self-reliance, and kindred values;

Whereas, by 1912, Boy Scouts were enrolled in every State;

Whereas, in 1916, Congress granted the Boy Scouts of America a Federal charter;

Whereas each local Boy Scout Council commits each Boy Scout to perform 12 hours of community service yearly, for a total of 30,000,000 community service hours each year;

Whereas, since 1910, more than 111,000,000 people have been members of the Boy Scouts of America;

Whereas Boy Scouts are found in 185 countries around the world;

Whereas the Boy Scouts of America will present the 2 millionth Eagle Scout award in 2009;

Whereas more than 1,000,000 adult volunteer leaders selflessly serve young people in their communities through organizations chartered by the Boy Scouts of America;

Whereas the adult volunteer leaders of the Boy Scouts of America often neither receive nor seek the gratitude of the public; and

Whereas the Boy Scouts of America endeavors to develop United States citizens who are physically, mentally, and emotionally fit, have a high degree of self-reliance demonstrated by such qualities as initiative, courage, and resourcefulness, have personal values based on religious concepts, have the desire and skills to help others, understand the principles of the social, economic, and governmental systems of the United States, take pride in the heritage of the United States and understand the role of the United States in the world, have a keen respect for

the basic rights of all people, and are prepared to participate in and give leadership to the society of the United States: Now, therefore, be it

Resolved, That the Senate designates February 8, 2010, as ''Boy Scouts of America Day'', in celebration of the 100th anniversary of the largest youth scouting organization in the United States.

SENATE RESOLUTION 113—DESIGNATING APRIL 23, 2009, AS ''NATIONAL ADOPT A LIBRARY DAY''

Mr. WEBB (for himself and Mr. WARNER) submitted the following resolution; which was considered and agreed to:

S. RES. 113

Whereas libraries are an essential part of the communities and the national system of education in the United States;

Whereas the people of the United States benefit significantly from libraries that serve as an open place for people of all ages and backgrounds to make use of books and other resources that offer pathways to learning, self-discovery, and the pursuit of knowledge;

Whereas the libraries of the United States depend on the generous donations and support of individuals and groups to ensure that people who are unable to purchase books still have access to a wide variety of resources;

Whereas certain nonprofit organizations facilitate donations of books to schools and libraries across the country to extend the joys of reading to millions of people in the United States and to prevent used books from being thrown away; and

Whereas several States and Commonwealths that recognize the importance of libraries and reading have adopted resolutions commemorating April 23 as ''Adopt A Library Day'': Now, therefore, be it

Resolved, That the Senate—

(1) designates April 23, 2009, as ''National Adopt A Library Day'';

(2) honors organizations that help facilitate donations to schools and libraries;

(3) urges all people in the United States who own unused books to donate those books to local libraries;

(4) strongly supports children and families who take advantage of the resources provided by schools and libraries; and

(5) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

SENATE CONCURRENT RESOLUTION 19—EXPRESSING THE SENSE OF CONGRESS THAT THE SHI'ITE PERSONAL STATUS LAW IN AFGHANISTAN VIOLATES THE FUNDAMENTAL HUMAN RIGHTS OF WOMEN AND SHOULD BE REPEALED

Mrs. BOXER (for herself, Ms. SNOWE, Ms. MIKULSKI, Mrs. MURRAY, Mrs. GILLIBRAND, Ms. CANTWELL, Mrs. SHAHEEN, Mrs. FEINSTEIN, and Ms. COLLINS) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 19

Whereas in March 2009, the Shi'ite Personal Status Law was approved by the parliament of Afghanistan and signed by President Hamid Karzai;

Whereas according to the United Nations, the law legalizes marital rape by mandating that a wife cannot refuse sex to her husband unless she is ill;

Whereas the law also weakens mothers' rights in the event of a divorce and prohibits a woman from leaving her home unless her husband determines it is for a ''legitimate purpose'';

Whereas President Barack Obama has called the law ''abhorrent'' and stated that ''there are certain basic principles that all nations should uphold, and respect for women and respect for their freedom and integrity is an important principle'';

Whereas the United Nations High Commissioner for Human Rights has said that the law represents a ''huge step in the wrong direction'' and is ''extraordinary, reprehensible and reminiscent of the decrees made by the Taliban regime in Afghanistan in the 1990s'';

Whereas the Secretary-General of the North Atlantic Treaty Organization (NATO) has asserted that passage of the law could discourage countries in Europe from contributing additional troops to help combat terrorism in the region;

Whereas President Karzai has instructed the Government of Afghanistan and members of the clergy to review the law and change any articles that are not in keeping with Afghanistan's Constitution and Islamic Sharia, yet has not made a concrete declaration that the provision legalizing marital rape and other provisions curtailing women's rights will be removed completely;

Whereas the law includes provisions that are fundamentally incompatible with the obligations of the Government of Afghanistan under the various international instruments that it has ratified, as well as under its own Constitution;

Whereas Afghanistan is a signatory of the Universal Declaration of Human Rights (UDHR), which establishes the principle of nondiscrimination, including on the basis of sex, and states that men and women are entitled to equal rights to marriage, during marriage, and at its dissolution;

Whereas Afghanistan became a party to the International Covenant on Economic, Social and Cultural Rights, done at New York December 16, 1966, and entered into force January 3, 1976 (ICESCR), which emphasizes the principle of self-determination, in that men and women may freely determine their political status as well as their economic, social, and cultural development;

Whereas Afghanistan acceded to the Convention on the Elimination of All Forms of Discrimination Against Women, done at New York December 18, 1979, and entered into force September 3, 1981 (CEDAW), which condemns discrimination against women in all its forms and reaffirms the equal rights and responsibilities of men and women during marriage and at its dissolution;

Whereas, notwithstanding any declarations or reservations made upon ratification of these various international conventions, the Government of Afghanistan is under an obligation not to act in any way which might defeat the object and purpose of these conventions, pursuant to the Vienna Convention on the Law of Treaties, done at New York May 23, 1969, and entered into force January 27, 1980, which is widely recognized as embodying customary international law;

Whereas Article 22 of the Constitution of Afghanistan (2003) prohibits any kind of discrimination between and privilege among the citizens of Afghanistan and establishes the equal rights of all citizens before the law;

Whereas Article 54 of the Constitution of Afghanistan obligates the Government of Afghanistan to ensure the physical and psychological well-being of the family, especially of mothers and children;

Whereas the international community and the United States have a long-standing commitment to and interest in working with the people and Government of Afghanistan to reestablish respect for fundamental human rights and protect women's rights in Afghanistan; and

Whereas the provisions in the Shi'ite Personal Status Law that restrict women's rights are diametrically opposed to those goals: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) urges the Government of Afghanistan and President Hamid Karzai to declare the provisions of the Shi'ite Personal Status Law on marital rape and restrictions on women's freedom of movement unconstitutional and an erosion of growth and development in Afghanistan;

(2) supports the decision by President Karzai to analyze the draft law and strongly urges him not to publish it on the grounds that it violates the Constitution of Afghanistan and the basic human rights of women;

(3) encourages the Secretary of State, the Special Representative to Afghanistan and Pakistan, the Ambassador-at-Large for International Women's Issues, and the United States Ambassador to Afghanistan to consider and address the status of women's rights and security in Afghanistan to ensure that these rights are not being eroded through unjust laws, policies, or institutions; and

(4) encourages the Government of Afghanistan to solicit information and advice from the Ministry of Justice, the Ministry for Women's Affairs, the Afghanistan Independent Human Rights Commission, and women-led nongovernmental organizations to ensure that current and future legislation and official policies protect and uphold the equal rights of women, including through national campaigns to lead public discourse on the importance of women's status and rights to the overall stability of Afghanistan.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1003. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1000 submitted by Mrs. BOXER (for herself, Ms. SNOWE, Mr. CORKER, and Mr. MERKLEY) to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

SA 1004. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 386, supra.

SA 1005. Mr. KOHL (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed by him to the bill S. 386, supra; which was ordered to lie on the table.

SA 1006. Mr. SCHUMER (for himself, Mr. SHELBY, Mr. DODD, Mrs. FEINSTEIN, Mr. GRAHAM, and Mr. REED) proposed an amendment to the bill S. 386, supra.

SA 1007. Mr. HATCH (for himself, Mr. CORNYN, Mr. ENZI, Mr. ROBERTS, and Mr. BENNETT) proposed an amendment to the bill S. 386, supra.

SA 1008. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 386, supra; which was ordered to lie on the table.

SA 1009. Mr. PRYOR (for himself and Mr. CORKER) submitted an amendment intended to be proposed by him to the bill S. 386, supra; which was ordered to lie on the table.

SA 1010. Mrs. McCASKILL submitted an amendment intended to be proposed by her to the bill S. 386, supra; which was ordered to lie on the table.

SA 1011. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 990 proposed by Mr. KOHL to the bill S. 386, supra; which was ordered to lie on the table.

SA 1012. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 990 proposed by Mr. KOHL to the bill S. 386, supra; which was ordered to lie on the table.

SA 1013. Mr. SCHUMER (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 386, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1003. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1000 submitted by Mrs. BOXER (for herself, Ms. SNOWE, Mr. CORKER, and Mr. MERKLEY) to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; as follows:

After page 2, line 20, add the following:

(f) PUBLIC-PRIVATE INVESTMENT PROGRAM.—

(1) IN GENERAL.—Any program established by the Secretary of the Treasury or the Board of Directors of the Federal Deposit Insurance Corporation that does any of the following shall meet the requirements of paragraph (2):

(A) Creates a public-private investment fund.

(B) Makes available any funds from the Troubled Asset Relief Program established under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) or the Federal Deposit Insurance Corporation for—

(i) a public-private investment fund; or

(ii) a loan to a private investor to fund the purchase of a mortgage-backed security or an asset-backed security.

(C) Employs or contracts with a private sector partner to manage assets for a public-private investment program.

(D) Guarantees any debt or asset for purposes of a public-private investment program.

(2) REQUIREMENTS.—Any program described in paragraph (1) shall—

(A) impose strict conflict of interest rules on managers of public-private investment funds that—

(i) specifically describe the extent, if any, to which such managers may—

(I) invest the assets of a public-private investment fund in assets that are held or managed by such managers or the clients of such managers; and

(II) conduct transactions involving a public-private investment fund and an entity in which such manager or a client of such manager has invested;

(ii) take into consideration that there is a trade off between hiring a manager with significant experience as an asset manager that has complex conflicts of interest, and hiring a manager with less expertise that has no conflicts of interest; and

(iii) acknowledge that the types of entities that are permitted to make investment decisions for a public-private investment fund may need to be limited to mitigate conflicts of interest;

(B) require the disclosure of information regarding participation in and management of public-private investment funds, including any transaction undertaken in a public-private investment fund;

(C) require each public-private investment fund to make a certified report to the Secretary of the Treasury that describes each transaction of such fund and the current value of any assets held by such fund, which report shall be publicly disclosed by the Secretary of the Treasury

(D) require each manager of a public-private investment fund to report to the Secretary of the Treasury any holding or transaction by such manager or a client of such manager in the same type of asset that is held by the public-private investment fund;

(E) allow the Special Inspector General of the Troubled Asset Relief Program, access to all books and records of a public-private investment fund;

(F) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(G) allow the Special Inspector General of the Troubled Asset Relief Program, the Secretary of the Treasury, and any other Federal agency with oversight responsibilities access to—

(i) the books, documents, records, and employees of each manager of a public-private investment fund; and

(ii) the books, documents, and records of each private investor in a public-private investment fund that relate to the public-private investment fund;

(H) require each manager of a public-private investment fund to give such public-private investment fund terms that are at least as favorable as those given to any other person for whom such manager manages a fund;

(I) require each manager of a public-private investment fund to acknowledge a fiduciary duty to the public and private investors in such fund;

(J) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(K) require stringent investor screening procedures for public-private investment funds that include know your customer requirements at least as rigorous as those of a commercial bank or retail brokerage operation;

(L) require each manager of a public-private investment fund to identify for the Secretary of the Treasury each beneficial owner of a private interest in such fund; and

(M) require the Secretary of the Treasury to ensure that all investors in a public-private investment fund are legitimate.

(3) REPORT.—Not later than 45 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General of the Troubled Asset Relief Program shall submit to Congress a report on the implementation of this section.

(4) DEFINITION.—In this subsection, the term ''public-private investment fund'' means a financial vehicle that is—

(A) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(B) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

SA 1004. Mr. ENSIGN submitted an amendment to be proposed by him to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; as follows:

At the end of the bill, add the following:

SEC. 5. PUBLIC-PRIVATE INVESTMENT PROGRAM.

(a) IN GENERAL.—Any program established by the Secretary of the Treasury or the Board of Directors of the Federal Deposit Insurance Corporation that does any of the following shall meet the requirements of subsection (b):

(1) Creates a public-private investment fund.

(2) Makes available any funds from the Troubled Asset Relief Program established under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) or the Federal Deposit Insurance Corporation for—

(A) a public-private investment fund; or

(B) a loan to a private investor to fund the purchase of a mortgage-backed security or an asset-backed security.

(3) Employs or contracts with a private sector partner to manage assets for a public-private investment program.

(4) Guarantees any debt or asset for purposes of a public-private investment program.

(b) REQUIREMENTS.—Any program described in subsection (a) shall—

(1) impose strict conflict of interest rules on managers of public-private investment funds that—

(A) specifically describe the extent, if any, to which such managers may—

(i) invest the assets of a public-private investment fund in assets that are held or managed by such managers or the clients of such managers; and

(ii) conduct transactions involving a public-private investment fund and an entity in which such manager or a client of such manager has invested;

(B) take into consideration that there is a trade off between hiring a manager with significant experience as an asset manager that has complex conflicts of interest, and hiring a manager with less expertise that has no conflicts of interest; and

(C) acknowledge that the types of entities that are permitted to make investment decisions for a public-private investment fund may need to be limited to mitigate conflicts of interest;

(2) require the disclosure of information regarding participation in and management of public-private investment funds, including any transaction undertaken in a public-private investment fund;

(3) require each public-private investment fund to make a certified report to the Secretary of the Treasury that describes each transaction of such fund and the current value of any assets held by such fund, which report shall be publicly disclosed by the Secretary of the Treasury;

(4) require each manager of a public-private investment fund to report to the Secretary of the Treasury any holding or transaction by such manager or a client of such manager in the same type of asset that is held by the public-private investment fund;

(5) allow the Special Inspector General of the Troubled Asset Relief Program, access to all books and records of a public-private investment fund;

(6) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(7) allow the Special Inspector General of the Troubled Asset Relief Program, the Secretary of the Treasury, and any other Federal agency with oversight responsibilities access to—

(A) the books, documents, records, and employees of each manager of a public-private investment fund; and

(B) the books, documents, and records of each private investor in a public-private investment fund that relate to the public-private investment fund;

(8) require each manager of a public-private investment fund to give such public-private investment fund terms that are at least as favorable as those given to any other person for whom such manager manages a fund;

(9) require each manager of a public-private investment fund to acknowledge a fiduciary duty to the public and private investors in such fund;

(10) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(11) require stringent investor screening procedures for public-private investment funds that include know your customer requirements at least as rigorous as those of a commercial bank or retail brokerage operation;

(12) require each manager of a public-private investment fund to identify for the Secretary of the Treasury each beneficial owner of a private interest in such fund; and

(13) require the Secretary of the Treasury to ensure that all investors in a public-private investment fund are legitimate.

(c) REPORT.—Not later than 45 days after the date of the establishment of a program described in subsection (a), the Special Inspector General of the Troubled Asset Relief Program shall submit to Congress a report on the implementation of this section.

(d) DEFINITION.—In this section, the term ''public-private investment fund'' means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

SA 1005. Mr. KOHL (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed by him to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

SEC. 5. WARNINGS TO HOMEOWNERS OF FINANCIAL SCAMS.

(a) IN GENERAL.—If a loan servicer finds that a homeowner has failed to make 2 consecutive payments on a residential mortgage loan and such loan is at risk of being foreclosed upon, the loan servicer shall notify such homeowner of the dangers of fraudulent activities associated with foreclosure.

(b) NOTICE REQUIREMENTS.—Each notice provided under subsection (a) shall—

(1) be in writing;

(2) be included with a mailing of account information;

(3) have the heading ''Notice Required by Federal Law'' in a 14-point boldface type in English and Spanish at the top of such notice; and

(4) contain the following statement in English and Spanish: ''Mortgage foreclosure is a complex process. Some people may approach you about saving your home. You should be careful about any such promises. There are government and nonprofit agencies you may contact for helpful information about the foreclosure process. Contact your lender immediately at [_____], call the Department of Housing and Urban Development Housing Counseling Line at (800) 569–4287 to find a housing counseling agency certified by the Department to assist you in avoiding foreclosure, or visit the Department's Tips for Avoiding Foreclosure website at http://www.hud.gov/foreclosure for additional assistance.'' (the blank space to be filled in by the loan servicer and successor telephone numbers and Uniform Resource Locators (URLs) for the Department of Housing and Urban Development Housing Counseling Line and Tips for Avoiding Foreclosure website, respectively.).

(c) LOAN SERVICER.—As used in this section, the term ''loan servicer'' has the same meaning as the term ''servicer'' in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).

(d) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A failure to comply with any provision of this section shall be treated as a violation of a rule defining an unfair or deceptive act or practice promulgated under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) ACTIONS BY THE FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall enforce the provisions of this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made part of this section.

SA 1006. Mr. SCHUMER (for himself, Mr. SHELBY, Mr. DODD, Mrs. FEINSTEIN, Mr. GRAHAM, and Mr. REED) proposed an amendment to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; as follows:

At the appropriate place in section 3, insert the following:

(__) ADDITIONAL APPROPRIATIONS FOR THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—There is authorized to be appropriated to the Securities and Exchange Commission, $20,000,000 for each of the fiscal years 2010 and 2011 for investigations and enforcement proceedings involving financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(2) INSPECTOR GENERAL.—There is authorized to be appropriated to the Securities and Exchange Commission, $1,000,000 for each of the fiscal years 2010 and 2011 for the salaries and expenses of the Office of the Inspector General of the Securities and Exchange Commission.

SA 1007. Mr. HATCH (for himself, Mr. CORNYN, Mr. ENZI, Mr. ROBERTS, and Mr. BENNETT) proposed an amendment to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; as follows:

At the end, insert the following:

SEC. ___. TRANSPARENCY IN ANNUAL FINANCIAL REPORTS.

(a) FINDINGS.—Congress finds the following:

(1) The American workers who contribute union dues deserve to have transparency and accountability in the management of their unions.

(2) Since 2001, investigations of union fraud have resulted in more than 1,000 indictments, 929 convictions, and restitution in excess of $93,000,000.

(3) A new rule (referred to in this subsection as the ''transparency rule'') to require union management to disclose more information about sales and purchases of assets, and disbursements to officers and employees, among other things, was set to take effect on April 21, 2009, after a previous delay affording reporting entities more time to prepare to comply.

(4) The Obama Administration has set a goal for itself to be the most open and transparent administration in the history of the Nation.

(5) On April 21, 2009, the Department of Labor issued—

(A) a final rule providing for a further delay of the transparency rule; and

(B) a proposed rule to withdraw the transparency rule.

(6) The transparency rule would have been a key tool in the battle against fraud, discouraging embezzlement of the money of union members and making money harder to hide, and would have provided great sunlight and transparency to allow members to know how their dues were being spent.

(7) The Department of Labor's actions are in direct contradiction to everything the Obama Administration purports to stand for.

(b) PROHIBITION.—The Secretary of Labor may not expend Federal funds to withdraw the rule issued by the Secretary of Labor entitled ''Labor Organization Annual Financial Reports'', 74 Fed. Reg. 3678 (January 21, 2009).

SA 1008. Ms. SNOWE submitted an amendment to be proposed by her to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; which was ordered to lie on the table; as follows:

On page 26, after line 22, add the following:

SEC. 5. EFFICIENT INVESTIGATION OF FINANCIAL CRIMES.

Not later than 60 days after the date of enactment of this Act, the Attorney General of the United States shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report regarding the activities of the Department of Justice to work with other Federal departments and agencies and State and local governments to ensure that financial crimes (including fraud, misrepresentation, malfeasance, or related crimes with respect to development, advertising, brokerage, or sale of financial products including derivatives, mortgage-backed securities, credit default swaps, and subprime loans, or related services) are investigated and prosecuted in the most efficient way possible and without duplication of effort.

SA 1009. Mr. PRYOR (for himself and Mr. CORKER) submitted an amendment intended to be proposed by him to bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ENHANCED REPORTING ON USE OF TARP FUNDS.

Section 105 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5215(a)) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) a detailed report on the use of capital investments by each financial institution, including—

''(A) a narrative response, in a form and on a date to be established by the Secretary, specifically outlining, with respect to the financial institution—

''(i) the original intended use of the TARP funds;

''(ii) whether the TARP funds are segregated from other institutional funds;

''(iii) the actual use of the TARP funds to date;

''(iv) the amount of TARP funds retained for the purpose of recapitalization; and

''(v) the expected use of the remainder of the TARP funds;

''(B) information compiled by the Secretary under subsection (b); and

''(C) a report, in a form and on a date to be established by the Secretary, on the compliance by the financial institution with the restrictions on dividends, stock repurchases, and executive compensation under the Security Purchase Agreement and executive compensation guidelines of the Department of Treasury.'';

(2) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(3) by inserting after subsection (a) the following:

''(b) INFORMATION PROVIDED BY FINANCIAL INSTITUTIONS.—

''(1) IN GENERAL.—For purposes of the report of the Secretary required by subsection (a)(4), financial institutions assisted under this title shall provide to the Secretary the information required by paragraph (2), at such times and in such manner as the Secretary shall establish.

''(2) INFORMATION REQUIRED.—Information required by this paragraph is—

''(A) for those financial institutions receiving $1,000,000,000 or more from the Capital Purchase Program established by the Secretary (or any successor thereto), a monthly lending and intermediation snapshot, as of a date to be established by the Secretary, which shall include—

''(i) quantitative information, as well as commentary, to explain changes in lending levels for each category on consumer lending, including first mortgages, home equity lines of credit, open end credit plans (as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), and other consumer lending;

''(ii) quantitative information, as well as commentary, to explain changes in lending levels for each category on commercial lending, including commercial and industrial (C&I) lending and real estate;

''(iii) quantitative information, as well as commentary, to explain changes in lending levels for each category on other lending activities, including mortgage-backed securities, asset-backed securities, and other secured lending; and

''(iv) a narrative report of the intermediation activity during the reporting period, including a general commentary on the lending environment, loan demand, any changes in lending standards and terms, and any other intermediation activity; and

''(B) for those financial institutions receiving less than $1,000,000,000 from the Capital Purchase Program established by the Secretary (or any successor thereto), a lending and intermediation snapshot, as of a date to be established by the Secretary, but not more frequently than once every 90 days, including the information described in clauses (i) through (iv) of subparagraph (A).

''(3) CERTIFICATION REQUIRED.—The information submitted to the Secretary under this subsection shall be signed by a duly authorized senior executive officer of the financial institution, including a statement certifying the accuracy of all statements, representations, and supporting information provided, and such certifications shall be included in the reports submitted by the Secretary under subsection (a)(4).''.

SA 1010. Mrs. MCCASKILL submitted an amendment to be proposed by her to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE II—HECM FRAUD PREVENTION AND ENFORCEMENT ACT

SEC. 21. SHORT TITLE.

This title may be cited as the ''Home Equity Conversion Mortgage Fraud Prevention and Enforcement Act of 2009''.

SEC. 22. PURPOSE.

The purpose of this title is to provide additional fraud prevention, detection, and enforcement provisions with respect to federally-insured home equity conversion mortgages.

SEC. 23. FEDERALLY-INSURED HOME EQUITY CONVERSION MORTGAGES.

(a) CERTIFICATION OF RESIDENCE.—Section 255(d)(2) of the National Housing Act (12 U.S.C. 1715z-20(d)(2)) is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

''(D) submits a certification to the Secretary and the mortgagee that the mortgagor occupies the dwelling that secures the mortgage; and''.

(b) PURCHASE OF DWELLING.—Section 255(d)(3) of the National Housing Act (12 U.S.C. 1715z-20(d)(3)) is amended by striking ''that is'' and all that follows through ''unit'' and inserting ''that—''

''(A) is designed principally for a 1- to 4-family residence in which the mortgagor occupies 1 of the units; and

''(B) in the case of a dwelling that is purchased with the proceeds of a home equity conversion mortgage, was owned and occupied during the 180-day period ending on the date of the sale of the dwelling''.

(c) APPRAISALS.—Section 255(d) of the National Housing Act (12 U.S.C. 1715z-20(d)) is amended—

(1) in paragraph (10), by striking ''and'' at the end;

(2) in paragraph (11), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(12) be secured by a dwelling that has been properly appraised by a person that—

''(A) the Secretary determines is qualified to perform such appraisals;

''(B) has verified the purchase price of the dwelling to ensure that the appraised value of the property is not inflated; and

''(C) has obtained any documentation necessary to support an appraised value that is high in relation to those of comparable dwellings.''.

(d) INFORMATION SERVICES FOR MORTGAGORS.—Section 255(f) of the National Housing Act (12 U.S.C. 1715z-20(f)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the margins accordingly;

(2) by striking paragraph (5);

(3) in the matter preceding subparagraph (A), as redesignated by this subsection, by striking ''The Secretary'' and all that follows through ''which shall include—'' and inserting the following:

''(1) IN GENERAL.—The Secretary shall provide or cause to be provided to entities other than the lender the information required under subsection (d)(2)(B). Such information shall be discussed with the mortgagor and shall include—'';

(4) in the matter following subparagraph (D), as redesignated, by striking ''The Secretary shall'' and inserting the following:

''(4) ALTERNATIVE APPROACHES.—The Secretary shall'';

(5) in subparagraph (D), as redesignated by this subsection, by striking ''and'' at the end; and

(6) by inserting after subparagraph (D), as redesignated by this subsection, the following:

''(E) information about how to report mortgage-related fraud or consumer abuses, including information about how to contact the Office of the Inspector General of the Department of Housing and Urban Development;

''(F) in the case of a home equity conversion mortgage in which a person was removed from the title to the dwelling, information about—

''(i) the consequences of being removed from such title; and

''(ii) the consequences upon the death of the mortgagor or a divorce settlement.

''(2) FRAUD REPORTING.—A person or entity that counsels a mortgagor under this subsection shall report to the Inspector General of the Department of Housing and Urban Development any suspected mortgage-related fraud against a mortgagor.

''(3) CERTIFICATION.—Before making a home equity conversion mortgage, a mortgagee shall obtain from each mortgagor a certification that such mortgagor has received counseling under this subsection.''.

(e) ADDITIONAL PROTECTIONS.—Section 255 of the National Housing Act (12 U.S.C. 1715z-20) is amended by inserting after subsection (p) the following:

''(q) POWERS OF HUD INSPECTOR GENERAL.—The Inspector General of the Department of Housing and Urban Development may—

''(1) conduct independent audits and inspections of mortgagees to ensure that such mortgagees comply with the requirements under this section; and

''(2) compare the records of mortgagors under mortgages insured under this section with the Death Master File of the Social Security Administration.

''(r) PRIVACY PROTECTIONS.—A mortgagee may not sell or disclose any personally identifiable information about a mortgagor under a home equity conversion mortgage for marketing purposes unless such disclosure is at the request of the mortgagor.

''(s) COMPLIANCE SYSTEM.—Each mortgagee shall create and maintain a system to ensure compliance with this section that includes—

''(1) written procedures; and

''(2) a periodic review of records to detect and prevent violations of this section.

''(t) ADVERTISING.—

''(1) IN GENERAL.—A mortgagee may not advertise a home equity conversion mortgage in a manner that—

''(A) is false or misleading;

''(B) fails to present a fair balance between the risks and benefits of a home equity conversion mortgage; or

''(C) fails to reveal—

''(i) facts that are material to a representation made in such advertisement; or

''(ii) the consequences of obtaining a home equity conversion mortgage.

''(2) REQUEST TO WITHDRAW OR REVISE ADVERTISEMENT.—The Secretary or the Commissioner of the Federal Trade Commission may request that a mortgagee withdraw or modify an advertisement that does not meet the requirements established under paragraph (1).''.

SEC. 24. CRIMINAL PENALTIES.

(a) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSACTIONS.—Section 1012 of title 18, United States Code, is amended by striking ''one year'' and inserting ''2 years''.

(b) EQUITY SKIMMING.—Section 912 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1709-2) is amended—

(1) in paragraph (1), by striking ''a mortgage or deed of trust insured or held by the Secretary'' and inserting ''a home equity conversion mortgage, a mortgage, or deed of trust insured or held by the Secretary''; and

(2) in the matter following paragraph (3), by adding at the end the following: ''Notwithstanding any other provision of law, and for purposes of any violation of this section relating to a home equity conversion mortgage, the statute of limitations for the commencement of a criminal action under this section shall not begin and shall be considered tolled until the fraud constituting the action is discovered.''.

SA 1011. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 990 proposed by Mr. KOHL to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. PROTECTING AMERICANS FROM VIOLENT CRIME.

(a) CONGRESSIONAL FINDINGS.—Congress finds the following:

(1) The Second Amendment to the Constitution provides that ''the right of the people to keep and bear Arms, shall not be infringed''.

(2) Section 2.4(a)(1) of title 36, Code of Federal Regulations (as in effect before January 9, 2009), provided that ''except as otherwise provided in this section and parts 7 (special regulations) and 13 (Alaska regulations), the following are prohibited: (i) Possessing a weapon, trap or net (ii) Carrying a weapon, trap or net (iii) Using a weapon, trap or net''.

(3) Section 27.42 of title 50, Code of Federal Regulations (as in effect before January 9, 2009), provided that, except in special circumstances, citizens of the United States may not ''possess, use, or transport firearms on national wildlife refuges'' of the United States Fish and Wildlife Service.

(4) The regulations described in paragraphs (2) and (3) (as in effect before January 9, 2009) prevented individuals complying with Federal and State laws from exercising the second amendment rights of the individuals while at units of—

(A) the National Park System; and

(B) the National Wildlife Refuge System.

(5) The existence of different laws relating to the transportation and possession of firearms at different units of the National Park System and the National Wildlife Refuge System entrapped law-abiding gun owners while at units of the National Park System and the National Wildlife Refuge System.

(6) Although the Bush administration issued new regulations relating to the Second Amendment rights of law-abiding citizens in units of the National Park System and National Wildlife Refuge System that went into effect on January 9, 2009—

(A) on March 19, 2009, the United States District Court for the District of Columbia granted a preliminary injunction with respect to the implementation and enforcement of the new regulations; and

(B) the new regulations—

(i) are under review by the administration; and

(ii) may be altered.

(7) Congress needs to weigh in on the new regulations to ensure that unelected bureaucrats cannot again override the Second Amendment rights of law-abiding citizens on 83,600,000 acres of National Park System land and 90,790,000 acres of land under the jurisdiction of the United States Fish and Wildlife Service.

(8) The Federal laws should make it clear that the second amendment rights of an individual at a unit of the National Park System or the National Wildlife Refuge System should not be infringed.

(b) PROTECTING THE RIGHT OF INDIVIDUALS TO BEAR ARMS IN UNITS OF THE NATIONAL PARK SYSTEM AND THE NATIONAL WILDLIFE REFUGE SYSTEM.—The Secretary of the Interior shall not promulgate or enforce any regulation that prohibits an individual from possessing a firearm including an assembled or functional firearm in any unit of the National Park System or the National Wildlife Refuge System if—

(1) the individual is not otherwise prohibited by law from possessing the firearm; and

(2) the possession of the firearm is in compliance with the law of the State in which the unit of the National Park System or the National Wildlife Refuge System is located.

SA 1012. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 990 proposed by Mr. KOHL to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after line 1, and insert the following:

SEC. ___. PROTECTING AMERICANS FROM VIOLENT CRIME.

(a) CONGRESSIONAL FINDINGS.—Congress finds the following:

(1) The Second Amendment to the Constitution provides that ''the right of the people to keep and bear Arms, shall not be infringed''.

(2) Section 2.4(a)(1) of title 36, Code of Federal Regulations (as in effect before January 9, 2009), provided that ''except as otherwise provided in this section and parts 7 (special regulations) and 13 (Alaska regulations), the following are prohibited: (i) Possessing a weapon, trap or net (ii) Carrying a weapon, trap or net (iii) Using a weapon, trap or net''.

(3) Section 27.42 of title 50, Code of Federal Regulations (as in effect before January 9, 2009), provided that, except in special circumstances, citizens of the United States may not ''possess, use, or transport firearms on national wildlife refuges'' of the United States Fish and Wildlife Service.

(4) The regulations described in paragraphs (2) and (3) (as in effect before January 9, 2009) prevented individuals complying with Federal and State laws from exercising the second amendment rights of the individuals while at units of—

(A) the National Park System; and

(B) the National Wildlife Refuge System.

(5) The existence of different laws relating to the transportation and possession of firearms at different units of the National Park System and the National Wildlife Refuge System entrapped law-abiding gun owners while at units of the National Park System and the National Wildlife Refuge System.

(6) Although the Bush administration issued new regulations relating to the Second Amendment rights of law-abiding citizens in units of the National Park System and National Wildlife Refuge System that went into effect on January 9, 2009—

(A) on March 19, 2009, the United States District Court for the District of Columbia granted a preliminary injunction with respect to the implementation and enforcement of the new regulations; and

(B) the new regulations—

(i) are under review by the administration; and

(ii) may be altered.

(7) Congress needs to weigh in on the new regulations to ensure that unelected bureaucrats cannot again override the Second Amendment rights of law-abiding citizens on 83,600,000 acres of National Park System land and 90,790,000 acres of land under the jurisdiction of the United States Fish and Wildlife Service.

(8) The Federal laws should make it clear that the second amendment rights of an individual at a unit of the National Park System or the National Wildlife Refuge System should not be infringed.

(b) PROTECTING THE RIGHT OF INDIVIDUALS TO BEAR ARMS IN UNITS OF THE NATIONAL PARK SYSTEM AND THE NATIONAL WILDLIFE REFUGE SYSTEM.—The Secretary of the Interior shall not promulgate or enforce any regulation that prohibits an individual from possessing a firearm including an assembled or functional firearm in any unit of the National Park System or the National Wildlife Refuge System if—

(1) the individual is not otherwise prohibited by law from possessing the firearm; and

(2) the possession of the firearm is in compliance with the law of the State in which the unit of the National Park System or the National Wildlife Refuge System is located.

SA 1013. Mr. SCHUMER (for himself, Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. ___. DECLARATION OF ENGLISH AS LANGUAGE.

(a) IN GENERAL.—English is the common language of the United States.

(b) PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE.—The Government of the United States shall preserve and enhance the role of English as the language of the United States. Nothing in this Act shall diminish or expand any existing rights under the laws of the United States relative to services or materials provided by the Government of the United States in any language other than English.

(c) DEFINITION.—For purposes of this section, the term ''laws of the United States'' includes the Constitution of the United States, any provision of Federal statute, any rule or regulation issued under such statute, any judicial decisions interpreting such statute, or any Executive Order of the President.

NOTICE OF HEARING

COMMITTEE ON INDIAN AFFAIRS

Mr. DORGAN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, April 23, 2009, at 2:15 p.m. in room 628 of the Dirksen Senate office building to conduct a hearing on the nomination of Yvette D. Roubideaux to be Director of the Indian Health Service.

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. LEAHY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on April 23, 2009, at 10:30 a.m.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Thursday, April 23, 2009, in room S–216, at 12 p.m.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a hearing on Thursday, April 23, at 2 p.m., in room SD–366 of the Dirksen Senate office building.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Thursday, April 23, 2009 at 10:30 a.m. in room 406 of the Dirksen Senate office building.

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

COMMITTEE ON FINANCE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, April 23, 2009, at 10 a.m., in room 215 of the Dirksen Senate office building, to conduct a hearing entitled ''Technology Neutrality in Energy Tax: Issues and Options.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, April 23, 2009, at 10:15 a.m., to hold a hearing entitled ''Voice of Veterans from the Afghan War.''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. LEAHY. 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 Thursday, April 23, 2009, at 9 a.m. to conduct a hearing entitled ''Follow the Money: State and Local Oversight of Stimulus Funding.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on Thursday, April 23, 2009, at 2:15 p.m. in room 628 of the Dirksen Senate office building.

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

COMMITTEE ON THE JUDICIARY

Mr. LEAHY. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate, to conduct an executive business meeting on Thursday, April 23, 2009, at 10 a.m. in room SD–226 of the Dirksen Senate office building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on April 23, 2009, at 2 p.m.

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

JOINT COMMITTEE ON THE LIBRARY

Mr. LEAHY. Mr. President, I ask unanimous consent that the Joint Committee on the Library be authorized to meet during the session of the Senate on Thursday, April 23, 2009, at 11:30 a.m.

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

JOINT COMMITTEE ON PRINTING

Mr. LEAHY. Mr. President, I ask unanimous consent that the Joint Committee on Printing be authorized to meet during the session of the Senate on Thursday, April 23, 2009, at 11:45 a.m.

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

NOTICE: REGISTRATION OF MASS MAILINGS

The filing date for 2009 first quarter Mass Mailings is Monday, April 27, 2009. If your office did no mass mailings during this period, please submit a form that states ''none.''

Mass mailing registrations, or negative reports, should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, D.C. 20510–7116.

The Public Records office will be open from 9:00 a.m. to 6:00 p.m. on the filing date to accept these filings. For further information, please contact the Public Records office at (202) 224–0322.

DESIGNATING APRIL 23, 2009, AS ''NATIONAL ADOPT A LIBRARY DAY''

Mr. DURBIN. I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 113, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 113) designating April 23, 2009, as ''National Adopt A Library Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 113) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 113

Whereas libraries are an essential part of the communities and the national system of education in the United States;

Whereas the people of the United States benefit significantly from libraries that serve as an open place for people of all ages and backgrounds to make use of books and other resources that offer pathways to learning, self-discovery, and the pursuit of knowledge;

Whereas the libraries of the United States depend on the generous donations and support of individuals and groups to ensure that people who are unable to purchase books still have access to a wide variety of resources;

Whereas certain nonprofit organizations facilitate donations of books to schools and

libraries across the country to extend the joys of reading to millions of people in the United States and to prevent used books from being thrown away; and

Whereas several States and Commonwealths that recognize the importance of libraries and reading have adopted resolutions commemorating April 23 as ''Adopt A Library Day'': Now, therefore, be it

Resolved, That the Senate—

(1) designates April 23, 2009, as ''National Adopt A Library Day'';

(2) honors organizations that help facilitate donations to schools and libraries;

(3) urges all people in the United States who own unused books to donate those books to local libraries;

(4) strongly supports children and families who take advantage of the resources provided by schools and libraries; and

(5) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

AUTHORIZING THE USE OF EMANCIPATION HALL

Mr. DURBIN. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H. Con. Res. 86, which was received from the House.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 86) authorizing the use of Emancipation Hall in the Capitol Visitor Center for the unveiling of a bust of Sojourner Truth.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DURBIN. I ask unanimous consent that the resolution be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The concurrent resolution (H. Con. Res. 86) was agreed to.

PROVIDING FOR ACCEPTANCE OF RONALD REAGAN STATUE

Mr. DURBIN. I ask unanimous consent the Senate proceed to the immediate consideration of H. Con. Res 101, which was received from the House.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res 101) providing for the acceptance of a statue of Ronald Wilson Reagan from the people of California for placement in the United States Capitol.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DURBIN. I ask unanimous consent that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The concurrent resolution (H. Con. Res. 101) was agreed to.

APPOINTMENT

The PRESIDING OFFICER. The Chair announces, on behalf of the Republican leader, pursuant to the provisions of S. Res. 105, adopted April 13, 1989 as amended by S. Res. 149, adopted October 5, 1993, as amended by Public Law 105–275, adopted October 21, 1998, further amended by S. Res. 75, adopted March 25, 1999, amended by S. Res. 383, adopted October 27, 2000, and amended by S. Res. 355, adopted November 13, 2002, and further amended by S. Res. 480, adopted November 21, 2004, the appointment of the following Senators as members of the Senate National Security Working Group for the 111th Congress: the Senator from Arizona, Mr. MCCAIN, and the Senator from Idaho, Mr. RISCH.

The PRESIDING OFFICER. The Chair announces, on behalf of the Republican Leader, pursuant to P.L. 110–229, the appointment of the following to be members of the Commission to Study the Potential Creation of a National Museum of the American Latino: Dr. Eduardo Padron of Florida, Sean D. Reyes of Utah, and Ellie Lopez-Bowlan of Nevada.

ORDERS FOR FRIDAY, APRIL 24, 2009

Mr. DURBIN. I ask unanimous consent that when the Senate completes its business today, it adjourn until 11 a.m. tomorrow, Friday, April 24; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

PROGRAM

Mr. DURBIN. The next vote will occur at approximately 5:30 p.m. on Monday. That vote will be on the motion to invoke cloture on S. 386, the Fraud Enforcement and Recovery Act.

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. DURBIN. If there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 10 p.m., adjourned until Friday, April 24, 2009, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF TRANSPORTATION

VICTOR M. MENDEZ, OF ARIZONA, TO BE ADMINISTRATOR OF THE FEDERAL HIGHWAY ADMINISTRATION, VICE THOMAS J. MADISON, RESIGNED.

ENVIRONMENTAL PROTECTION AGENCY

STEPHEN ALAN OWENS, OF ARIZONA, TO BE ASSISTANT ADMINISTRATOR FOR TOXIC SUBSTANCES OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE JAMES B. GULLIFORD, RESIGNED.

DEPARTMENT OF AGRICULTURE

RAJIV J. SHAH, OF WASHINGTON, TO BE UNDER SECRETARY OF AGRICULTURE FOR RESEARCH, EDUCATION, AND ECONOMICS, VICE GALE A. BUCHANAN, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. DOUGLAS M. FRASER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. LARRY O. SPENCER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. MARC E. ROGERS

UNITED SATES MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COLONEL JOHN J. BROADMEADOW
COLONEL JOHN W. BULLARD, JR.
COLONEL STEVEN W. BUSBY
COLONEL HERMAN S. CLARDY III
COLONEL LEWIS A. CRAPAROTTA
COLONEL ROBERT F. HEDELUND
COLONEL FREDERICK M. PADILLA
COLONEL MICHAEL A. ROCCO
COLONEL RICHARD L. SIMCOCK II
COLONEL VINCENT R. STEWART

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. ELEANOR V. VALENTIN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. MARK L. TIDD

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. KURT L. KUNKEL
CAPT. JONATHAN A. YUEN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. KATHERINE L. GREGORY
CAPT. KEVIN R. SLATES

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. CLINTON F. FAISON III

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be lieutenant colonel

CHARLES T. KIRCHMAIER

CONFIRMATION

Executive nomination confirmed by the Senate, April 23, 2009:

DEPARTMENT OF DEFENSE

ASHTON B. CARTER, OF MASSACHUSETTS, TO BE UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.