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## Senate

The Senate met at 10 a.m. and was called to order by the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois.

### PRAYER

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

Let us pray.

Lord God Almighty, Maker of Heaven and Earth, we praise You that You have not left us solely to our own resources. Instead, You promised to be our strength, our ever-present help in time of trouble.

Lord, our lawmakers need You during these challenging days. Guide them with Your wisdom, as Your loving providence prepares the road ahead. Give them the grace to be valiant pilgrims of life's sometimes dreary and dusty way. Teach them to toil and ask not for reward save that of knowing they do the things that please You. May the spur of conscience be the guiding star to lead them to the right decisions. Strengthen their will to always choose that which is morally excellent rather than what is politically expedient.

We pray in Your sacred Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable ROLAND W. BURRIS 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, October 20, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

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

### RECOGNITION OF THE MAJORITY LEADER

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

### SCHEDULE

Mr. REID. Mr. President, following leader remarks, there will be a period of morning business for 90 minutes, with Senators permitted to speak for 10 minutes each. The majority will control the first 45 minutes and the Republicans will control the second part of that.

Following morning business, the Senate will proceed to the consideration of the conference report to accompany H.R. 2892, which is the Department of Homeland Security Appropriations Act. There will be 3 hours 15 minutes for debate prior to a vote on the conference report. The Senate will recess from 12:30 to 2:15 p.m. today for our weekly caucus lunches. If all time is used, the vote will occur around 4:30. However, some of the debate time may be yielded back and we could vote earlier than that.

We are still working on an agreement, the Republican leader and myself, to consider the Medicare Physicians Fairness Act. Senators will be notified when any agreement is reached.

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

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

The legislative clerk proceeded to call the roll.

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

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

### RECOGNITION OF THE MINORITY LEADER

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

### HEALTH CARE WEEK XIV, DAY II

Mr. MCCONNELL. Mr. President, over the past few months, I have delivered a series of floor speeches on the kinds of commonsense reforms that Americans were looking for but have not seen in the ongoing debate over health care. In particular, I have noted the glaring absence of medical liability reform in the various Democratic plans that are kicking around here on Capitol Hill.

My point has been simple: Throughout the debate, the administration has been hauling out one group or another onto the White House lawn as a way of suggesting support for its health care plans. We have seen doctors. We have seen nurses. We have seen hospitals, State governments—you name it. But one group you have not seen is the personal injury lawyers who drive up the cost of medicine and premiums for all of us by filing wasteful lawsuits against doctors and hospitals all across our country.

The connection between lawsuits and higher health care costs is obvious. Because of the constant threat of these suits, doctors are forced to order costly but unnecessary tests and procedures to protect themselves. The routine nature of this so-called defensive medicine is one reason health care costs

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



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have skyrocketed over the past decade, and junk lawsuits are the primary reason doctors today spend a fortune—a fortune—on liability insurance even before they open their doors for business.

The prevalence of wasteful lawsuits is evidenced by the fact that Americans spend more on lawsuits than any other country and more than twice as much as all but one other country—not because American doctors are somehow more negligent but because our lawsuits tend to be more wasteful. In fact, according to the *New England Journal of Medicine*, 40 percent—40 percent—of liability suits in the United States are entirely without merit, and even in cases in which the plaintiff prevails, most of the compensation goes to someone other than the victim.

There should be no doubt that wasteful lawsuits are a major reason that health care costs in this country are out of control and that we should do something about it.

We have seen the good results of medical liability reforms at the State level. States that have adopted medical liability reform have witnessed premiums for medical liability insurance fall dramatically. Recent reforms in Texas, for example, helped drive down insurance premiums for doctors by more than 25 percent. These savings have allowed doctors in Texas to see more clients and increase charity care.

Here was a commonsense reform that surely everyone could agree on. Yet, just like the other commonsense reforms Republicans have proposed as a way of fixing our existing health care system, our advice was ignored.

The administration and Democratic leaders in Congress were determined from the outset to press ahead with a massive—a massive—expansion of government rather than take step-by-step reforms that the American people have been asking for all along. We have seen it in every Democratic proposal, including the recently finalized Baucus plan. In the face of indisputable evidence that medical liability reforms would lower costs, the Baucus bill offers nothing more than lip service—a sense of the Senate that “Congress should consider establishing a state demonstration program.”

Well, we already have State demonstration programs. We have them in California, we have them in Indiana, and we have them in Texas. They work, and we ought to be doing that at the Federal level.

If Democrats were serious about getting rid of junk lawsuits, I am sure they could have found room in the 1,500-page Baucus bill for it. Unfortunately, they did not.

Americans expected more than this. At the outset of this debate, everyone agreed that one of the primary reasons for reform was the need to lower health care costs, and commonsense experience and the testimony of all the experts tells us unequivocally—unequivocally—that ending junk lawsuits against doctors and hospitals would

lower costs. The question was not whether we should have included it. The only question was, Why would Democrats leave out such a commonsense reform?

Unfortunately, the answer is all too obvious. Here is how a former Democratic National Committee chairman put it recently in a candid moment. This is what he had to say. “The reason why tort reform is not in the bill is because the people who wrote it did not want to take on the trial lawyers in addition to everybody else they were taking on, and that is the plain and simple truth.”

That is Howard Dean, Dr. Howard Dean, not Senate Republicans. Howard Dean says the reason this obvious, commonsense reform was not included in the Baucus bill is that the authors of the bill did not want to face the wrath of the lawyers.

This is precisely why Americans are concerned about government-driven health care. Commonsense decisions become political decisions. And Americans do not want politics interfering with their health care. Medical liability reform should be in this bill. The fact that it is not only makes Americans more concerned about the impact government-driven health care would have on their lives and on their care.

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

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

The legislative clerk proceeded to call the roll.

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

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

#### RESERVATION OF LEADER TIME

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

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business for 90 minutes, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the second half.

The Senator from Rhode Island.

#### EXTENSION OF UNEMPLOYMENT INSURANCE BENEFITS

Mr. REED. Mr. President, I rise again to urge my colleagues, particularly my colleagues on the Republican side, to put aside their amendments so we can move immediately and pass an extension of unemployment insurance benefits.

We are facing a crisis of employment throughout this country. We are seeing people who are exhausting their benefits. The need is now. The time is now. We must act now.

Hundreds of thousands of Americans have already exhausted their unemployment benefits, including 3,500 Rhode Islanders. Unfortunately, this number is growing every day. These people are out of work, without an employment check or paycheck, with jobs remaining scarce.

It is important to recognize how we got here. A \$236 billion Federal surplus accumulated in the 1990s under President Clinton and handed to President Bush evaporated in 2000 due to President Bush's unsound and excessive tax cuts which cost nearly \$1.8 trillion and failed to spur sustainable economic expansion and were targeted to the richest Americans, not middle-income Americans. Indeed, most working Americans actually ended up less well off as the median income for families fell by \$2,000 from the year 2000 to the year 2007. Let me say that again. In the period of the Bush administration, with the huge tax cuts which he proposed as being the key to our economic recovery and our economic progress, incomes of middle-income Americans fell, they didn't rise. Incomes of the very richest Americans rose dramatically and continue to rise.

In addition, the Bush administration praised the doctrine of inadequate supervision of our financial markets, a lack of adequate risk assessment by financial institutions throughout not only the United States but the world, and they combined that laissez-faire attitude toward regulation of Wall Street with very costly and unfunded wars in Iraq and Afghanistan. As a result of these profligate policies, President Obama inherited a \$1.3 trillion deficit upon taking office. This is on top of an unprecedented set of circumstances facing our Nation both at home and abroad—the virtual collapse of the financial markets in September, the ongoing wars in Iraq and Afghanistan. With regard to Afghanistan, the same inattention the Bush administration showed toward regulation they showed toward our efforts in Afghanistan, and today we face a crisis of the first order there.

Today, we are in a serious situation. Through decisive action, which I will credit began under President Bush last September but particularly carried out through the stimulus package, we are responding to this economic crisis. But economists of all persuasions tell us we are in a very difficult and challenging moment. Unlike the 1980s and prior economic downturns, they do not expect a traditional V-shaped recovery—a quick decline and then a fairly rapid ascent to normal economic performances. In fact, economists are predicting that job gains will not be manifest until next year. It always seems to be the situation that employment numbers lag behind other indicators,

including economic growth and availability of credit, and this lag is particularly challenging today because it means people are out of work and unfortunately may stay out of work into next summer and beyond.

There have been some signs of recovery. The last time the Dow hit 10,000 was October 2008, and we recently have seen it headed up in crossing 10,000. It is no longer in a meltdown, but we are far from a full, sustainable recovery.

Wall Street is one indication, but it is not the indication most Americans look to in terms of their own family's welfare. The most important aspect of a family's welfare is steady, dependable, rewarding employment, and that is the challenge we face today. People are concerned about jobs. Many Rhode Islanders with jobs are coping with reductions in hours and earnings, while those without jobs are tirelessly looking for work in a labor market that is worsening, and jobs simply aren't there.

We have a particularly dire situation in Rhode Island. There are 74,000 unemployed in my State. That is a big number, but it is much bigger in terms of my State of Rhode Island. We are the smallest State in the Union. With a population between 900,000, and 1 million, 74,000 unemployed people is a huge amount. It translates to 13 percent unemployment. If you look at the underemployed, if you look at those who have dropped out of the labor force, it is probably much higher. If you look at subcategories—teenagers, for example, much higher; minority communities, much higher. As a result, there is a growing frustration and too often a desperation gripping the people of Rhode Island.

A key component of stabilizing the economy is ensuring that Americans without jobs can continue to support their families, and that is at the heart of our unemployment compensation program. This compromise legislation which I helped craft along with Leader REED, Chairman BAUCUS, Senator SHAHEEN from New Hampshire, Senator DURBIN, and others, strikes a careful balance. It is completely offset. It helps unemployed workers across the country by providing all States with an additional 14 weeks of unemployment insurance benefits. It also continues the historical precedent and sound policy of recognizing that workers in the hardest hit States such as Rhode Island have even greater challenges finding work and are in the greatest need of assistance. Rhode Island and other States with unemployment rates at or above 8.5 percent would get an additional 6 weeks of benefits, for a total of 20 weeks. This provision will help more than 25 States, including South Carolina, Tennessee, and Michigan.

Unfortunately, the other side of the aisle, instead of permitting us to take up the bill quickly, is blocking legislation to extend unemployment insurance.

First they argued that they needed to see a CBO score, even though this legis-

lation has been scored by CBO and, again, it is fully offset. It is quite obvious it is fully offset.

Now my colleagues on the other side are delaying passage of this measure by offering a range of amendments that are not related to unemployment benefits. It is my understanding that the junior Senator from Nebraska is offering an amendment with respect to ACORN funding. This amendment not only has nothing to do with extending the benefits to jobless Americans, but it has already been considered on several occasions. In fact, I joined the Senator in passing his amendment to the Transportation appropriations bill just the other week.

Another of our colleagues wants to extend the \$8,000 new homeowner tax credit which costs an estimated \$16.7 billion. This is a worthy effort, but in the context of trying to get aid immediately to unemployed workers, I don't think it is the best use of our time.

It is counterintuitive to delay an extension of unemployment insurance with these types of amendments. Again, the homeowner tax credit is something I support. It is something we should do. It is something we should consider paying for also. But now is the time to deal with the most obvious crisis: people without work, running out of benefits, facing a desperate situation. They are falling behind in mortgage payments, accelerating another aspect of our problem—the crisis in foreclosures. They need this extension. Debating amendments that send messages but don't provide help for working Americans is not what we should be doing.

I wish to underscore the urgency we are facing. People are exhausting their benefits. They are receiving nothing. They still have to provide for their families. In Rhode Island, 3,500 people would benefit immediately from a Federal extension, a majority of whom have already exhausted their benefits going back, in some cases, several months. Thousands more Rhode Islanders will see their benefits end unless we act. These families need this help to stay afloat, to pay their bills, to stay in their homes. It is truly ironic that the Republican Party is delaying an extension of unemployment insurance to the middle class, yet in the past they have had no problem supporting huge tax cuts skewed toward the wealthiest Americans.

It is my hope we can work together. This is not a Rhode Island problem alone. It is not a Democratic problem or a Republican problem. I have been joined—and I wish to thank my colleague from South Carolina, LINDSEY GRAHAM, for working on this, because South Carolina is feeling the effects of this recession. Every part of this country, with very few exceptions, is feeling this problem. I again urge that we pass this measure.

In addition, we should recognize that there is one other aspect we should consider; strengthening and expanding

work-share programs, which allow employers to cut-back hours rather than lay people off if the employer maintains pension and health benefits. In turn, employees receive a proportionate unemployment insurance benefit for those hours reduced. It has been very effective in Rhode Island—averting nearly 5,000 layoffs in the first eight months of this year.

I urge immediate consideration of this extension, and I hope we can pass it this week.

With that, I yield the floor.

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

Mrs. SHAHEEN. Mr. President, I come to the floor for the third time in the last couple of weeks to urge passage of the Unemployment Compensation Extension Act. This will help the almost 2 million Americans who are in danger of losing their benefits. I am proud to join Senator JACK REED, and I thank him for his leadership in trying to get this done and working out legislation that can be supported by hopefully most of the Members of this Senate. For nearly 2 weeks, we have been working to pass an extension to help struggling families across the country.

The Senate bill we have introduced is a good bill, as Senator REED has said. It extends unemployment benefits for up to 14 weeks in all 50 States and by an additional 6 weeks in States with the highest unemployment rates. The extensions are targeted: only unemployed workers who have already exhausted their benefits are eligible. That means that almost all jobless workers who use this extension will have been out of work for a year or longer. That is a very long time.

Unemployment insurance was created to provide workers with an income while they look for another job, but with unemployment almost 10 percent nationally, it has gotten harder to find work, not easier. The number of long-term unemployed—those without a job for 27 weeks or more—rose to 5.4 million in September. In my home State of New Hampshire, the number of long-term unemployed has more than tripled in the past year. So now we have reached a perfect storm with unemployment. There are more than six people for every job opening, and nearly 2 million Americans are about to run out of all benefits, the benefits they need to pay the rent, to pay their mortgage, to buy food, to pay for gas, to continue to look for a job.

The Presiding Officer and I both know that unemployment is spent on necessities and it is spent immediately. So when we extend benefits, we are not just helping the workers who have lost their jobs; we are helping small businesses that provide the goods and services unemployed workers need. In fact, economists say that dollar for dollar, extending unemployment benefits is one of the most cost-effective actions we can take to stimulate the economy.

So now, as this economy is trying to recover, as people are struggling to

find work, it makes perfect sense that we would extend unemployment benefits for those people who need them. The American people are calling for the Senate to act, but some of our Members just aren't listening, and they have held up an extension for almost 2 weeks. They don't seem to want to move forward under any circumstances. My office is getting calls every day from people in New Hampshire and across the country, and they want to know why the Senate isn't acting quickly to pass an extension. Unfortunately, some Senators seem to be holding up the process to win political points, to delay our entire legislative agenda. They are playing politics while 7,000 workers a day run out of benefits, the benefits they need to put food on the table, to pay their bills, to keep our economy going.

This is not the time to play politics. This extension will help millions of Americans. It will help Americans in Democratic States, in Republican States, in Independent States, in purple States and red States and blue States.

It is important for us to pass this extension to help those Americans to stimulate our economy by getting money back into the hands of people who will spend it immediately.

I, again, urge all those Senators who have been standing in the way to stop playing politics and to pass this critical extension.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from New Hampshire for adding to the statement of the Senator from Rhode Island about this unemployment issue. As you can tell, this is a national concern. There was a time, I say to the Senator from New Hampshire, who is one of our newer Members, this was not even debated. Whether you were talking about minimum wage or unemployment compensation, it was a bipartisan issue. We basically knew, as the Senator said, the people hurting out there are not all Democrats, not all Republicans; they are all Americans and they are from all over this country.

Unfortunately, we have now drifted into a status where even this has become a political issue. I say to my colleagues on the Republican side of the aisle who are blocking unemployment benefits for the millions of unemployed people in this country: Go out and meet some of these people.

Last Friday, I went to Pilsen, which is a section in Chicago. I went to an office called the National Able Network, where they are trying to help the unemployed find a job. I sat at the table with about 12 unemployed people around me. I wish my Republican colleagues would actually sit down and meet some of these people who are unemployed. They will learn something. These are not lazy people. These are not people who enjoy being unem-

ployed. These are people who are now desperate—desperate people.

Let me tell you about Ira. I will not use his last name. I met him. He is a 43-year-old African American. He worked at one of the biggest banks in Chicago up until 14 months ago. He was in charge of human relations. He said: My job was to place people in jobs. Now I am trying to place myself in a job. He is going to DePaul University to pick up a certification in his field in the hopes that will give him an edge to find a new job.

Ira is a father with a family and his son suffers from a serious illness. Ira has no health insurance. He lost it when he lost his job.

Corinne is another one. Corinne had been a vice president in a bank in downtown Chicago, which the Presiding Officer would know if I mentioned its name. She worked her way up, at age 61, to a good-paying job. She lost it when the bank went out of business and merged. She said: I look through all these classified ads and go on the Internet. There are not too many jobs for vice presidents at banks, and that is what I used to be. Now she says: I am willing to do whatever it takes. Corinne has no health insurance either.

I went around the table and asked people what they were up against. They said, basically, if we stop unemployment payments, if Congress does not extend it, we will turn to our savings. One lady said: I don't have any savings; I have spent it all to keep my house so I don't go into foreclosure.

That is the reality of this issue. So why are the Republicans stopping us from extending unemployment insurance benefits? Some of them oppose it. Some of them believe people who are unemployed are just plain lazy. They should sit down and talk with some of these folks. As the Senator from New Hampshire said, there are six unemployed people for every available job in America. This is not laziness. This is a reality of a recession which this President inherited.

Some others want to try to refinance and reconfigure unemployment as we know it—the unemployment benefits that are collected from all working Americans, while we are working, for the rainy-day possibility that we will lose a job someday. There is money in this fund to pay these benefits.

One of the Senators on the Republican side came to the floor last week and said: I wish to find a new way to refinance unemployment benefits. That is a great exercise and a great challenge. For goodness' sake, while you debate this issue, are you going to let hundreds of thousands of people wonder whether they will be able to keep food on the table? That is the reality.

There is a third group, honest to goodness, that believes these folks do not deserve to receive this money, that it means they will not try hard to find a job. That is fundamentally unfair. If you believe in family, family values,

and a safety net for America, unemployment insurance is absolutely critical and essential.

Mr. President, 400,000 American families have run out of unemployment insurance benefits already, and the Republicans are stopping us from bringing up the bill to extend this safety net to unemployed Americans. There are 20,000 in my State of Illinois who lost their benefits a few days ago, at the end of September. There are another 200,000 families across the country who will lose their benefits this month because the Republicans continue to stop us from extending unemployment insurance benefits.

What are they waiting for? Mr. President, 1.3 million Americans will lose their temporary assistance by the end of the year if the Republicans stop us from moving on this legislation, 50,000 families in Illinois, similar to the ones I met with last Friday.

This money is essential for these families. It is essential for the economy. The money we put in an unemployment check is going to be spent by these people instantly. They are living paycheck to paycheck and, in this case, unemployment check to unemployment check.

Never in the history of the country's unemployment insurance program have more workers been unemployed for such prolonged periods of time. That is why we are extending the benefits. Half of all jobless workers cannot find a job within the first 6 months they receive benefits. That is the highest percentage of prolonged unemployment in the history of the program.

I can tell you what this comes down to. We are either going to stand up for these people who have been victims of this recession or we are going to watch more and more Americans show up at the bread lines, show up at the soup kitchens, show up at the homeless shelters. The New York Times had an article yesterday that said 1 out of 10 Americans in homeless shelters today is a victim of foreclosure. In the Midwest, it is one out of every six.

We are pretty comfortable as Members of the Senate. Our life is not bad at all. We know our next paycheck is coming in. But what about these poor people? I say to the Republicans, it is time to wake up to reality. Don't talk about family values, rewarding work, and standing up for people when you believe in them and turn down these unemployment benefits. It is time to pass these benefits now, and the Republicans had better step aside.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank my colleagues who have come before the Senate on this critical issue, our ability to extend unemployment insurance, and to ask our Republican colleagues not to block our efforts and to allow us to bring up this bill and do it quickly to help the families who are suffering in every one of our States.

This week we have an important opportunity and a need to address a real “kitchen table” issue for families all across this country. We have an opportunity and a responsibility to pass an extension of unemployment insurance and, in doing so, to provide a measure of financial stability to millions of Americans who have been laid off in the most difficult economic times since the Great Depression. We have the opportunity and the responsibility to provide peace of mind to families who are left without a job and nowhere else to turn and are so concerned about their future, families who, right now, as we debate our ability to bring this bill to the floor of the Senate, are having a much more agonizing debate about how to make next month’s rent or even next week’s grocery budget if their unemployment runs out.

For these families, this bill Senator BAUCUS has worked so hard on to bring to the floor helps them out. What this bill does is extend the unemployment to laid-off workers in States that have been hardest hit by job losses by 6 weeks, and it provides every single unemployed worker who has exhausted his or her benefits, regardless of the State in which they live, an additional 14 weeks of support. It makes some critical changes to help our families. It makes clear that the additional \$25 per week in benefits that Congress included in the Recovery Act does not count against someone who is seeking food stamps.

This bill could not come at a more critical time. This month, we have seen banner headlines in newspapers all across the country that make a very stark point about the tough climate our laid-off workers face today. In my home State of Washington, unemployment has now risen to 9.3 percent. That number alone does not illustrate the need to provide immediate relief. Even with the robust recovery program that has saved and created jobs throughout my State, our workers are feeling the very sharp effects of this recession.

Since this recession began in December of 2007, there have been over 145,000 jobs lost in my State. That means 1 in 20 jobs in Washington State has been lost. These unemployed workers are searching for an average of 6½ months before they find a job. While those statistics clearly point out the need for this legislation, the stories behind these statistics provide even more of a call to action—stories of single mothers who are scanning the classifieds every morning and then having to search through coupons each night to afford to feed their family dinner; stories of skilled workers, with many years of education and the debt that comes with that, facing stacks of unpaid bills; stories such as those that over the past few weeks, as unemployment benefits have become exhausted for millions of workers, have poured into my Senate offices, stories such as the one of Wane Ryan of Bonney Lake, WA, who shared it with me.

Mr. Ryan says he is a carpenter, with 23 years of experience, who has been looking for work for more than a year. In his letter, Mr. RYAN tells of recently selling all his personal belongings, relying on food banks, and being on the verge of financial ruin, through no fault of his own. He wrote me to ask for another emergency unemployment extension just to keep his head above water.

There is Kristina Cruz, from Seattle, who received her last unemployment check just a few weeks ago. Kristina told me she has been unemployed now for 20 months, after spending 10 years in human resources. She talks of going above and beyond in her job search, a skill she picked up as her career. But still, she said, interviews have been few and far between. She told me she is stressed out and panicked. She says she is not interested in living off the government long term, but in the midst of this economic crisis, she believes we need to pass this extension.

There is the story of Angela Slot and her family from Washougal, WA. Angela’s husband designs kitchens and has been out of work since last May. He has returned to school, put out over 1,500 applications in different fields in different States and for every different type of job. Yet today he remains without work.

The Slot family has taken out loans, used all their savings and unemployment payments just to stay in their home and provide for their three children. Without this extension, the Slot family calculates they will not have their home by the end of this year.

For these families and millions more like them, the question that haunts them every single day is what will we do if this support runs out? Where will we go when our savings are exhausted, when the credit card can no longer make ends meet, when the bank will not wait for a mortgage payment any longer? To whom do we turn?

In a time of national crisis, it is our job to make sure we are answering those questions. We can do that by providing a bridge to financial stability for families today. By the end of this year, my State projects that nearly 18,000 people will be in need of these benefits just to keep them afloat.

I, personally, know how important it is to have the government in your corner during financial times. When I was young, my dad had to stop working. He was diagnosed with multiple sclerosis. That left my mom at home to support and raise seven kids, as she also took care of my dad. It was a very difficult time for my family. We made a lot of sacrifices to get by. But you know what. Our country was there for us. Through food stamps, VA benefits for my dad, student loans, my family made it through those tough times, and I am here today. That is why I believe strongly that we need to be there now for the millions of Americans who are struggling today.

We cannot sit on the sidelines. Doing so would only compound the problems

we already face—more families pushed into bankruptcy, more families who will have foreclosures happen to them, more people will lose their health care, and less progress will be made on this important road to financial recovery. We cannot sit by as working families are pushed to the brink by a financial crisis they did not create but for which they are still paying.

Angela Slot ended her letter to me by saying she felt families such as hers, families who are just scraping by, are “falling off the radar.” This unemployment extension bill is our opportunity to prove to her and many others that is not the case. We have not forgotten them. We know they are out there.

I urge our colleagues to listen to the voices of their constituents. I ask our Republican colleagues not to block this effort, not to say no to these families, not to turn a blind eye but to join us in passing an unemployment extension that makes sure America’s laid-off workers are not ignored.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I speak in support of extending unemployment benefits to provide much needed relief to jobless workers.

Nearly 2 million Americans, including more than 13,000 Minnesotans, will exhaust their unemployment benefits by the end of the year. We are facing record high unemployment in this country. The number of Americans out of work has almost doubled over the past 2 years. People who want to get back to work are still facing a depressed job market, where there are six unemployed workers for every job opening. It is no wonder that I have received so many letters from my constituents, scores of people going to 60 job interviews, sending in hundreds of resumes.

I thank Senator SHAHEEN for her leadership here; Senator DURBIN, who just spoke; the majority leader, Senator BAUCUS, Senator DODD, Senator JACK REED, and my other distinguished colleagues in working with me to provide this much needed relief. I was so pleased that we were able to put together a proposal that included all 50 States because I simply could not explain to the people of my State that while people in Wisconsin who are unemployed would get extended unemployment benefits, those in Minnesota would not. Our States share a border, but when people suffer in one State, they also suffer in the other.

This is a fiscally responsible solution that is fair and will provide for a State such as Minnesota, where unemployment is still high but below 8.5 percent, which was the mark that was used in the House bill. Unemployment is unemployment no matter where you live. Minnesotans without jobs do not suffer any less because our State’s unemployment rate is slightly lower.

Several constituents wrote to me earlier, when Minnesota’s unemployment rate was around 8 percent. At

that time, as I mentioned, the proposal from the House would have cut things off at 8.5 percent. After getting these letters and talking to people in my State, I decided that was not good enough.

In one letter, Marilyn, from St. Paul, wrote:

Unemployment may be 8 percent for the State of Minnesota, but in our house it's 100 percent.

As Marilyn notes, unemployment is a national issue that does not simply begin or stop at State lines. Being unemployed in North Dakota, South Dakota, Iowa, Wisconsin, or any other State does not hurt any more or less than being unemployed in Minnesota. Deep, persistent unemployment hurts no matter where you happen to live, and the solution my colleagues and I crafted strikes the right balance in recognizing that fact.

Mariann from White Bear Lake, MN, wrote:

The tremendous stress of trying to search for an affordable job and raise two children on my own is overwhelming in itself. I cannot help that I live in one of the States with lower than 8.5 percent unemployment.

And Brian from Anoka wrote:

In fairness, what is good for one unemployed person should be good for all unemployed persons everywhere.

As the Senator from Illinois knows, sometimes we get letters that are all the same, from groups that organize, but these were individual letters from citizens out there who are hurting and who actually looked at the paper, heard the news, and decided: Wait a minute, the House bill, at 8.5 percent, does not help me. I am going to be left with nothing.

Simply put, this legislation in the Senate provides relief in a fair way to all those in need. This legislation helps jobless workers who desperately need relief. This legislation does not add to the deficit. This legislation is the right thing to do. Despite our best efforts, we have not been able to convince some of our colleagues on the other side of the aisle to agree that struggling middle-class Americans deserve an up-or-down vote on whether their unemployment benefits should be extended.

While my colleagues can perhaps afford to wait in their States—maybe the unemployed people in their States aren't writing them these letters—the more than 13,000 Minnesotans who will exhaust their unemployment benefits by the end of December cannot afford to wait. They have already waited too long. The time to act is now. This is the decent thing to do, and in a stretched economy, it is the right thing to do.

I know people are happy that we have started to see some good numbers on Wall Street. We need that. Maybe it will help us with our 401(k)s. But what do you say to Barbara, from Mahtomedi, MN, who understands Wall Street is doing well, but writes this:

My husband has been looking for a job since March and without unemployment to

help us out, I don't know what will happen. All four of us have been looking for steady employment for months. We drive old cars, bought a house within our means that we have been fixing up slowly by ourselves the past 22 years, buy everything used or on sale. Please don't let Minnesotans get left out in the cold—oh yes, don't forget about the heating bills coming in the next months. We need jobs and extending benefits will help us survive.

And what would my colleagues who are now stopping this bill from coming to the floor say to Carolyn of Woodbury, MN, who writes:

As of the early part of November of this year, I will have completed all my unemployment benefits. I have been looking for work daily since May of 2008 and have had several interviews but no offers yet. I like working, I am looking for work, I want to work and I am able to work but have not gotten any offers yet. Is there any chance that unemployment benefits will be extended? My unemployment is my only source of income and if I am not able to get that and don't have a job what will happen to a person like myself?

The time for partisanship is over. This is about people's lives and their ability to survive and to continue to provide for their families. I am very glad this Senate recognized that an unemployed person in Minnesota needs as much help as an unemployed person in Wisconsin, but now it is time to get the bill passed.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

#### HEALTH CARE REFORM

Mr. McCAIN. Mr. President, last year, the President of the United States, during his campaign, stated that there was going to be a change in the way we do business here in our Nation's Capitol, and that when it comes time for a conference on a bill that the American people would be brought in; that C-SPAN cameras would be there as Republicans and Democrats in a room that was open to the American public; that they would sit down and negotiate and come forward with results from a process that the American people would all be aware of. I have the direct quote here.

So what is going on today? Here is the bill from the HELP Committee. This is only some 600 pages. And over here we have the Finance Committee bill, some 1,500 pages. And not far from here—very close to here—there is a handful of Democrats and administration people behind closed doors who are reconciling these two bills. Sooner or later they will come out of that room—fortunately no longer smoke filled, but certainly with no access or information available for the American people—with perhaps a 2,100-page bill which has yet to be on the Internet so that the American people can see it. A remarkable process. No one should wonder then about the cynicism that is out there in America about the way we do business in our Nation's Capitol.

Less than 6 months ago, the President stood before a receptive audience

and he told the members of the American Medical Association, and I quote him:

Now, I recognize that it will be hard to make some of these changes if doctors feel like they're constantly looking over their shoulders for fear of lawsuits. Now I understand some doctors may feel the need to order more tests and treatments to avoid being legally vulnerable. That's a real issue. I do think we need to explore a range of ideas about how to put patient safety first, how to let doctors focus on practicing medicine. I want to work with the AMA so we can scale back the excessive defensive medicine that reinforces our current system. So this is going to be a priority for me.

That is a quote from the President back when he spoke to the AMA less than 6 months ago. Yet in this 600-page document there is not a mention of medical malpractice reform. In this 1,500-page document there are 20 pages of sense-of-the-Senate language. In case there is anyone who doesn't know what sense of the Senate means, it means exactly that. It does not mean law.

So the President of the United States talks to the AMA and tells them that we are going to bring about change. We are going to stop this practice of defensive medicine, which by the way, the estimates say account for as much as \$200 billion a year added to health care expenses. But what have we got here, and here, and going on behind closed doors? Does anybody believe the Democrats are going to come out with anything that is meaningful on medical malpractice reform? No. But what they will do is to say that we are going to try some demonstration projects. We are going to try some demonstrations.

In fact, on September 9, 2009, before a joint session of Congress, the President went a step further and stated:

Now, finally, many in this Chamber—particularly on the Republican side of the aisle—have long insisted that reforming our medical malpractice laws can help bring down the cost of health care. Now, I don't believe malpractice reform is a silver bullet, but . . . defensive medicine may be contributing to unnecessary costs. I know that the Bush administration considered authorizing demonstration projects in individual States to test these ideas.

And by the way, the reason why they did that was because they couldn't get meaningful malpractice reform through the Congress. Continuing the quote from the President:

I think it's a good idea, and I'm directing my Secretary of Health and Human Services to move forward on this initiative today.

Shortly thereafter, the President did issue a memo on medical malpractice reform where he stated:

We should explore medical liability reform as one way to improve the quality of care and patient-safety practices and to reduce defensive medicine.

So we all read with great interest about the new initiative. The memo went on to state:

We must foster better communication between doctors and their patients. We must ensure that patients are compensated in a fair and timely manner for medical injuries,



while also reducing the incidence of frivolous lawsuits. And we must work to reduce liability premiums.

The memo concluded with the grand policy crescendo and a request that the Secretary of Health and Human Services announce:

... that the department will make available demonstration grants to States, localities, and health systems for the development, implementation, and evaluation of alternatives to our current medical liability system.

There is nothing to be demonstrated. We already have two demonstration States—California and Texas—where medical malpractice laws are working. What is needed is leadership. Despite all the promises, the President and his party have yet to put forward any real medical malpractice liability reforms as part of either of the two health bills that have been shepherded through two Senate committees that are being merged behind closed doors by a select few.

I wish to point out that every time we tried to get an amendment on the 600-page bill—not the 1,500-page bill—those amendments to do even the slightest change in medical malpractice were voted down on a party-line basis. It is a failure of leadership.

How many patients are subjected to unneeded and unwarranted tests and procedures—some of which are certainly not painless—because the doctor has to perform defensive medicine? How many medical practitioners in America today are like the chief of surgery, the surgeon I met at the Palmetto Medical Center in Miami, who said: No, I don't have insurance. I couldn't afford the premiums. I don't have insurance. But if they sue me, all they can do is take everything I have. What kind of incentive is that for people to engage in the medical profession?

As I said, the Finance Committee bill—1,522 pages—contains 20 lines of nonbinding sense-of-the-Senate language that merely expresses a view that “health care reform presents an opportunity to address issues related to medical malpractice and medical liability insurance.” Let me repeat that. This is the 1,500-page bill. In 1,500 pages, there are 20 lines of sense-of-the-Senate language which says: “Health care reform presents an opportunity to address issues related to medical malpractice and medical liability insurance.”

I am not making that up. I am not making it up. It surely does present an opportunity to address issues related to medical malpractice reform. However, the other side passes on such an opportunity. It is a fact that just the narrowest specifics of medical liability reform could save \$11 billion this year alone. As I said, there are some estimates which claim it could be as much as \$200 billion when you look at the defensive medicine that is being practiced today.

California addressed this precise problem in 1975 by passing legislation

that capped jury awards for “non-economic” damages such as pain and suffering in medical malpractice suits. Not only does this cap reduce the amount of damages but it has had the effect of deterring unwarranted lawsuits. Malpractice filings have fallen in almost every county in California, medical malpractice insurance premiums have dropped, and patient costs have lessened.

In Texas, the trial lawyers had created such a problem for lawsuit abuse that patients didn't have access to doctors for several primary and specialty care services. Women couldn't find OB-GYNs. Several counties didn't even have neurosurgeons or anesthesiologists. Texas put in place a new structure that ensured patients got full compensation for their losses while at the same time curbing lawsuit abuse. In Texas, “Patients are the ultimate beneficiaries of the tort reform measures passed in 2003,” said Dan Stultz, M.D., president/CEO of the Texas Hospital Association.

It's clear that hospitals are able to attract more specialty physicians and offer new or expanded services that have enhanced patients' access to care and saved lives.

A survey conducted by THA—that is the Texas Health Association—in July 2008 found that 85 percent of hospitals are finding it easier to recruit medical specialists and subspecialists.

We could replicate these success stories across America, but the other side has refused to consider medical malpractice amendments to the bills. Instead, the Democrats and the White House are attempting to buy the silence of American medical associations and doctors everywhere who support reform by increasing the deficit by \$250 billion in Medicare physician payment increases.

CBO estimates the medical malpractice reform would reduce the Federal deficit by \$54 billion over the next 10 years. Others say it is as high as \$200 billion. The question is, is there anyone who denies that medical malpractice reform would not reduce health care costs in America? Is there anyone? Of course not. This bill is ample testimony of the influence of the trial lawyers of America on this body. We should be ashamed.

Talk is cheap. This issue requires real leadership. I believe the President needs to stand by his word and put forward real medical malpractice reforms rather than simply request applications for demonstration grants. I hope the President will demonstrate a willingness to listen and a willingness to reach a bipartisan agreement on this important issue. Patients, doctors, hospitals, and taxpayers need action.

We are going through an interesting process. Mr. President, 1,522-page and 622-page bills are being merged behind closed doors with a handful of elected representatives, leaving out not only everyone on this side of the aisle and most of the people on that side of the aisle, but the American people are

being left out of this process. The American people are getting more and more angry. I don't think this will go over well with the American people. In fact, I think they will steadfastly reject it.

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

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

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Tennessee is recognized.

Mr. WICKER. Madam President, do you know how long I have at this moment to speak to health care?

The PRESIDING OFFICER. The minority has a total of 27 minutes 15 seconds.

Mr. CORKER. I will not take 27 minutes. Thank you for letting me know that.

Madam President, I was on the Senate floor last week, which is a rarity for me. I spend very little time on this floor. Most of my time is spent in committee hearings. But I rise today to speak regarding the proposed Stabenow bill, a bill that is designed to pass on a \$¼ trillion in unfunded liabilities to future generations. As you know, we have been talking about health care reform in this body for some time. I have met numerous times with almost every official involved in health care reform and talked about how I thought it was unwise to look at taking \$404 billion out of Medicare and not using that money to deal with the issue of SGR or the “doc fix,” the fact that physicians across this country are going to see a 21-percent cut in fees in the very near future, and what that would do to the Medicare population depending upon these services.

I talked to the President on July 15 about how this body and the House were putting together pieces of legislation that did not make sense. I urged the President to use a responsible approach as it relates to health care reform. I have met with the chairman of the Finance Committee, the distinguished Senator from Montana, numerous times to talk about the Ponzi scheme that is being created by the Finance Committee in looking at how we finance something that is going to be a part of our citizens' lives for years to come and certainly a tremendous strain on the American budget.

I have been told from day one that in fact we were going to put together a health care reform bill that will be paid for. I think most people know now the way that is being looked at is we are going to take \$404 billion out of Medicare, which is an insolvent program, and leverage a new entitlement program—something the people of Tennessee do not believe makes much common sense. I know you are aware of the

fact that in addition to trying to solve this problem by taking money from an insolvent program, we also are planning to pass what Tennessee's Governor has called the mother of all unfunded mandates; making States, if you will, increase their Medicaid rolls at their expense so we in Washington can say we have reformed health care.

But I have to say one of the most sinister moves I have seen take place in my 2 years and 10 months being in the Senate is the Stabenow bill. The Stabenow bill seeks to say we are going to deal with SGR, that we are going to deal with our obligation in Medicare to pay physicians at least the rates they are making today. We are going to pass on a \$¼ trillion bill to future generations in order to get support from physicians across our country.

I talked to physicians in our State this weekend, a meeting at Tennessee Medical Association—the American Medical Association was on the line—and I was shocked at the response. Today the Hill cited a meeting where Senator REID and others met with physicians in order to buy their support. I know we all know the selling of one's body is one of the oldest businesses that has existed in the history of the world. So the AMA is now engaged in basically selling the support of its body by leveraging—by throwing future generations under the bus, by in essence urging that we as Congress pass this week a \$¼ trillion spending bill, unpaid for. If we would do that, we might get their support in health care reform.

I have to tell you, I have never witnessed something more sinister than the Stabenow bill. It is my hope that this week Senators on both sides of the aisle will come together and realize we have to graduate.

We talk fondly about the “greatest generation,” our parents and others, who did so much in the way of sacrificing for this country to make sure that generations who came after had a better way of life. I am sad to say that—while I consider it the greatest privilege of my life to serve in this body, and I thank the citizens of Tennessee for allowing me this lease, this 6-year lease to serve in this body to try to conduct myself in a way that will put our country's long-term interests first—I am sad to say I serve during what I would call the “selfish generation.” The political leadership we have today, of which we are a part, no doubt embodies the most selfish policies this country has seen in its history. There is no question that is the case; that for short-term political gain, in order to make some constituents happy, in order to give people what they want with no sacrifice, we are willing to throw future generations under the bus.

It is my hope, this week even, this body will graduate from that selfish existence, doing things we know absolutely are undermining the future of this country, and that we will come together and look at this legislation in

the appropriate way. I hope there will be Senators on both sides of the aisle that revolt at the majority leader's push to purchase the support of physicians all across our country by, in essence, creating legislation that puts our country another \$¼ trillion in debt.

Madam President, I wanted to say this is not at all what the President said he would do. This President has said he would offer health care reform that balanced the budget. The American people understand by doing what the Stabenow bill seeks to do this week, that is absolutely not true. This administration absolutely is not living up to the commitment it has given the people of this country.

This body needs to stand up and do what is right. I hope we will do that this week. I hope we will defeat the Stabenow bill as it now has been introduced. I hope we will work together to do those things that are responsible.

I absolutely agree physicians around this country do not need to take a 21-percent cut. I have probably been the most outspoken person on that issue in the Senate since I came here. But what we need to do is balance our resources, not continue to do things we think make sense on one hand to the detriment of future generations. It is my hope this will be embodied as part of the overall health care reform package.

This gets to my point I have been making on this floor and in committees and other places for months; that is, it makes absolutely no sense to use \$404 billion out of Medicare to finance health care reform and not deal with SGR. I hope other Senators will join me in revolting against this most sinister act that, hopefully, will not come to fruition this week.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded the call the roll.

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

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

#### HEALTH CARE REFORM

Mr. ENSIGN. Madam President, I rise today to discuss why meaningful medical liability reform must be included in the health care reform package. Americans spend far more on lawsuits than any other country, and more than twice as much as all countries except for one.

According to a recent study conducted by the Tillinghast-Towers Perrin Group, the direct cost of health care lawsuits is \$30 billion per year. These costs are multiplied by the indirect costs of lawsuits, especially doctors ordering costly tests out of fear of being sued.

Estimates of wasted money spent on unneeded tests range from over \$100

billion each year to nearly \$250 billion annually. In a 2006 article in the *New England Journal of Medicine*, it suggests that as much as 40 percent of medical liability lawsuits are frivolous.

Medical liability insurance premiums are threatening the stability of our Nation's health care system. These rates are forcing many physicians, hospitals, and other health care providers to move out of high liability States, limit the scope of their practices, and some even to close their doors permanently. This crisis is affecting more and more patients. It is threatening access to reliable, quality health care services.

I have a good friend from Nevada who practices obstetrics. In his practice he specializes in high-risk pregnancies. Because of medical liability problems that we have seen in the past several years, his insurance company limits the number of high-risk pregnancies in which he can assist.

If you are a woman and you are pregnant with a high-risk pregnancy, it would seem to me you would want the doctors who specialize in high-risk pregnancies to see you. This only makes sense. However, because of the medical liability crisis we are facing in this country, the best of the best are limited in the number of cases they can handle.

Because of the unaffordable medical liability insurance premiums, it is now common for obstetricians to not deliver babies and for other specialists to no longer provide emergency calls or provide certain high-risk procedures.

Ask yourself this question: What if I were in need of an emergency procedure? What if I were the woman who had a high-risk pregnancy and could not find a specialist to provide me with the health care I needed?

The medical liability crisis is threatening patient access to reliable, quality health services all across America. Additionally, costly medical liability premiums have forced some emergency rooms to shut down temporarily in recent years.

In my home State of Nevada, our level 1 trauma center was closed for 10 days in 2002. This closure left every patient within a 10,000-square-mile area unserved by a level 1 trauma center.

Unfortunately, a gentleman by the name of Jim Lawson was one of those in need of a trauma unit at that time. Jim lived in Las Vegas and was just 1 month shy of his 60th birthday. He had recently returned from visiting his daughter in California. When he returned, he was injured in a severe car accident. Jim should have been taken to the University Medical Center's level 1 trauma center. Unfortunately, it was closed.

Instead, Jim was taken to another emergency room where he was stabilized and then transferred to Salt Lake City's trauma center. Tragically, Jim never made it that far. He died that day due to cardiac arrest caused by blunt force from physical trauma.

Why was Nevada's only level 1 trauma center closed that day? Due to the



simple fact that doctors could not afford the medical liability insurance premiums, and there were not enough doctors to provide the care.

Ultimately, the State had to step in and take over the liability to reopen the trauma center. Our State has caps on how much someone can sue for, so medical liability insurance is affordable.

More than 35 percent of the neurosurgeons have altered their emergency or trauma call coverage because of the medical liability crisis. This means patients with head injuries or who are in need of neurosurgical services must be transferred to other facilities, delaying much needed care.

Doctor Alamo of Henderson, NV, brought another example of this problem to my attention. Doctor Alamo was presented with a teenager suffering from myasthenia gravis. She was in a crisis and in need of immediate medical treatment. Because of the medical liability situation, there was no emergency neurologist on-call to assist this young woman.

Dr. Alamo called several neurologists in the area and none of them wanted to take her case because of the medical liability situation. So Dr. Alamo had the young woman transported all the way to California by helicopter to receive the medical care she so desperately needed.

These kinds of situations should not happen and should not be forced to happen because of the medical liability crisis we face in America. Stories such as these are all too common across our country.

To address the growing medical liability crisis in my home State of Nevada, the State enacted legislation that includes a cap on noneconomic damages and a cap on total damages for trauma care. Several other States have enacted similar reforms.

This should not be a Republican or a Democratic issue. Simply put, the current medical liability crisis means patients cannot find access to care when they need it most in many areas.

Without Federal legislation, the exodus of providers in the practice of medicine will continue, and patients will find it increasingly difficult to obtain needed care. As we work on comprehensive health care reform, one of our primary goals must be to enact meaningful medical liability reform to help patients access care.

As you know, President Obama recently addressed the entire Congress on health reform. During his speech he said:

I do not believe malpractice reform is a silver bullet, but I have talked to enough doctors to know that defensive medicine may be contributing to unnecessary costs.

The President went on to say he asked Secretary Sebelius to move forward on demonstration projects in individual States to test ways to put patient safety first and let doctors focus on practicing medicine. Let's face reality. There is no doubt that defensive

medicine occurs every day and that the costs to the health care system are staggering.

As I mentioned earlier, tens if not hundreds of billions of dollars are wasted every year due to the practice of defensive medicine, largely in an attempt to avoid frivolous, junk lawsuits. Just think of how many uninsured patients we could cover with this money or how much cheaper the premiums would be for those who already have insurance.

We must stop playing games and start doing something real to address important health care issues. Unfortunately, the Finance Committee bill that was voted on last week only includes a meaningless sense of the Senate on medical liability reform. That seems to parrot some of the President's remarks.

Specifically, the language in the bill expresses the Sense of the Senate that States should be encouraged to develop and test alternatives to the current civil litigation system as a way of improving patient safety, reducing medical errors, encouraging the efficient resolution of disputes, increasing the availability of prompt and fair resolution of disputes and on and on and on. It is only a Sense of the Senate.

The provision also expresses the sense of the Senate that Congress should consider establishing a State demonstration program to evaluate alternatives to the current civil litigation system.

Let's be honest with ourselves. The Sense of the Senate is fluff. It ignores the substantial progress many States have already made with medical liability reform. Capping noneconomic damage awards has been highly successful in a number of States, such as Texas, and is something we should consider as part of health care reform.

It is important for the Senate to consider capping punitive damages, limiting attorneys' fees, and providing that if multiple defendants contributed to a mistake, each defendant should pay only for the portion of the mistake for which they are responsible.

So let's do the right thing. Let's enact real medical liability reform rather than a meaningless Sense of the Senate. As part of the health care debate, I will be offering a comprehensive medical liability reform amendment that sets reasonable limits on noneconomic damages while also providing for unlimited economic damages.

My amendment is a responsible reform measure that includes joint liability and collateral source improvements, and limits on attorney fees according to a sliding scale. My legislation also includes an expert witness provision to ensure that relevant medical experts serve as trial witnesses instead of so-called professional witnesses who are too often used to further the abuse of the system.

What happens today in our medical liability system is we have professional witnesses. Too often they are not a specialist in the field for which they are

called to testify. Yet because juries do not know they are not a true expert, their testimony is allowed to influence liability claims.

My amendment uses a Texas style of caps on noneconomic damages that provides a cap of \$250,000 for a judgment against a physician or health care provider. In addition, the patient can be awarded up to \$250,000 for a judgment against one health care institution.

Under Texas law, judgments against two or more health care institutions cannot exceed \$500,000, with each institution not liable for more than half that. In total, noneconomic damages cannot exceed \$750,000.

Medical liability reform works, and it is already turning the tide against frivolous lawsuits and outrageous jury awards in some States. We have seen it in California, in Texas, and in my home State of Nevada, where the number of medical malpractice lawsuits has decreased dramatically.

It has been a crisis driving doctors out of business for too long. It is time to protect patients across the country and to ensure access to quality health care.

To illustrate my point, I would like to tell you about the success of medical liability reform in Texas. Over 16,000 new physicians have come to Texas since reform was enacted. The number of high-risk medical specialists in Texas is growing. Since 2003, Texas has added 650 emergency room doctors, 350 heart doctors, over 200 obstetricians, 160 orthopedic surgeons, and almost 60 neurosurgeons.

These additions are not limited to urban Texas. The ranks of rural obstetricians have grown by almost 30 percent. Twenty-two rural counties have added an obstetrician and 10 counties have added their first OB. The statistics go on and on about the success in Texas.

In addition to improvements in access to health care, charity care has also greatly expanded due to medical liability reform. Today, Texas hospitals are rendering \$600 million more in charity care annually than they were just 6 years ago—\$600 million more in charity care by hospitals than they were giving before medical liability reform.

Liability savings have allowed hospitals to upgrade medical equipment, expand emergency rooms, expand outpatient services, staff Emergency Rooms 24/7 with high risk specialists, improve salaries for nurses, and launch patient safety programs.

Without reforms and the attendant savings, these healthy developments would not have been possible. Lawsuit reform has been a magnet for attracting doctors and the funding mechanism to improve access to care and enhance patient safety.

Physicians have seen a decrease in their medical liability premiums. Since 2003, physicians in Texas have saved, collectively, almost \$600 million in

their liability premiums. Today, most Texas doctors are paying lower liability premiums than they were almost 10 years ago.

All major physician liability carriers in Texas have cut their rates since the passage of the reforms and most of them by double digits.

Texas's reforms prove lawsuit reform can improve access to care, expand the number of doctors and types of care hospitals are able to offer, and help reduce medical costs. According to a conservative estimate by the Congressional Budget Office, CBO, if Congress adopted only a few of the proposed lawsuit reforms, the deficit would decrease by \$54 billion over 10 years.

Madam President, \$54 billion is how much it would save the government. To put this in perspective, this is twice as much as the Finance Committee plans to raise by taxing medical devices.

During the Finance Committee markup, CBO's Director, Dr. Elmen-dorf, added that he felt the savings to the private sector would be approximately equal to the \$54 billion saved by the government.

Madam President, \$54 billion to decrease the deficit, and the savings in the private sector is another \$54 billion. Under this conservative estimation, which is substantially less than what third-party estimates have shown, enacting medical liability reform would save at least \$100 billion between the government and the private sector over 10 years.

So why would the Democrats leave medical liability reform out? Well, they did put a Sense of the Senate in the Finance Committee bill. What are the savings from the Sense of the Senate to the private sector and the government? A big, fat zero.

I will tell you why the Democrats left out medical liability reform. It is because it would hurt a Democrat special interest group: they are known as trial lawyers.

Howard Dean, the former chairman of the Democratic National Committee, put it simply:

[T]he reason why tort reform is not in the bill is because the people who wrote it did not want to take on the trial lawyers in addition to everybody else they were taking on, and that is the plain and simple truth. Now, that's the truth.

I hope as the debate unfolds on the floor that many of my colleagues on the other side of the aisle will change their mind about enacting serious medical liability reform. My medical care access protection amendment is not a battle of right versus left. It is a battle of right versus wrong.

This amendment is the right prescription for patients. We need to secure patient access to quality health care services when they need it the most. I urge my colleagues to adopt this commonsense amendment when it is brought to the floor.

One last comment. We are going to be adding what is called the doctor fix. We are going to be adding the doctor

fix unpaid for. It is \$250 billion over the next 10 years. I have been talking a lot about the Federal debt and what we are doing to our children. The other side wants to do what we all want to do around here; that is, make sure doctors' fees in Medicare are not cut because they are already paid at a very low rate, but they are doing that without honoring what they talked about known as "pay-go".

We heard a lot about that during the campaign: We need to pay for everything. We cannot keep adding to the deficit. They accused this side of the aisle as being fiscally irresponsible. Now they are going to add \$250 billion, take it off the table, and say: Well, it does not count. We are just going to add to the deficit \$250 billion; that we can fix the doctors' payments, but we are not going to pay for it.

I think this is pretty outrageous. That is why we are going to have amendments to attempt to fix what is happening to the doctors but to do it in a fiscally responsible way so we are not adding to our children's and our grandchildren's tax burden in the future.

Madam President, I yield the floor.

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

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

#### ORDER OF BUSINESS

Mr. McCAIN. Madam President, parliamentary inquiry: What is the pending business before the Senate?

The PRESIDING OFFICER. There is just under 3 minutes remaining in morning business.

Mr. McCAIN. And then?

The PRESIDING OFFICER. Then the Senate will turn to the conference report on homeland security.

Mr. McCAIN. Madam President, thank you.

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

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

#### CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Madam President, I ask unanimous consent that the remaining time in morning business be yielded back.

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

Morning business is closed.

#### DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2010—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 2892, which the clerk will state.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2892), making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2010, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the House proceedings of the RECORD of October 13, 2009.)

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Madam President, I speak today in support of the conference report providing appropriations for the Department of Homeland Security for fiscal year 2010. I especially wish to thank my ranking member, Senator GEORGE VOINOVICH, for his cooperation in producing the agreement that is now before the Senate. It has been 8 years—8 long years—since the attacks of 9/11. There are some people in this country who have become complacent about the threat of another attack. Don't count me as one of them. I am not one of those people.

There have been numerous terrorist attacks around the globe, including the London, Madrid, and Mumbai bombings. Just last month, a Denver man was indicted on a charge of conspiracy to use weapons of mass destruction. Where? In New York City. So we must continue to be vigilant. Nor can we be complacent about Mother Nature's power to wreak havoc with a major earthquake, flood, or hurricane, meaning that such disaster relief will require the funding provided in this bill.

This year, I have set five goals for the Homeland Security Department, five goals that I trust we all share. What are they? No. 1, to secure our borders and enforce our immigration laws. No. 2, to protect the American people—your people, my people, the American people—from terrorist threats. No. 3, to prepare for and respond to all disasters, both manmade and natural. No. 4, to support our State, local, tribal, and private sector partners with resources and information. No. 5, to give the Department of Homeland Security the management tools it needs to succeed.

I believe the conference report we are presenting today meets those goals.

Funding for the Department of Homeland Security totals \$42.8 billion. Do you know how much money that is? That is \$42.80 for every minute since Jesus Christ was born. That is a lot of money. It is an increase of \$2.65 billion

over 2009. Again, I thank my friend, the very able Senator GEORGE VOINOVICH, the ranking member, for his notable contributions to this legislation. I thank Senator DANIEL INOUE and Senator THAD COCHRAN, the chairman and the vice chairman of the Appropriations Committee.

I also thank our able majority and minority staff who have worked together to produce this legislation. Let me name them: Charles Kieffer, Chip Walgren, Scott Nance, Drenan Dudley, Christa Thompson, Rebecca Davies, Carol Cribbs, and Alex Avanni.

Madam President, I thank all Senators, and I urge support for the conference report.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, I am pleased to join the distinguished Senator from West Virginia in presenting the fiscal year 2010 appropriations conference report for the Department of Homeland Security.

As my colleagues know, it is after October 1—the start of a new fiscal year—and the Department of Homeland Security's programs and activities are being funded under a continuing resolution because we did not complete our work on time. I think this is unfortunate. The House adopted its version of the bill on June 24 and the Senate adopted it on July 9.

When I was mayor and Governor of Ohio, I would have lost my job if the budget were not done in time or the appropriations not done on time. I think everyone would agree that this is not the way to properly run our operation. I know of no good explanation as to why we could not have resolved our differences to allow this conference agreement to be signed into law before this date.

Senator BYRD said the conference report recommends a total of \$44.1 billion in appropriations to support programs and activities of the Department of Homeland Security. Of this amount, \$42.8 billion is for discretionary spending, and this is roughly \$254 million less than the President's total discretionary request. I wish to make that clear, that it is less than the President requested.

In addition, \$1.4 billion is provided for the Coast Guard retired pay—the only mandatory appropriations account in the conference report—and \$241.5 million is provided for Coast Guard overseas contingency operations.

The conference report includes significant resources for border security and enforcement of our immigration laws, for continued improvements in security at our Nation's airports and modes of surface transportation, for the Coast Guard operations and recapitalization, for helping our citizens prepare for and recover from natural disasters, and for equipping and training our Nation's first responders. I think Senator BYRD did a beautiful job in terms of his five reasons and the things

we ought to be doing, and that is what we have tried to do in this report, to respond to those five goals Senator BYRD outlined.

As Senator BYRD has indicated, there is much in this conference report to recommend. I am not going to list all of the funding recommendations, but I do wish to note some. This is very important: Full funding is provided for border security. This includes funds to support 20,163 Border Patrol agents, 21,124 Customs and border protection officers, and 33,400 detention beds. These are the beds we use when we pick up people and we put them there and hold them until we return them to where they came from. Also included is \$800 million to continue work on the virtual border fence and to improve radio communications.

Starting in fiscal year 2005, significant increases have been provided for border and immigration enforcement. Fewer people are illegally crossing our borders. This can be seen in the decrease in apprehensions of aliens along our borders from nearly 1.2 million in fiscal year 2005 to nearly 724,000 in fiscal year 2008. More fencing, roads, and personnel have allowed the Border Patrol to increase the number of miles over which it has effective control from 253 miles in October of 2005 to 729 miles in March of 2009.

Additional agents and detention beds have allowed U.S. Immigration and Customs Enforcement to increase total removals of aliens from nearly 247,000 removals in fiscal year 2005 to approximately 347,000 in fiscal year 2008. We are making significant progress in terms of our border protection and going after these illegal aliens.

This fiscal year 2010 conference report provides nearly \$16 billion in appropriations for these activities. This will allow us to continue making progress, but we still have a long way to go and at a great expense. One of these days I am going to come to the Senate floor and talk about how much money we have spent and how much money we are going to have to continue to spend if we are going to do anything about the problems of illegal aliens in this country.

While this conference report is significant for what it includes, it excludes two important provisions added to this bill when it was considered by this Senate, including a permanent extension of the E-Verify program and the extension of E-Verify to current employees. I would have preferred to have the conference agreement to include both provisions, but my House colleagues were not so inclined. Even though this conference agreement does not permanently authorize E-Verify programs as opposed to the Senate bill, it does extend the program's authorization for an additional 3 years, allowing its continued development as a crucial tool for employers to ensure a legal workforce. However, it does not include the Senate provision offered by my colleague from Iowa, Senator GRASSLEY,

which would have given employers the flexibility to voluntarily check their entire workforce and not solely new hires.

The administration expressed concerns that the provision could tax the capacity of E-Verify. Let me tell my colleagues, E-Verify has the capacity to handle more than 60 million queries a year and it has received less than 8.7 in fiscal year 2009. Capacity does not seem to be a barrier of this program, and this is an issue I hope we are going to revisit one of these days.

I wish to thank the chairman of the Senate subcommittee, my colleague from West Virginia, Senator BYRD. It has been an honor for me to work with Senator BYRD this year. This is my first year on Appropriations, and who do I have as my chairman but the distinguished Senator from West Virginia.

Mr. BYRD. I thank the Senator.

Mr. VOINOVICH. Madam President, I wish to thank Mr. PRICE, the ranking member of the House committee, and Mr. ROGERS for their substantial contributions to this bill. It has taken many hours of hard work by these Members and their staffs to reach the agreements which are presented to the Senate today. While everything is not settled to my liking, I believe this is a balanced set of recommendations which reflects many of the Department's priorities and achieves a reasonable degree of compromise in some of the more contentious issues.

I again wish to join Senator BYRD in commending our staff. Mr. Kieffer has been wonderful to work with. The folks on my side, Carol and Rebecca, I am a new member of the Appropriations Committee. I have never seen staff work as conscientiously as we have had for the Appropriations Committee. Senator BYRD, it is almost like magic they do such a good job for us. So again, I wish to thank them for their good work.

Madam President, I recommend this conference report to my colleagues for their consideration, and I support it.

I yield the floor.

Mr. BYRD. Madam President, 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. TESTER. 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. TESTER. Madam President, I congratulate Chairman BYRD and Senator VOINOVICH in getting this conference report to the Senate today. This is a very good example of good work that comes from folks who work together to get things done.

With good funding levels for our firefighter support programs and funding for two emergency operations centers critical to my State, this is a bill that does right by the folks to keep America safe every day.

There is one issue, however, that still gives me great concern; that is, the funding in this bill for the proposed National Bio and Agro-Defense Facility. The final conference report includes my amendment requiring DHS to conduct a security and risk mitigation study before getting any money for construction of the bio facility. It also includes an additional requirement that the National Academy of Sciences puts its independent eyes on the Department's study before funds go out the door.

This is a good start, but it is not enough. I do not understand why we are going to appropriate \$30 million for a project we need not one but two studies about whether this project can move forward safely.

Independent experts have real concerns about building the NBAF in the heart of the beef belt where an accidental or intentional release of foot-and-mouth disease could have disastrous consequences for America's livestock industry, and that industry includes Montana where the livestock industry is a \$1.5 billion industry.

This facility will house some of the most dangerous agricultural diseases around the world. We should not start doing this research on the U.S. mainland and in the middle of tornado alley without taking every possible precaution.

On a matter this serious, we ought to measure twice and cut once. Regrettably, by giving the Department \$30 million this year, we are not heeding that old saying.

The GAO, the subcommittee, and independent experts acknowledge that we do not know if this research can be done safely on the U.S. mainland. We all agree that an accidental release of foot-and-mouth disease or another dangerous disease from this facility would devastate America's livestock industry. Yet we are providing the money to go ahead with it anyway.

Why not just wait and do the studies this year and then the Department can come back to us with their revised funding request next year?

I understand this has to do with getting Kansas to sign a cost-sharing agreement. But are we convinced Kansas will not put forward the money next year if this facility is to be built there?

If this facility is built in Kansas, the United States will become the only country, other than England and Canada, to do FMD research on a mainland. Everyone else does it on an island.

England had an accidental release in 2007 which led to eight separate outbreaks of FMD on farms surrounding their facility. Canada at least does it in an urban area far from livestock production areas.

Congress's nonpartisan, independent auditor, the Government Accountability Office, has sounded the alarm on this issue. They are telling us that Homeland Security has not conducted

or commissioned any study to determine whether foot-and-mouth disease work can be done safely on the mainland.

Proponents of this facility have said it is OK to do this research because the new Kansas facility will have the most modern technology and all the safety bells and whistles that Plum Island lacks. But the GAO rightfully argues this view only encourages a false sense of security.

The GAO says:

Even with a proper biosafety program, human error can never be completely eliminated. Many experts told us that the human component accounts for the majority of accidents in high-contaminant laboratories. This risk persists, even in the most modern facilities and with the latest technology.

I know I am not the only Senator who shares the GAO's concern. So I look forward to working with many of my colleagues on this issue again next year. We do need to pay attention to what these studies say, and as a member of this subcommittee, I will be watching it very closely.

The Department is going to come here next spring with a \$500 million request for funding for this project. That is a lot of money. But the true cost of doing this research in the middle of tornado alley could be much higher. The cost of cleaning up after an FMD release—the culling of entire herds of livestock, the loss of foreign agricultural sales that will endure for years after a release, and the loss of America's food security—will be measured in the tens of billions of dollars. That is something America cannot afford, and we must not let it happen.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### RECESS

Mr. BYRD. Madam President, I ask unanimous consent that the Senate stand in recess until the hour of 2:15 p.m. today.

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

Thereupon the Senate, at 12:26 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2010—CONFERENCE REPORT—Continued

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, I believe we are going to be considering the Homeland Security conference report. I want to spend a few minutes talking about that so that the American public might realize what we are doing. This year's spending totals have averaged, on individual appropriations bills, anywhere from a high of 24 percent to a low of about .6 percent, on one bill that had received twice its annual appropriation in the stimulus. We have of course a conference report that is \$42.7 billion. That is a 6.5, almost 7-percent increase over last year, the same the year before, and a 23-percent increase the year before that. There is no question, homeland security is an important part.

The issue I want to raise with my colleagues and the American people is, we had inflation of 1.5 percent last year. We do have one bill, one bill that has come in at inflation or less. All the rest are averaging around 10, 11, 12 percent increases. We ought to be concerned about what the Congress is doing in terms of increasing the spending in light of the fact that we have just finished a year in which we had a published \$1.4 trillion deficit. But those are Enron numbers. That is Enron accounting because we didn't recognize all the money we borrowed from trust funds that don't go to the public debt, that are internal IOUs that our children nevertheless will still have to pay back.

The real reason I want to talk about this bill is because it purports to have an amendment on competitive bidding. I will grant that the amendment is better than no amendment, but the American people should be outraged at what we have done on competitive bidding in this bill. What we have said is we want competitive bidding—except for our friends. If you are connected to a Senator through an earmark or if you are connected through a grant process, what we have done is taken a large number of grants and directed them specifically without competitive bidding. What does that mean to the process? What does that do to the integrity of the process? It says if you are well heeled and well connected, then in fact you can have what you want on a non-competitive basis, because that is what the amendment in the bill says. But if in fact you are not, then you will have to compete on the basis of merit and price like everybody else in the country.

Once again we have earned our lack of endorsement by the American public because of what we have said: "Unless otherwise authorized by statute without regard to the reference statute." Those are fancy words for saying we want competitive bidding on everything except earmarks and the congressional directive we have in this bill.

That means if you have a business and you have an earmark, you didn't have to be the best business to get

that, to supply the Federal Government whatever it is. If you are a grant recipient and got earmarked, you didn't have to be the one with the greatest need, No. 1, or the most efficient way to generate the dollars through that grant. What it does is it puts on its ear any semblance of fair play, No. 1; and, No. 2, it takes away the initiative for everybody else who now is going to get a competitive bid. What it is going to do is drive a greater demand for earmarks in the future.

We ought to ask ourselves the following question: If this is taxpayer money and our grandchildren's money—because 43 percent of this bill is going to be borrowed—is it morally correct, is it intellectually honest that we would say: If you are connected, if you have an “in,” you don't have to meet the same level of responsibility and accountability as those who are well connected? I think that is a great question for us to debate.

Unfortunately, a real competitive bidding amendment was not agreed to in this bill that would put all of it at competitive bidding. Senators have the right to say we ought to do something. But they don't necessarily have the right to say we ought to do something and this person ought to benefit from it. It is not ours to give away. When we do things as we have done in this bill to protect those most well heeled, those most well connected to the Congress, by saying everybody else is going to play under one set of rules but if, in fact, you have a friend or a connection or an earmark or a directed grant, you don't have to play by those rules, not only is it unfair to everybody else who does not have to play by those rules, it actually undermines the value of what we do.

On the basis of that and the spending levels, I plan on opposing the Homeland Security conference report. My hope is that we will get better, that in fact we will not play games with the American public, that we will not say our friends get to get treated differently than anybody else in this country and that every dollar we spend we can assure to the American taxpayer is going to go to the best firm to do that based on a competitive bid so we actually get the best value for the hard-earned dollars that are being spent.

I yield the floor.

Mr. LIEBERMAN. Mr. President, I rise to urge my colleagues to vote for passage of the fiscal year 2010 appropriations bill for the Department of Homeland Security.

First, I want to thank my colleagues on the Appropriations Subcommittee on Homeland Security, Chairman Byrd and Ranking Member Voinovich, as well as full Committee Chairman and Ranking Member Inouye and Cochran for all the hard work and consideration they brought to this bill.

The overall bill, which provides \$42.776 billion in discretionary funding for DHS in fiscal year 2010, is \$151 mil-

lion less than the total provided in the Senate bill, but \$159 million higher than the House funding total, and seems to me to be a fair compromise.

The resources provided in the bill are sufficient to carry out the Department's core missions of protecting the homeland against the threat of terrorism, securing our borders, enforcing our immigration laws, and preparing for and responding to terrorist attacks and natural disasters.

While there are many programs and activities at DHS deserving of funding above the level provided in this bill, we are in a time of serious economic challenge, and obviously tough choices had to be—and were—made in putting this legislation together.

This bill reflects the priorities of a department that has made great strides in the last 6 years but still faces many hurdles in fulfilling the mission Congress laid out for it in 2002. Senator COLLINS and I have worked together since DHS was created—alternating as chairman and ranking member of the primary authorizing committee for the Department—to strengthen the Department's ability to carry out its many national security assignments, to strengthen its management, facilitate its integration, and to hold its leadership accountable to an American public that has a right to be safe and secure within the borders of our own Nation.

In May, I wrote to Chairman Byrd and Ranking Member Voinovich setting forth what I believed to be the most significant appropriations priorities for the Department, and I am grateful that a number of my recommendations have been incorporated into this bill. Let me briefly discuss a few sections of this bill that I believe are particularly important to our homeland security.

First, I am pleased the Appropriations Committee recognized that the Department's management and operations accounts need adequate funding if DHS is to succeed as it must. Secretary Napolitano has emphasized the need to create “One DHS” where the Department's many components are working closely together. To accomplish this, the offices for policy, human capital, acquisition, and information technology need additional resources, and all received significant increases in their budgets. The additional investment in acquisition oversight is particularly gratifying, as it will improve the Department's ability to oversee the \$12 billion it spends each year on contracts with the private sector to better ensure our tax dollars are not wasted on bloated or ineffective programs.

Second, this bill, together with the funding provided in the fiscal year 2009 supplemental, significantly increases resources for combating violence on our southern border and includes the bulk of the \$500 million increase in border security funding Senator COLLINS and I successfully added to the Senate budget resolution in March.

The FBI has said that the Mexican drug cartels are the number one orga-

nized crime threat in America today, replacing the Mafia. The kind of targeted and grisly violence we are seeing in Mexico is unprecedented. Thanks to this funding, DHS will be able to send almost 300 additional law enforcement officers to our ports of entry in order to conduct southbound inspections and interdict the illegal flow of cash and guns into Mexico that is fueling the cartels' ruthless attacks against the Mexican Government.

The funding will also add hundreds of ICE investigators to work on drug, currency, and firearms cases in the border region, and will expand the Border Enforcement Security Task Force fusion centers that ICE has established along the southwest border. This funding was badly needed to help Federal, State, and local law enforcement agencies take down these sophisticated and dangerous drug and human smuggling networks. The Mexican drug cartels represent a clear and present threat to homeland security, and I remain fully committed to working with the administration to support our Federal law enforcement agencies in this crucial fight.

Third, this bill continues funding for the Homeland Security grant programs that our first responders need to prepare for acts of terrorism and natural disasters at the State, local, and tribal levels. Funding for the State Homeland Security Grant Program, which provides basic preparedness funds to all States and is the largest of DHS's grant programs, remains steady from last year at \$950 million, including \$60 million for grants focused on border security, essentially the full level authorized by Congress in the Implementing Recommendations of the 9/11 Commission Act of 2007. Funds for Urban Area Security Initiative, UASI, grants, which provide resources to the Nation's highest risk metropolitan areas, are increased by nearly \$50 million over last year.

I am also pleased that funding for SAFER grants which assist local fire departments with the cost of hiring new firefighters was doubled to \$420 million for fiscal year 2010. In this era of budget constraints, this funding will help ensure that communities are able to continue to staff their local firehouses.

The Appropriations Committee has also wisely restored a significant portion of the funding cut from the President's budget for assistance to firefighter grants. These grants fund essential equipment, vehicles and training for firefighters. However, the \$390 million for these grants still represents a cut of nearly one-third below the fiscal year 2009 appropriation. I hope that next year the funding for this important program will be brought fully up to its previous level.

Fourth, this bill wisely supports the administration's request for a significant increase in funding for cybersecurity at DHS which has been identified

as one of our top national security priorities. The Department needs resources to protect Federal civilian networks from cyber-related threats and to work with the private sector to protect their networks and infrastructures. The Homeland Security and Governmental Affairs Committee is currently working to develop legislation that strengthens the government's authorities with respect to cybersecurity, so this funding decision is particularly important.

Fifth, this bill adds \$25 million above last year's appropriation to support coordination, management and regulation of high-risk chemical facilities and brings DHS regulator staff to 246—an increase of 168 over the 2009 staffing level.

This bill makes other essential homeland security investments in port security, transit security, science and technology, and biosecurity, all of which are critical to the overall security of the Nation.

I believe that overall this is a strong and essential piece of legislation. I thank the leadership and the members of the Appropriations Committee for their work on this bill and strongly urge my colleagues to support its passage.

Mr. INOUE. Mr. President, I submit pursuant to Senate rules a report, and I ask unanimous consent that it be printed in the RECORD.

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

DISCLOSURE OF CONGRESSIONALLY DIRECTED  
SPENDING ITEMS

I certify that the information required by rule XLIV of the Standing Rules of the Senate related to congressionally directed spending items has been identified in the conference report which accompanies H.R. 2892 and that the required information has been available on a publicly accessible congressional website at least 48 hours before a vote on the pending bill.

Mr. LEAHY. Mr. President, I am pleased that the Senate has passed the Department of Homeland Security appropriations conference report. This legislation contains important funding for the Department of Homeland Security to carry out its various responsibilities. I commend Chairman INOUE and Subcommittee Chairman BYRD for their hard work on this legislation, and also for their support of a vibrant immigration program that fosters direct investment in U.S. job creation that is extended through this legislation.

The conference report we will pass today contains a 3-year extension for the EB-5 regional center program. This extension will bring badly needed stability to this program. Foreign investors who look to the regional center program must have the confidence that the Federal Government supports and believes in this program. Stakeholders that rely on financing through this program must have the predictability that this 3-year extension will help provide. As the U.S. Citizenship and Immigration Services expressed to the

Senate Judiciary Committee during a recent hearing about this program, the biggest impediment to the EB-5 regional center program is its lack of permanence. I have long believed in the potential of this program as an economic engine for America's communities. Given the recent and rapid expansion in the number of approved regional centers around the country, it is clear that many Americans recognize this potential, as well.

In an effort to make this program an integral part of our immigration system, I offered an amendment to the Homeland Security appropriations bill on the Senate Floor to provide for its permanent authorization. That amendment was overwhelmingly adopted. Unfortunately, the conference committee did not retain that permanent authorization, and once again, irrational immigration politics got in the way of good policy. Instead of making permanent a program that has created thousands of American jobs and brought more than \$1 billion of capital investment into our communities since 2006, the conference was compelled to sacrifice this opportunity for no legitimate reason. However, it is still heartening to know that over the next 3 years the citizens who are working to better their communities through the regional center program will be able to do so without the fear of constant interruption and uncertainty.

I want to take a moment to commend all of the resourceful business people who have turned to this program to finance key economic development projects in their communities. Despite the hurdles that have continually hampered the efforts I have led to renew the program, the stakeholder community has not only continued to work hard on improving local economies across the country, but has directly engaged Members of Congress to ensure that this program does not wither away. As a result of their efforts to retain a strong extension in the conference report, I am confident that many more Members of Congress have a better understanding of this program's potential and importance in their own communities.

These stakeholders all deserve thanks for the jobs and capital investment they are bringing to their communities. In Vermont, people like Bill Stenger at Jay Peak Resort and Win Smith at Sugarbush Resort have used the EB-5 program to keep Vermont's ski industry a vibrant and foundational part of the Vermont economy. As a direct result of the EB-5 regional center program and in a very difficult economic environment, dozens of subcontractors in Northeastern Vermont are hard at work on a project financed through the EB-5 Regional Center program. And in an effort to build on these successes, the State of Vermont is actively involved in working to expand the business sectors covered by Vermont's regional center so that technology firms and other diverse

Vermont business enterprises can market their investment opportunities to a global audience. My efforts will continue in support of the regional center program. I look forward to helping Vermont and States across the country realize the full potential of this program through a permanent authorization.

I am also pleased that the conference retained an important measure to correct a serious inequity in immigration law commonly known as the widow penalty. Prior to the corrective amendment contained in this legislation, a foreign national widow or widower of a U.S. citizen was put into the untenable position of not only losing their spouse but losing their lawful permanent residence and path to U.S. citizenship. To underscore the nature of this injustice: In cases where a marriage was entered in good faith and without any fraud or ill intent, if the U.S. citizen spouse passed away during the period of conditional residency, the immigration agency took the position that the widow or widower no longer had standing to become a lawful permanent resident. This is wrong, and for a society that places such great value on family, a truly unfortunate position. The amendment in this legislation, which I and other Senators worked hard to ensure was retained in the conference report, will end this injustice.

The conference report also contains an amendment to extend a visa program that allows individuals from around the world dedicated to working on behalf of their religious faiths to come to the United States to do just that. I am pleased that the efforts I and others made to ensure this measure was retained have resulted in its adoption.

Finally, I commend the conference committee for rejecting an amendment that would have done little more than waste taxpayer dollars and cause further harm to the rights of property owners and the environment along our southern border. The conference committee wisely rejected an amendment that would have, in effect, required the Department of Homeland Security to tear down and rebuild hundreds of miles of barriers between the United States and Mexico that have already been constructed, at enormous expense to taxpayers. The Secure Fence Act, a piece of legislation I strongly opposed, directed the Department of Homeland Security to build border fencing and other barriers as a response to illegal border crossings. The Department carried out this legislative command during the Bush administration and constructed pedestrian fencing with vehicle barriers and other infrastructure. The amendment that was rejected by the conference committee would have compounded the negative effects that attended the border fence's original construction, and wasted taxpayer dollars in the process. I commend the conference for its wisdom in not accepting this amendment.



Mr. President, I commend the Senate for enacting the Leahy-Cornyn OPEN FOIA Act—a commonsense bill to promote more openness regarding statutory exemptions to the Freedom of Information Act, FOIA—as part of the Department of Homeland Security Appropriations Act, H.R. 2892. This FOIA reform measure builds upon the work that Senator CORNYN and I began several years ago to reinvigorate and strengthen FOIA by enacting the first major reforms to that law in more than a decade.

The Freedom of Information Act has served as perhaps the most important Federal law to protect the public's right to know for more than four decades. The OPEN FOIA Act will help to ensure that FOIA remains a meaningful tool to help future generations of Americans access government information.

The OPEN FOIA Act will make certain that when Congress provides for a statutory exemption to FOIA in new legislation, Congress states its intention to do so explicitly and clearly. In recent years, we have witnessed a growing number of so-called “FOIA (b)(3) exemptions” in proposed legislation—often in very ambiguous terms—to the detriment of the American public's right to know.

During a recent FOIA oversight hearing held by the Judiciary Committee, the president and CEO of the Associated Press, Tom Curley, testified that legislative exemptions to FOIA “constitute a very large black hole in our open records law.” The Sunshine in Government Initiative, a coalition of media groups dedicated to improving government transparency, has identified approximately 250 different statutory exemptions to FOIA that are used

by Federal agencies to deny Americans’ FOIA requests. This is an alarming statistic that should concern all of us, regardless of party affiliation or ideology.

By enacting the OPEN FOIA Act, Congress has taken an important step towards shining more light on the process of creating legislative exemptions to FOIA, so that our government will be more open and accountable to the American people. I thank Senators LIEBERMAN, GRAHAM and CORNYN, and Representative PRICE, for working with me on this measure. I also thank the distinguished chairmen and ranking members of the Senate and House Appropriations Committees—Senators INOUE and COCHRAN and Representatives OBEY and LEWIS—for their support of this open government measure.

President Obama—who supported the OPEN FOIA Act when he was in the Senate—has demonstrated his commitment to enacting this measure, as have the many FOIA, open government and media organizations that have tirelessly supported this measure since it was first introduced in 2005, including OpenTheGovernment.org, the Sunshine in Government Initiative, the National Security Archive and the American Civil Liberties Union.

I have said many times before—during both Democratic and Republican administrations—that freedom of information is neither a Democratic issue nor a Republican issue. It is an American issue. I commend the Congress for taking this significant step to reinvigorate FOIA and I urge the President to promptly sign this provision into law.

Mr. CONRAD. Mr. President, I rise to offer for the record, the Budget Committee's official scoring of the conference report to accompany H.R. 2892,

the Department of Homeland Security Appropriations Act for fiscal year 2010.

The conference report provides \$42.8 billion in discretionary budget authority for fiscal year 2010, which will result in new outlays of \$25.5 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the conference report will total \$46.6 billion.

The conference report includes \$242 million in budget authority designated as being for overseas deployments and other activities for the Coast Guard. Pursuant to section 401(c)(4) of S. Con. Res. 13, the 2010 budget resolution, an adjustment to the 2010 discretionary spending limits and the Appropriations Committee's 302(a) allocation has been made for this amount in budget authority and for the outlays flowing therefrom.

The conference report matches its section 302(b) allocation for budget authority and is \$2 million below its allocation for outlays.

The conference report includes provisions that make changes in mandatory programs that result in an increase in direct spending in the 9 years following the 2010 budget year. These provisions are subject to a point of order established by section 314 of S. Con. Res. 70, the 2009 budget resolution. The conference report is not subject to any other budget points of order.

I ask unanimous consent that the table displaying the Budget Committee scoring of the conference report be printed in the RECORD.

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

H.R. 2892, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2010

[Spending comparisons—Conference Report (in millions of dollars)]

	Defense	General Purpose	Total
Conference Report:			
Budget Authority .....	1,567	41,209	42,776
Outlays .....	1,395	45,239	46,634
Senate 302(b) Allocation:			
Budget Authority .....			42,776
Outlays .....			46,636
Senate-Passed Bill:			
Budget Authority .....	1,582	41,335	42,917
Outlays .....	1,404	45,296	46,700
House-Passed Bill:			
Budget Authority .....	1,553	41,064	42,617
Outlays .....	1,390	44,931	46,321
President's Request:			
Budget Authority .....	1,365	41,473	42,838
Outlays .....	1,219	45,168	46,387
Conference Report Compared To:			
Senate 302(b) allocation:			
Budget Authority .....			0
Outlays .....			-2
Senate-Passed Bill:			
Budget Authority .....	-15	-126	-141
Outlays .....	-9	-57	-66
House-Passed Bill:			
Budget Authority .....	14	145	159
Outlays .....	5	308	313
President's Request:			
Budget Authority .....	202	-264	-62
Outlays .....	176	71	247

Note: The table does not include 2010 outlays stemming from emergency budget authority provided in the 2009 Supplemental Appropriations Act (P.L. 111-32). The conference report includes \$242 million in budget authority designated as being for overseas deployments and other activities for the Coast Guard.

AIR FORCE AERIAL REFUELING TANKER

Mr. HATCH. Mr. President, I rise today with my fellow cochair of the Senate Tanker Caucus, Senator CONRAD, to lend my support to the ex-

pedited acquisition of the next aerial refueling tanker for the Air Force. We were pleased to hear Secretary Gates announced on September 16 that he was giving oversight authority back to

the Air Force for this vital procurement program. This program will ultimately produce 179 new KC-X aerial refueling tankers through one of the largest military procurement contracts

in history, worth approximately \$35 billion.

Mr. CONRAD. While it is important to acknowledge that the KC-135 replacement flight path was turbulent at times, we rise to commend the Air Force for its plan to carry out the service's No. 1 recapitalization priority. The Air Force has presented a revamped KC-X plan after a rigorous review of previous acquisition strategy. The new plan belies the fact that the Air Force is committed to a fair, open, and transparent competition. On September 25 the draft Request for Proposal was released, restarting the process to ensure our men and women in uniform have an aerial refueling tanker that will continue our unmatched Global Reach anywhere on the planet. It goes without saying now is the time to produce a timely, cost-effective, war-winning system for the war fighter. The operations our nation is conducting today and will conduct for the foreseeable future and require our airmen, soldiers, sailors, and marines to operate in remote locations that need to be supplied and defended without delay.

Mr. HATCH. The current KC-X proposal has been refined to 373 key mandatory requirements that will allow this new tanker to "Go to War" on day 1. There are 93 additional areas that will enable offerors to enhance their proposals. If the bids are within 1 percent of one another, the 93 additional capabilities will be analyzed to break this virtual tie. If a competitor has a score that wins by more than one point then the award will go to that contractor. If the tally of additional requirements score is less than a one point difference, the contract will be awarded to the contractor with the lowest proposed price. After reviewing this process, we believe it is very clear and transparent. The contract award has been projected for May 2010.

Mr. CONRAD. Mr. President, we are concerned that the plan is only projected to purchase 15 tankers each year from the winning offeror. As you remember, the last contract was structured to purchase 19 tankers per year. It is imperative we find a way to increase the rate at which we purchase this new tanker especially given the time we have lost. If we stay on the current course, we will be relying on 80-year-old KC-135s when the last new KC-X comes off the assembly line—an absolutely unprecedented age for operational aircraft, especially such a critical enabler that we rely on to ensure America's Global Reach. We must accelerate this purchase.

Mr. HATCH. Mr. President, we are in great need of a new aerial refueling tanker now. No one can dispute this fact; the President, the Secretary of Defense, and the Secretary of the Air Force have all said so. President Eisenhower was our first President to see the current refueling tanker in service and it has served through every contingency for over almost 50 years. The

venerable KC-135 is by far the oldest airframe in our inventory. The generation of men and women that defend our freedom deserve an aerial refueling tanker that capitalizes on the innovations of today while providing the taxpayer the best value.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I ask unanimous consent to speak for 7 minutes as in morning business.

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

#### RYAN WHITE AUTHORIZATION

Ms. MIKULSKI. Mr. President, I want to talk today about the Ryan White authorization. The Ryan White authorization passed last night by, really, unanimous approval. As many people know, the Ryan White legislation is one of the most important pieces of legislation to fund help for those people living with HIV and AIDS.

I want to comment on the importance of the bill, but essentially, in today's world, remind people of where we were and how far we have come. I want to talk about the importance of the bill. I could cite statistics from my own State. I have a State with one of the largest numbers of surviving AIDS patients, for which we are so happy and grateful. I have over 34,000 Marylanders living today with HIV and AIDS.

As I said, the passage was almost unanimous. The debate was non-controversial. It was the same way in our Health, Education Committee. Our debate was quite civil. It was even policy wonkish. We were focusing on the details of funding, how to include more assistance for rural communities where there is a spike in the number of AIDS cases. It was actually quite civil and collegial—robust as it always is in the HELP Committee. But as I sat there and listened to my colleagues—and it was somewhat dull, the usual—I thought back to 1990 when it was not like that at all.

I say that today as we take up health reform. We are gripped by fear, we are gripped by frenzy where all kinds of myths and misconceptions are out there. The debate is prickly. It is tense. We don't listen to each other. We are out there, hurtling, hurling accusations.

I want to go back to a day in 1990, a day in the HELP Committee chaired by Senator Kennedy, when this young boy, Ryan White, came to testify. Ryan White was diagnosed with AIDS at age 13. He came to testify at the committee when we were trying to figure out what to do with this new disease that was gripping the land, where people in our urban communities were dying, adults who contracted it. Here was this little boy who came, who was so frail, who was so sick, and he wrenched our hearts that day as he talked about this new disease that he had gotten. He had gotten it through a blood transfusion.

But what he also told us about was what he was going through. He testified that day, mustering every bit of

energy he had, speaking with verve and pluck about his plight, he told us about what had happened to him—how he was shunned in the class, how he was locked in a room, how children were forbidden to play with him. He lived a life of isolation and a life of desolation. He was treated like a pariah.

He wasn't the only one. Anyone who had AIDS in those days was greeted as if they were the untouchables. I remember it well. If you had AIDS, you were hated, you were vilified, you were viewed as a pariah. People were afraid to get near you, afraid to use the water fountain. If you heard someone in our office had AIDS, you didn't want to use the same bathroom.

Firefighters and emergency people were afraid to touch people bleeding at the site because they were concerned they could get it. Funeral homes would not bury people who had AIDS. I remember a little girl who died in my State who had AIDS, and only one funeral home in the Baltimore area would bury her. This is the way it was then.

As that little boy spoke, we were gripped by tears and we were gripped by shame, we were so embarrassed at what was happening in our country. Both sides of the aisle were touched. The Senate stepped up and they did it on a bipartisan basis. I was so proud that day when Senator Ted Kennedy, whom we miss dearly, said: Tell me, young man, what can we do for you?

And he said: Help the other kids. Help the other people who have AIDS.

Ted said: I certainly will.

And Senator ORRIN HATCH immediately stepped up—sitting next to Kennedy—and said: I want to be involved. I want to work on that legislation.

Ted Kennedy, ORRIN HATCH, CHRIS DODD, TOM HARKIN, BARBARA MIKULSKI, NANCY KASSEBAUM—we all came together. We worked on a bipartisan basis and we did move the Ryan White bill against the grain of many people in this country and in the face of the fear and frenzy.

As Ryan White left with his mother that day, as he walked out in a very halting way, he was gripped by a media frenzy. The noise went on. They were pushing and shoving to try to get a picture of this poignant little lad. Senator Kennedy jumped up, built like the linebacker he once was in Harvard, and ran out and he said, "BARB, come with me; CHRIS, get over there; ORRIN, grab that chair." We all ran out and Ted Kennedy literally threw himself in front of Ryan White to protect him from being run over by TV cameras.

Again, both sides of the aisle, we were there—Ted, calling this out—CHRIS, you go there; BARB, open the door; ORRIN, stick with me, and ORRIN stuck with him. They put their arms around him and got him into a safe haven in one of our offices.

Ted Kennedy literally put himself on the line that day of fear and frenzy, and Republicans were right there with

him, helping him out to get that young man to a safe room. Ted Kennedy protected that little boy that day, literally and figuratively, and he had the support of the committee.

So as we move ahead today, as we reauthorize the Ryan White program for 4 more years, remembering that it is the largest source of Federal funding for HIV/AIDS programs, I want us to remember how we worked together, what it is like when we literally stand up for each other. Ted Kennedy literally protected that child 19 years ago. He stood up and protected the people who count on us to protect them every day. It was a moving day. It was a lesson to be learned today—Ted Kennedy leading the way, the ranking member by his side, all of us coming together.

What I also remember that day was not only our bipartisanship and our compassion and our civility with this little boy and with each other, I remember the angry mob out there, worrying about people who had AIDS, finger pointing. I guess the lesson of today is don't listen to the mob. Don't be swayed by fear and frenzy. Let's get rid of misconceptions and stop accusing each other. Let's start to work together. Let's listen to each other.

Maybe 20 years from now when we look back on the debate of health insurance reform, we will pass it and make it, and it will be so usual and customary, and we will be proud of what we did as we are proud of what we did today. Ryan White is no longer with us. But what he helped inspire a nation to do is. I thank him and his family and all who endured during that time.

Now I call upon us again. Let's return to civility, bipartisanship. Let's stick to the facts. Let's stick with each other.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I rise today to speak about the conference report to accompany the Department of Homeland Security Appropriations bill.

When this bill was originally before the Senate, I joined 83 other Members of this body in supporting it.

But at this time I cannot support the conference report because it includes language that was not included in the Senate-passed bill relating to the detainees being held at the Guantanamo Bay Naval Facility, or Gitmo.

This bill would prohibit the transfer, release or detention in the United States of any of the detainees held at Gitmo as of June 24, 2009. However, it does allow detainees to be brought into the U.S. for prosecution. I cannot support this. I have been very outspoken on this issue and believe it is wrong to bring these detainees into our country to try them in our criminal courts. These terrorists have committed violations of the laws of war and should be held and prosecuted according to the

procedures Congress laid out in the past.

Prosecuting these individuals in our U.S. courts simply will not work and there is too much at stake to grant the unprecedented benefit of our legal system's complex procedural safeguards to foreign nationals who were captured outside the United States during a time of war. Allowing these terrorists to escape conviction, or worse yet, to be freed into the U.S. by our courts, because of legal technicalities would tarnish the reputation of our legal system as one that is fair and just. Prohibiting the detainees from entering into the U.S. is one small step in the right direction. However, this legislative loophole is a step in the wrong direction.

In May, the Senate voted 90 to 6 to prohibit any of these hardened terrorists from being brought to the United States. Despite this clear objection, the administration transferred one detainee, Ahmed Ghailani, to New York City in June. He is facing a trial in the Southern District of New York for his role in the August 7, 1998 bombings of two U.S. embassies in Africa. Some of my colleagues in the Senate have touted this as an example of how we can bring criminal charges against the Gitmo detainees and try them in our courts. However, Ghailani was indicted on March 12, 2001, a full 6 months prior to the terrorist attacks of 9/11 and after a full investigation by the Federal Bureau of Investigation. The case against Ghailani was built long before he was transferred to Gitmo in 2006. To imply that other detainees, many of whom the FBI has not investigated or collected evidence against, may be prosecuted similarly in U.S. courts is naïve. Worse yet, just recently, the Attorney General ordered the U.S. attorney not to seek the death penalty in this case, despite the fact that his participation in the bombings resulted in the death of over 200 people and injured over 4,000. In contrast, six of the charges brought against Ghailani in his military commission carried the death penalty.

Now there are press reports that the administration is considering transferring Khalid Sheikh Mohammed or KSM to the United States. KSM is the self-proclaimed, and quite unapologetic, mastermind of the 9/11 attacks. KSM admitted he was the planner of 9/11 and other planned, but foiled attacks against the U.S. In his combatant status review board, he admitted he swore allegiance to Osama bin Ladin, was a member of al-Qaida, was the Military Operational Commander for all foreign al-Qaida operations, and much more. These admissions are unlikely to be admitted in a Federal court. Bringing KSM to a U.S. court will do nothing but allow defense lawyers to expose our intelligence sources and methods used in interrogating KSM to the world.

Time after time since President Obama's January 22, 2009 announcement stating that he would close Gitmo within a year, I have seen hasty

and ill-advised comments and action taken with respect to the Gitmo detainees. The detainees at Guantanamo are some of the most senior, hardened, and dangerous al-Qaida figures we have captured. It is imperative that the President satisfy the concerns of Congress and the American public before we should fund the transfer of any of these detainees to U.S. soil for any reason.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Georgia for his comments. Having served on the Judiciary Committee and the Armed Services Committee with Senator CHAMBLISS, we had a number of hearings on these issues. I agree with Senator CHAMBLISS that there is no practical alternative to the process we are using. It is right and just to do so, to use the one, at least, we have been using at Guantanamo Bay.

To create trials in Federal district court using American rules of procedure such as Miranda and the exclusionary rule is not the kind of thing that ought to be done in this case. He has given a lot of thought to it, and I appreciate it. In essence, he is disappointed that the conference committee altered language we passed by an overwhelming majority in this Senate. That is exactly what I am going to talk about today.

I am disappointed that those in the leadership in this Congress, without discussion or debate, have decided to dramatically alter the amendment I offered that was accepted unanimously to the Homeland Security appropriations bill in this Congress.

On July 8, 2009, the Senate rejected, by a vote of 44 to 53—I think at least 13 or more Democrats voted this way—a motion to table the E-Verify amendment I offered to the Department of Homeland Security bill. After the motion to table was defeated, the Senate then unanimously accepted my amendment. The amendment made the program permanent, the E-Verify Program, which allows businesses to run virtually an instant computer check to see if the person who has applied before them is legally able to work in the United States. The amendment I offered would have made that E-Verify system permanent and it would have made it mandatory for government contracts. Some States have mandatory rules; businesses are voluntarily doing it. It would simply say: You are not going to get a contract from the taxpayers of the United States if you are not legally working in the United States. How simply is that? But the version of the bill reported from conference is dramatically different. It contains only a 3-year extension of the E-Verify Program and does not include any of the Federal contractor language. We passed a lot of stimulus money to try to create jobs for Americans this year, and it should be for lawful people, not unlawful.

This is the third time this Congress and the leadership in this Congress have either removed, changed, or blocked attempts to make this successful program permanent, against the overwhelming will of the American people, actually, and against the will of the Obama administration—at least in their verbal statements—and the express will of both the House and the Senate.

So this is how things happen. I think this is one of the reasons people are angry with Congress. Some people say they are angry at immigrants. I do not think that is accurate. I think they are angry at Congress for failing to take commonsense steps to create a lawful system of immigration and end the lawlessness that exists.

The mechanism is this: We pass it. Members of the Senate vote for it. They go home and say: I voted to make E-Verify permanent. I voted to make it apply to contractors. I am sorry it did not happen. Well, who makes this happen? Who changes the language? It is done in secret in conference in a nonopen way. They meet and just change it. They think nobody is going to know and they can just get away with it. It is the reason people are not happy with Congress.

In addition, the Democratic leadership on the conference committee—and they are all appointed by the Speaker and by the majority leader. So the majority of both Houses, the House and the Senate, are clearly Democratic Members. I do not want to make this such a partisan thing, but I guess it is an institutional thing of frustration that our Democratic Members have voted for these reforms, for these good ideas, but yet somehow it goes into conference and it gets eliminated, gets undermined so it does not become law.

There were three other amendments stripped that dealt with immigration issues that had overwhelming support: A DeMint amendment that passed in the Senate called for completing the 700 miles of double-layer fence called for by the Secure Fence Act that we passed overwhelmingly some time ago, and that was taken out. A Grassley amendment that would have allowed employers to reverif employees through E-Verify was taken out. A Vitter amendment that would have precluded the rescissions of the no-match rule was taken out.

So together with the recent actions of this administration—and they have been sending mixed signals, but their actions sometimes speak louder than words. They have backed off of the detention policy. Now I see they are putting people illegally coming into our country in hotel and motel rooms. They watered down the 287(g) Program which allows local law enforcement to work with the Federal officials to help them identify those who are illegally in the country in a way that makes sense. It is a limited power, but it is very helpful. Those are some of the things this administration has backed off on.

So I think the conclusion we reach is that the majority in control of this Congress seems to be committed to blocking any congressional action that actually seeks and is effective in enhancing law enforcement. Some say: That is a harsh thing to say, JEFF. That is not true. I will just repeat it. If you know what the system is about, you know how the debate is going on in this Senate and in the House, you would be aware of the fact that E-Verify is very important and that it should apply to people who get government contracts. Why do they keep taking it out?

Back in February, two amendments were unanimously accepted to the House stimulus bill, the \$800 billion bill that was supposed to create jobs in America. Those amendments related to the E-Verify Program. One was offered by Congressman KEN CALVERT of California for a 4-year extension of the E-Verify Program. It was identical to the reauthorization language that passed the House on July 31, 2008, by a vote of 407 to 2. Another was offered by Congressman JACK KINGSTON, and it prohibited funds made available under this \$800 billion stimulus bill from being used to enter into contracts with businesses that do not participate in this E-Verify system.

It is growing. Millions of checks are being done by this system. It is no burden on businesses. So it would say, if you did not use that system, you could not get this stimulus money to do things, build things with.

The provisions of the bill were both unanimously accepted without a vote by the House Appropriations Committee. Furthermore, the provision that extended the program was also overwhelmingly approved by the House last July by a vote of 407 to 2.

One of the main purposes of the stimulus bill was to put Americans back to work. It was common sense—common sense—to include a simple requirement that the people hired to fill the stimulus-created jobs be lawfully in our country and lawfully able to work.

I tried to offer an amendment, at that time, that incorporated both the House provisions in the Senate stimulus bill when the stimulus bill was being considered in the Senate, but it was blocked on three separate occasions by the Democratic leadership. I can only conclude from that they did not want it. I knew, if we could get a vote, we would have a bipartisan Democratic and Republican vote for it.

My amendment only incorporated the short 5-year extension, but I was not even allowed to get a vote. As I predicted at that time, once the bill went to conference, the conferees would strip the E-Verify provisions from the final version of the economic stimulus package without any open discussion or debate. That is exactly what they did. I hate to say it, but the actions seem to send a clear signal that our leadership wants to use taxpayers' money to employ people who are in this country illegally.

That is a harsh thing to say. But if you do not want that to happen, why don't we take some steps to do something about it? Why wouldn't we require people who get government money—taxpayers' money that is supposed to be designed to create American jobs—why wouldn't we want to at least take this modest step to try to see that people illegally here do not get those jobs?

Furthermore, in March, when I tried to offer an identical amendment to the Omnibus appropriations bill, it was tabled by a vote of 50 to 47. This proves to me there are some powerful forces out there somewhere still alive who want to block this important step.

It is important we permanently reauthorize this successful E-Verify Program, which is currently set to expire when the current continuing resolution ends. We should do it particularly now that we are in a time of serious economic downturn and unemployment.

E-Verify is an online system operated jointly by Homeland Security and the Social Security Administration. Participating employers can check the work status of new hires online by comparing information from an employee's I-9 form—that is their employment form—against the Social Security and DHS databases. It is done like that. It takes just a few minutes.

E-Verify is free to businesses and is the best means available for determining the employment eligibility of new hires and the validity of their Social Security numbers, instead of the so many bogus numbers many of you have read about.

As of October 3 of this year—2009—over 157,000 employers, businesses, are enrolled in this program. This represents over 600,000 hiring sites nationwide. Over 8.5 million inquiries were run through the system in 2009 and over 90,000 have been run since October 1 of this year—in 20 days.

The Homeland Security Secretary—President Obama's Secretary—Janet Napolitano, has spoken highly of the E-Verify Program. She called the program "an integral part of our immigration enforcement system"—an integral, essential part of our enforcement system. There is no doubt about it, in my view. Attempts to make the program permanent have been thwarted time and time again during this Congress.

According to Homeland Security, 96.1 percent of employees are cleared to go to work immediately under this online system, and growth continues at over 1,000 new employer users each week.

Of the remaining 3.9 percent of queries with an initial mismatch—so there are 3.9 percent who are not cleared immediately—of those, only .37 percent, about a third of 1 percent, were later confirmed to be work authorized. So it looks like about 80, 90 percent of the people who did not get immediate clearance—really, more than that—were not authorized to work legally in America. Only .37 percent of those

later were shown to be held up improperly—or not “improperly,” just being held up. Maybe they entered a wrong Social Security number by mistake.

Employers get an advantage. An employer that verifies work authorization under E-Verify has established a rebuttable presumption that the business has not knowingly hired an illegal alien.

Recently, the Bureau of Labor Statistics reported that the unemployment rate in the United States has jumped to 9.8 percent—basically, double what it was a year or so ago. That is 15 million unemployed. This is the highest unemployment rate in 25 years.

Immigration by illegal immigrants has had a serious and depressing effect on the standard of living of lower skilled American workers. That is a fact, in my view. The U.S. Commission on Immigration Reform, chaired by the late civil rights pioneer, Barbara Jordan—and they had a big study of this—found that “immigration of unskilled immigrants comes at a cost to unskilled U.S. workers.”

The Center for Immigration Studies has estimated that such immigration has reduced the wage of the average native-born worker in a low-skilled occupation by 12 percent or almost \$2,000 annually.

In addition, Harvard economist and author of perhaps the most respected book on immigration—he goes into great detail of economic studies and information that he analyzed—Professor George Borjas, himself born in Cuba, has estimated that immigration in recent decades has reduced the wages of native-born workers without a high school degree by 8.2 percent.

E-Verify is working. In fact, the program is so successful that Secretary Napolitano recently said:

The Administration strongly supports E-Verify as a cornerstone of worksite enforcement and will work to continually improve the program to ensure it is the best tool available to prevent and deter the hiring of persons who are not authorized to work in the United States.

That is a strong, clear, good statement the Secretary has given, and it is common sense.

Recently confirmed Citizenship and Immigration Services Director Alejandro Mayorkas said:

I believe E-Verify is an effective law enforcement tool.

In February of 2009, Doris Meissner, former head of immigration under President Clinton, said:

Mandatory employer verification must be at the center of legislation to combat illegal immigration . . . the E-Verify system provides a valuable tool for employers who are trying to comply with the law. E-Verify also provides an opportunity to determine the best electronic means to implement verification requirements. The Administration should support reauthorization of E-Verify and expand the program. . . .

Alexander Aleinkoff—President Clinton’s INS official and an Obama administration Department of Homeland Security transition official—calls it a

“myth” that “there is little or no competition between undocumented workers and American workers.” He is right about that. They can say this is not true all day long, but anybody who observes what is happening knows the large influx of low-skill workers pulls down the wages of hard-working Americans who did not get a high school diploma who are trying to take care of their families and survive in a competitive world. It is a fact. We need to understand that.

Even the distinguished majority leader supports the program. He wrote a letter in March of this year saying:

I strongly believe that every job in our country should go only to those authorized to work in the United States. That is why I strongly support programs like E-Verify that are designed to ensure that employers only hire those who are legally authorized to work in the United States, and believe we need to strengthen enforcement against employers who knowingly hire individuals who are not authorized to work. I support reauthorization of the E-Verify program, as well as immigration reform that is tough on lawbreakers, fair to taxpayers and practical to implement.

This is one I hope we can all agree on. But I do not know how it came out that this language was gutted out of the conference report, once again.

Since 2006, 12 States have begun requiring employers to enter new workers’ names into the system, which checks databases, including Arizona, which passed the law while our current Homeland Security Secretary, Janet Napolitano, was Governor of Arizona. Colorado, Georgia, Minnesota, Mississippi, Missouri, North Carolina, Oklahoma, Rhode Island, South Carolina, Tennessee, and Utah have this system where their employers that have contracts in government work—actually any employers have to use the system before they are hired.

Secretary Napolitano has also said:

I’m a strong supporter of E-Verify. . . . You have to deal with the demand side for illegal immigration, as well as the supply side, and E-Verify is an important part of that.

In January of 2009, the Washington Post reported that Secretary Napolitano said:

I believe in E-Verify. I believe it has to be an integral part of our immigration enforcement system.

President Bush signed Executive Order 12989 last year. I think, in many ways, he was slow to come to realize how important creating a lawful system of immigration was. But he made some progress toward the end and he made this statement and took this action. He said:

Contractors that adopt rigorous employment eligibility confirmation policies are much less likely to face immigration enforcement actions, because they are less likely to employ unauthorized workers, and they are therefore generally more efficient and dependable procurement sources than contractors that do not employ the best available measures to verify the work eligibility of their workforce. . . . It is the policy of the executive branch to use an electronic

employment verification system because, among other reasons, it provides the best available means to confirm the identity and work eligibility of all employees that join the federal workforce. Private employers that choose to contract with the federal government should meet the same standard.

So President Bush issued that Executive Order, that private employers that choose to contract with the Federal Government should meet the same standard. Basically, what happened was, President Obama delayed it. They have since issued a policy that larger businesses should use the system, for which I give them credit. So the Federal Government should meet the same standard. He meant it should apply. The Obama administration has made, as I understand it, an executive order that requires larger businesses to use this system for the current time but not smaller businesses, and it is not a part of law.

Last June, when Homeland Security designated E-Verify as the electronic employment eligibility verification system that all Federal contractors must use, Secretary Chertoff—the Secretary of Homeland Security—said this:

A large part of our success in enforcing the nation’s immigration laws hinges on equipping employers with the tools to determine quickly and effectively if a worker is legal or illegal. . . . E-Verify is a proven tool that helps employers immediately verify the legal working status of all new hires.

So some have argued it is too costly and too cumbersome. However, a letter to the Wall Street Journal from Mark Powell, a human resources executive with a Fortune 500 company, said it is free; it takes only a few minutes and is less work than a car dealership would do checking a credit score prior to selling a vehicle or taking a test drive.

Well, that is true. How else can we explain so many employers voluntarily signing up? I think the short-term extensions only discourage participation in the E-Verify Program and leave us with a lack of assurance in the future we need.

With regard to the contention that there are some mismatches, as I said, only .37 percent—less than 1 percent—of the people whose numbers don’t check out are found to be improperly checked out. Truthfully, most of them got the right answer.

So I would conclude by saying a lot of progress has been made to make the system even better than it was. Over 60 percent of foreign-born citizens who have utilized this option and more than 90 percent of those phone calls have led to a final “work authorized” determination. I think we are on the right track. I think we should make this permanent. We absolutely should make it so that anyone who obtains a contract or a job as a result of government taxpayer money should be legally in the United States. If they are not, they shouldn’t get the job. It should be set aside for American taxpayers. I thank the Chair.

Just before I conclude, once again, let me express frustration that what

was passed so overwhelmingly, somewhere behind closed doors—the same place they are meeting right now to write a health care bill. We don't know where they are or what they are talking about, but a group is meeting to try to cobble together the two or three or four bills that are pending out there with something they will bring to the floor, and nobody has even seen it yet. We are having too much of that. I think it is eroding public respect for the Congress, and I can understand why the American people are angry with us.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Louisiana.

Mr. VITTER. Mr. President, I rise to join my distinguished colleague from Alabama, as well as our colleague from South Carolina, who will come to the floor soon to talk about this Department of Homeland Security Appropriations conference report and specifically the major provisions which had broad bipartisan support which were stripped out of the conference report in the dead of night. I wish to thank my colleague from Alabama for all his work on this issue in general, particularly the E-Verify system. I strongly support expanding it aggressively. It is part of a solution. It is not the whole solution; no one item is. But it is an important part of the solution to get our hands around immigration enforcement, particularly at the workplace. So I thank my colleague for that work.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. VITTER. Absolutely. I will yield.

Mr. SESSIONS. The Senator has served in the House and the Senate and knows how conference committees work. Isn't it true that the majority of the Senate conferees would be appointed by the majority leader, and a majority of the House conferees would be appointed by the Speaker?

Mr. VITTER. Absolutely.

Mr. SESSIONS. Isn't it a tradition that normally conferees appointed by those leaders tend to follow their lead in how they vote in conference?

Mr. VITTER. Absolutely.

Mr. SESSIONS. The Senator had an amendment that was stripped out, as I did, dealing with the immigration issue. It seems to me odd that amendments receiving such high votes in both the House and the Senate would be stripped out of conference. Would you agree that is an odd thing to happen?

Mr. VITTER. I absolutely agree with my colleague.

I would point out in that vein, the Sessions amendment got broad support. When the Democratic leadership handling the bill on the floor asked to table the amendment, that was rejected 53 to 44. In a similar way, they attempted to table the amendment of our colleague from South Carolina, and that motion was defeated 54 to 44. My amendment was adopted by unanimous

consent. Yet with that clear support from the Senate floor, the leadership on the other side apparently went to conference and took out those amendments in the dead of night. I find that worrisome. I find it worrisome in terms of the process. I find it worrisome in terms of immigration reform and where we are apparently headed.

Again, as I said, these were three significant amendments put in this bill on the Senate floor. All three have been stripped out of this conference report.

Let me focus for a minute on my proposal. When the bill was on the Senate floor, my amendment, which was Senate amendment No. 1375, was passed by unanimous consent. So literally no one in the entire body, Democratic or Republican, objected. Essentially, everyone agreed to put this amendment on the bill. The amendment was to prohibit funding to the Department of Homeland Security if they implemented any changes in a final rule requiring employees to follow the rules of the Federal Social Security no-match notices. This, as E-Verify, is an important piece of the puzzle. It is an important piece of the solution.

In August of 2007, the Department of Homeland Security introduced its no-match regulation. This clarified the responsibility of employers who receive notice that their employees' names and Social Security numbers don't match up with the records at Social Security.

So under the rule, employers receiving these notices who did not take corrective action would be deemed to have constructive knowledge that they are employing unauthorized aliens. So, in other words, the intent and the way the rule worked was very simple and straightforward. If records went in to the Department of Homeland Security, if a name and a Social Security number didn't match according to Social Security records, then the Federal Government would notify the employer and would say: Time out; you have a problem. You need to do something about it. If it is a mistake, we need to figure that out, but otherwise it seems as though you are hiring an illegal. So stop and either clear up the mistake or do not hire that person.

This rule provided employers with clear guidance on the appropriate due diligence they should undertake if they received that sort of letter from the Federal Government. So employers who received no-match letters would know they have a problem: Either their record keeping needs to be improved or they have hired illegal workers. The DHS no-match rule gives companies that want to follow the law a clear path to safety. Companies that prefer to ignore the problem or have chosen to run their business with illegal labor cannot be forced to act responsibly, so they do so at their peril under this rule. Since the Social Security letter leaves a clear record for DHS investigators to build a case against employers, it makes the entire system far more workable.

My amendment simply said we are going to keep that new rule in place. It is important for enforcement. It is important for workplace enforcement. It is important to get our hands around the problem of illegal immigration because of the common sense behind that concept. My amendment was adopted on the Senate floor unanimously, by unanimous consent.

As I said, Senator SESSIONS had an important amendment which he just talked about to expand the E-Verify system. That amendment was actually opposed by some, and there was a motion to table the amendment, but that motion to table was defeated 53 to 44. Similarly, Senator DEMINT of South Carolina had an important immigration enforcement amendment. He will be coming to the floor to talk about that this afternoon. His amendment required the completion of at least 700 miles of reinforced fencing along the southwest border by December 31, 2010. Again, his amendment was opposed by some liberals on the Senate floor. They moved to table that amendment but, again, by a significant vote that motion to table was defeated 54 to 44.

So if these amendments are adopted by comfortable, if not unanimous, margins in the Senate, why are they being stripped in the dead of night in the conference committee report? Unfortunately, I think it is clear this Congress, under the Democratic leadership, and this administration want to take a very different approach to immigration, and they are not serious about any of these enforcement measures.

I think that is a shame because these three amendments and other good enforcement ideas I believe represent the common sense of the vast majority of the American people. To me, this harkens back to the major immigration reform debate we had in the summer of 2007 when a big so-called comprehensive immigration reform bill came to the floor of the Senate. It didn't have enough enforcement, in my opinion. It did have a huge amnesty program instead. So by the end of the debate, the American people spoke loudly and clearly. They said: No, we want enforcement. We want to do everything we can on the enforcement side first. We don't want a big amnesty.

That so-called comprehensive bill was defeated by a wide margin. After that seminal event, so many on the Senate floor, including many who had backed that bill, Senator MCCAIN among them, said: OK, we heard the American people. We heard you loudly and clearly. We need to start with effective enforcement. We need to start with commonsense measures, such as a certain amount of fencing, such as E-Verify, such as the Social Security no-match rule. Yet when we put those commonsense measures in this bill, what happened? In this Congress, led by Democratic leadership, under this administration, it was just stripped out of the conference committee report.

Sure, it got big votes on the Senate floor; sure, it has widespread House



support; sure, the Vitter amendment was adopted by unanimous consent. We don't care. We are going to strip it out.

The message is loud and clear. The message is, we don't care what the American people have said. We don't care what they said in the summer of 2007. We don't care what they say over and over and over again about these issues—no-match, E-Verify, fencing—we are just going to oppose any of those commonsense enforcement measures.

I truly believe the second half of where the leadership in this Congress and this administration is coming from is the same thing as the second half of that immigration reform bill in 2007: a big amnesty program with little to no enforcement, a big amnesty program.

We need to listen to the American people. We don't need to play games and say we are supporting provisions and then have them stripped out of conference reports. We need to be more straightforward, more honest in what we are truly about in attacking this problem. Unfortunately, this conference report is an example of exactly the opposite.

I urge my colleagues to pay attention to what is happening because so many folks in this body are speaking out of both sides of their mouth. They are saying: Oh, yes, fence, sure; E-Verify, absolutely; social security no-match, sure. Then they get certain leaders of the conference committee to do their dirty work and just strip those provisions. They are ignoring the will of the American people. They are rejecting commonsense enforcement, and according to many reports, the Obama administration and its leaders in the Congress are going to attempt another push for broad-based amnesty.

We need to listen to the American people and not play games. In particular, we need to stop this game playing overall. Senator SESSIONS, my distinguished colleague from Alabama, was right when he said these sorts of antics—talking out of both sides of our mouths on this issue, stripping so-called popular amendments from a conference committee report—these antics are exactly what is eroding confidence in Congress overall. This is exactly what the American people are so frustrated and, in fact, so scared about with regard to many other issues, such as health care.

I believe this is of real concern as we go into the health care debate because, quite frankly, what does it matter what we adopt on the Senate floor when the conference committee work is going to be handled, perhaps, just like this Homeland Security conference committee was. People can have little confidence based on our votes on the Senate floor. The conference committee work can be diametrically opposed to it on significant issue after significant issue, just as it was on no match, on E-Verify, on fencing.

We need to stop eroding public confidence in that way. We need to do

what is, in fact, our first job in the Congress, House and Senate, which is to listen to the American people and, yes, represent the American people.

I am afraid this DHS conference report, with its significant omissions in the area of Social Security no match, E-Verify, and fencing, is a sign that this leadership in Congress and this administration are not prepared to do any of that. I lament that.

I urge all of our colleagues to come back together and demand progress on E-Verify, on no match, and on fencing, and to stop this game playing as we move to other crucial issues, including health care.

Mr. President, I yield the floor.

THE PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. I thank the Chair.

(The remarks of Mr. CARPER and Mr. KAUFMAN pertaining to the introduction of S. 1801 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. CARPER. I thank the Chair, and with that, 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.

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

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

Mrs. MURRAY. Mr. President, I ask unanimous consent that the time during the quorum call be equally divided between both sides.

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

Mrs. MURRAY. 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. DEMINT. 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. DEMINT. Mr. President, I apologize for your having to listen to me again this week, but I thank you for recognizing me, and actually I want to talk about something pretty serious.

I think as Americans look in—and I guess in our relationships here—cynicism is becoming so much a part of what we are doing. As a matter of fact, trying to stop cynicism here in Washington is like trying to stop water from flowing downhill. Every time the American people succeed in forcing sunlight and transparency on the political process, politicians find another corner to hide in. The latest trick is the majority's practice of accepting popular amendments to legislation while fully intending to strip those amendments out of the final bill that we send to the President. There were at least four of these amendments stripped from the conference report that is in front of us today.

One of the amendments—authored by Senator SESSIONS—permanently authorized the E-Verify Program and made it mandatory for all government contractors. That is very important to the American people, very important to employers, to be able to determine whether they are hiring a worker who is here legally. That was thrown out.

Senator VITTER had an amendment which allowed the implementation of what is called the "no match" rule, which essentially says that if a name and a Social Security number don't match, that the employer is immediately identified. That was thrown out.

Senator GRASSLEY had an amendment to allow employers to voluntarily verify the status of current employees. That was thrown out.

Then there was my amendment to require the Department of Homeland Security to complete the 700-mile reinforced fence along the Southwest border by the end of 2010. It passed on this Senate floor 54 to 44. This amendment was stripped, along with all the others.

As always, Washington politicians respect the people's wrath when the cameras are on us, but they do not respect the people's opinions when the cameras are turned off. As everyone here is aware, the American people are adamant about securing our southern border. It is a matter of security, it is a matter of jobs, it is a matter of drug trafficking and weapons trafficking. Thousands of Mexicans have been killed because of our unwillingness to control our own border.

In 2006, overwhelming public opinion forced Congress to order the construction of a 700-mile reinforced double fence by 2010. Both the Bush administration and the Obama administration have dragged their feet, and so far we only have 34 miles actually completed. The Department of Homeland Security claims 661 miles are completed, but that is not according to the law we passed because they count single-layer fencing and vehicle barriers, which do nothing to stop pedestrian traffic. My amendment would have reasserted a promise—a law—that Congress has already passed. Leaders of both parties have repeatedly tried to break this promise.

We are learning there is almost nothing that politicians won't do to get out of promises they make in the daylight, especially if they can pretend to keep the promises. This is staggering cynicism, and it is undemocratic. It violates our whole principle of the rule of law. But this problem goes well beyond our unkept promises to cure our southern border. Earlier today, we considered the conference report on Energy and Water—the Energy and Water spending bill. That report also stripped out a popular amendment offered by Senator COBURN to require all reports under the law to be made available to the public.

The majority is now so afraid of public scrutiny that they have to go behind closed doors to complete amendments they earlier accepted to guarantee transparency. This is now a pattern and a practice of the least transparent Congress in American history. That should give all of us pause, especially when we consider these same politicians are right now behind closed doors planning the takeover of one-sixth of our economy, if this health care bill succeeds.

They have promised the bill won't add to the deficit, promised it won't force people off their health care plans, promised it won't pay for abortions or cover illegal immigrants, and promised thousands of other things. The problem is we don't know what is in the bill. In the context of this back-room amendment stripping, these promises cannot be delivered, and this process cannot be trusted.

I encourage my colleagues to recognize that we need to make good on our promises. Both parties in this Congress have talked a lot about ethics and transparency. When we accept a bill on the floor, with the American people looking, but then strip it when the American people are not looking, our whole process is denigrated. This bill in particular, containing issues that deal with illegal immigration, which our country is so engaged in—and particularly at a time when people are losing their jobs, many times to workers who are not legal—is a very sensitive issue to the American people.

For this amendment to be voted on and passed and then stripped out makes no sense at all. I encourage my colleagues not to support this conference report. It has stripped out the will of the American people.

I yield the floor.

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

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

The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I rise to speak on this bill, on a particular issue of interest to my State and I think to the country on a new National Bio-Agriculture facility to research new diseases and problems that can come in on animal health. In this particular bill, Senator ROBERTS and I have been working for some period of time to get funding for this facility to go forward. This was a national competition that took place for the location of the NBA facility. A number of States competed for it. It was determined that Kansas would be the primary location for this to occur. The initial funding of \$32 million is in this conference report. I am delighted that the National Bio-Agriculture facility,

to be located in Kansas, is getting its initial funding.

As one of the responsible acts of this body, the fullest amount of the funding for this will not come until the Plum Island facility is sold. When that is sold, then that money is to go to build this facility that will research a number of different, difficult diseases in the animal health industry—foot-and-mouth disease and a number of other ones are to be researched. The facility has to be built safely so the containment facility, its initial design, is a metal structure on top of a concrete structure on top of another concrete structure in which the animals and the pathogens will be contained.

To make sure this structure is safe, the facility design will be reviewed by the Department of Homeland Security and the DHS review will also be reviewed by the National Academy of Sciences, so it is an additional review on top of a review process. That may seem like redundancy to a lot of people, but there has been a lot of concern about moving FMD research into the mainland from Plum Island off of New York.

I think it is prudent for us to do this research. I think it is important for us to research cures in this area. I think it is also prudent for us to make sure that the facility is well built and one from which we can be certain these pathogens will not be released.

The passage of this final bill is a huge step in locating this NBA facility in Kansas, providing additional funding for this. I believe there is no better place than in Kansas to do this research. I am not just saying that because it is my State—although that is a big part of it—but 30 percent of the animal health industry globally is located within 100 miles of Kansas City. It is a place where there is a lot of this research taking place. The scientists are already there, the companies are already developing these products to take care of animal health problems. They are there and we can build on that success at a national level.

I am delighted to see this moving forward in a responsible fashion. This is the initial piece. The bigger piece comes after the sale of Plum Island, which is appropriate. I am hopeful my colleagues will see fit to doing that this next year.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, later today—in fact, as I understand, in a very short time—the Senate will vote on the conference report to accompany the fiscal year 2010 Department of Homeland Security appropriations bill. This conference report spends approximately \$42.7 billion, 6.6 percent above last year's bill. I am sure many American households would love a 6-percent increase in their budget but cannot afford it. The Federal Government can't afford it either.

Specifically, this conference report contains 181 congressionally directed

spending items totaling over \$269 million. As far as I can tell, none of these projects was requested by the administration, authorized, or competitively bid in any way. No hearing was held to judge whether these were national priorities worthy of scarce taxpayers' dollars.

By the way, as I recall, when we first started with the Homeland Security Appropriations bills, we had decided at that time there would be no earmarks. So the next time we didn't do them. Then there are a few more. Now there are 181 of them—181, totaling over \$269 million. I do not need to remind Americans—I might want to try to keep reminding the appropriators—the Federal deficit now stands at \$1.4 trillion. It is an all-time high. Americans are losing their jobs and their homes at record rates. What are we doing? We just keep on spending.

Let's take a look at some of the earmarks included in this conference report: \$4 million for the Fort Madison Bridge, in Fort Madison, WI. How is that related to homeland security? There is \$3.6 million for a Coast Guard Operations Systems Center in West Virginia. Why would the Coast Guard Operations Systems Center be located in a landlocked State? There is \$200,000 to retrofit a college radio station in Athens, OH. Let me be clear here. This is to appropriate funds for homeland security. Obviously high on somebody's list is \$200,000 to retrofit a college radio station. My, my, my.

There is \$900,000 for the City of Whitefish Emergency Operations Center in Whitefish, MT. The population is 5,849. That comes out to \$153.87 per resident which is paid for by my taxpayers and all American taxpayers.

There is \$250,000 to retrofit a senior center in Brigham City, UT. The last time I checked, senior centers are important but they have very little relation to homeland security. There is \$125,000 to replace a generator in La Grange Park, IL. I have to say, maybe there is something we don't know here. Maybe there is a reason why we need to retrofit a college radio station in Athens, OH; maybe there is a reason we need to replace a generator in La Grange Park, IL; maybe there is a reason why we have to spend \$250,000 to retrofit a senior center in Brigham City, UT in the name of homeland security; maybe there is a reason to spend \$130,000 to relocate the residents of 130 homes in DeKalb, IL. But we will never know because we don't have any hearings, we don't have any authorization. We just go ahead and spend the money—6.6 percent over last year. The original intent was there were not going to be any earmarks. Amazing.

In addition to the earmarks contained in the conference report, Congress continues to fund programs that the President, as part of his budget submission, had recommended terminating or reducing. This is the President's budget submission. These are the requests of the President that certain programs be terminated because

they are unnecessary and unwanted and redundant. Remember, this is in the face of a \$1.43 trillion deficit. We are still funding them, no matter what the President of the United States says and no matter what good sense says.

The first amendment I tried was to terminate a terrestrial-based, long-range maritime radio navigation system called the LORAN-C. The Bush and Clinton administrations sought to terminate the program. They tried. The current administration states in its budget that, although the program is not fully developed, it is already "obsolete technology." This is what the President says:

The Nation no longer needs this system because the federally supported civilian global positioning system, GPS, has replaced it with superior capabilities.

Is there anybody who doubts that GPS is a superior capability?

The elimination of this program, according to the President, would achieve a savings of \$36 million in 2010 and \$190 million over 5 years.

Those are not my words, those are the words of the administration. So what have the appropriators done? They continued to fund it. When I offered an amendment to eliminate that obsolete technology that the Nation no longer needs, 36—count them—36 of my colleague also supported it. The majority party in the Senate did not support the administration's view that this program should be eliminated and this conference report continues to fund the program into next year, rather than cutting funding immediately—as we should have done a long time ago.

My other attempt to support the President's effort to eliminate wasteful government programs also failed. The administration proposed in its 2010 budget to cut the Over-the-Road Bus Security Program because the money was not awarded based on risk, as recommended by the 9/11 Commission, and the program has been assessed as not effective.

The appropriators have now gone against the recommendations of the 9/11 Commission, they have gone against the recommendations of the President of the United States, and we will continue to spend another \$6 million. I offered the amendment to eliminate the program. The amendment was defeated by a vote of 47 to 51, so we will spend another \$6 million that the administration says we do not need and that clearly is unnecessary to be funded.

During the Senate consideration of the bill, I filed a total of 28 amendments to strike earmarks and end funding for programs that the President had sought to terminate. Not surprisingly, my efforts were rebuffed each time by the members of the Appropriations Committee. The American people are tired of this process, they are tired of watching their hard-earned money go down the drain. Earlier this year, the President pointedly stated, and I quote him:

We cannot sustain a system that bleeds billions of taxpayers dollars on programs

that have outlived their usefulness, or exist solely because of the power of politicians, lobbyists or interest groups. We simply cannot afford it. . . . We will go through our Federal budget—page by page, line by line—eliminating those programs we don't need, and insisting those we do operate in a sensible and cost-effective way.

This is the document. The President went through it line by line. So we offered amendments to eliminate these programs. So of course the appropriators won again. They not only voted against my attempts to strike wasteful and unneeded spending, they also eliminated a provision that was supported by 54 Members of the Senate to mandate the completion of 700 miles of fence along the Southwest border by December 31, 2010. This elimination will only serve to weaken our efforts to secure the border. We know that fencing alone is not a panacea to every security issue on the border, but there is no doubt that increased fencing bolsters Customs border patrol efforts to secure our border.

Additionally, the other body's leadership added language that prohibits use of the funds in this act or any other act for the release of detainees held at Guantanamo into the United States, its territories and possessions. By extending this prohibition to U.S. territories and possessions, the conference report further restricts the release of detainees enacted into law in the supplemental appropriations act for fiscal year 2009. The conference report also restricts transfers of detainees from Guantanamo, limiting them to only transfers for the purpose of prosecution or detention during legal proceedings, and requires the President provide a plan to Congress 45 days prior to transfer. These provisions allow detainees to be tried for acts that amount to war crimes in Federal criminal courts and would authorize bringing detainees into the United States for that purpose.

I will continue to believe that war crimes—and by that I include the intentional attacks by civilians that resulted in the loss of nearly 3,000 lives on September 11, 2001—should be tried in a war crimes tribunal created especially for that purpose. The Military Commission's Act of 2009 is a result of extensive input and coordination with the Obama administration. It should be the vehicle for the trial for the horrendous war crimes committed against thousands of innocent American civilians, rather than bringing detainees from Guantanamo to the United States to face trial in a domestic Federal criminal court.

I am sure that many of my colleagues read with interest the views of former Attorney General of the United States Michael Mukasey in the Wall Street Journal on Monday, October 19, in which he opposes trial of these detainees who are suspected of being responsible for the 9/11 attacks in Federal criminal court. He says:

The Obama administration has said it intends to try several of the prisoners now de-

tained at Guantanamo Bay in civilian courts in this country. This would include Khalid Sheikh Mohammed, the mastermind of the September 11, 2001 terrorist attacks, and other detainees involved.

The Justice Department claims our courts are well suited to the task. This is the former Attorney General of the United States who says:

Based on my experience trying such cases and what I saw as Attorney General, they are not.

That is not to say civilian courts cannot ever handle terrorist prosecutions, but rather their role in a war on terror—to use an unfashionable phrase—should be as the term "war" would suggest, a supporting and not a principal role.

I ask unanimous consent the article from the Wall Street Journal by the former Attorney General of the United States saying, "Civilian Courts Are No Place To Try Terrorists," be printed in the RECORD.

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

[From the Wall Street Journal, Oct. 19, 2009]

#### CIVILIAN COURTS ARE NO PLACE TO TRY TERRORISTS

(By Michael B. Mukasey)

The Obama administration has said it intends to try several of the prisoners now detained at Guantanamo Bay in civilian courts in this country. This would include Khalid Sheikh Mohammed, the mastermind of the Sept. 11, 2001 terrorist attacks, and other detainees allegedly involved. The Justice Department claims that our courts are well suited to the task.

Based on my experience trying such cases, and what I saw as attorney general, they aren't. That is not to say that civilian courts cannot ever handle terrorist prosecutions, but rather that their role in a war on terror—to use an unfashionably harsh phrase—should be, as the term "war" would suggest, a supporting and not a principal role.

The challenges of a terrorism trial are overwhelming. To maintain the security of the courthouse and the jail facilities where defendants are housed, deputy U.S. marshals must be recruited from other jurisdictions; jurors must be selected anonymously and escorted to and from the courthouse under armed guard; and judges who preside over such cases often need protection as well. All such measures burden an already overloaded justice system and interfere with the handling of other cases, both criminal and civil.

Moreover, there is every reason to believe that the places of both trial and confinement for such defendants would become attractive targets for others intent on creating mayhem, whether it be terrorists intent on inflicting casualties on the local population, or lawyers intent on filing waves of lawsuits over issues as diverse as whether those captured in combat must be charged with crimes or released, or the conditions of confinement for all prisoners, whether convicted or not.

Even after conviction, the issue is not whether a maximum-security prison can hold these defendants; of course it can. But their presence even inside the walls, as proselytizers if nothing else, is itself a danger. The recent arrest of U.S. citizen Michael Finton, a convert to Islam proselytized in prison and charged with planning to blow up a building in Springfield, Ill., is only the latest example of that problem.

Moreover, the rules for conducting criminal trials in federal courts have been fashioned to prosecute conventional crimes by

conventional criminals. Defendants are granted access to information relating to their case that might be useful in meeting the charges and shaping a defense, without regard to the wider impact such information might have. That can provide a cornucopia of valuable information to terrorists, both those in custody and those at large.

Thus, in the multidefendant terrorism prosecution of Sheikh Omar Abdel Rahman and others that I presided over in 1995 in federal district court in Manhattan, the government was required to disclose, as it is routinely in conspiracy cases, the identity of all known co-conspirators, regardless of whether they are charged as defendants. One of those co-conspirators, relatively obscure in 1995, was Osama bin Laden. It was later learned that soon after the government's disclosure the list of unindicted co-conspirators had made its way to bin Laden in Khartoum, Sudan, where he then resided. He was able to learn not only that the government was aware of him, but also who else the government was aware of.

It is not simply the disclosure of information under discovery rules that can be useful to terrorists. The testimony in a public trial, particularly under the probing of appropriately diligent defense counsel, can elicit evidence about means and methods of evidence collection that have nothing to do with the underlying issues in the case, but which can be used to press government witnesses to either disclose information they would prefer to keep confidential or make it appear that they are concealing facts. The alternative is to lengthen criminal trials beyond what is tolerable by vetting topics in closed sessions before they can be presented in open ones.

In June, Attorney General Eric Holder announced the transfer of Ahmed Ghailani to this country from Guantanamo. Mr. Ghailani was indicted in connection with the 1998 bombing of U.S. Embassies in Kenya and Tanzania. He was captured in 2004, after others had already been tried here for that bombing.

Mr. Ghailani was to be tried before a military commission for that and other war crimes committed afterward, but when the Obama administration elected to close Guantanamo, the existing indictment against Mr. Ghailani in New York apparently seemed to offer an attractive alternative. It may be as well that prosecuting Mr. Ghailani in an already pending case in New York was seen as an opportunity to illustrate how readily those at Guantanamo might be prosecuted in civilian courts. After all, as Mr. Holder said in his June announcement, four defendants were "successfully prosecuted" in that case.

It is certainly true that four defendants already were tried and sentenced in that case. But the proceedings were far from exemplary. The jury declined to impose the death penalty, which requires unanimity, when one juror disclosed at the end of the trial that he could not impose the death penalty—even though he had sworn previously that he could. Despite his disclosure, the juror was permitted to serve and render a verdict.

Mr. Holder failed to mention it, but there was also a fifth defendant in the case, Mamdouh Mahmud Salim. He never participated in the trial. Why? Because, before it began, in a foiled attempt to escape a maximum security prison, he sharpened a plastic comb into a weapon and drove it through the eye and into the brain of Louis Pepe, a 42-year-old Bureau of Prisons guard. Mr. Pepe was blinded in one eye and rendered nearly unable to speak.

Salim was prosecuted separately for that crime and found guilty of attempted murder. There are many words one might use to describe how these events unfolded; "successfully" is not among them.

The very length of Mr. Ghailani's detention prior to being brought here for prosecution presents difficult issues. The Speedy Trial Act requires that those charged be tried within a relatively short time after they are charged or captured, whichever comes last. Even if the pending charge against Mr. Ghailani is not dismissed for violation of that statute, he may well seek access to what the government knows of his activities after the embassy bombings, even if those activities are not charged in the pending indictment. Such disclosures could seriously compromise sources and methods of intelligence gathering.

Finally, the government (for undisclosed reasons) has chosen not to seek the death penalty against Mr. Ghailani, even though that penalty was sought, albeit unsuccessfully, against those who stood trial earlier. The embassy bombings killed more than 200 people.

Although the jury in the earlier case declined to sentence the defendants to death, that determination does not bind a future jury. However, when the government determines not to seek the death penalty against a defendant charged with complicity in the murder of hundreds, that potentially distorts every future capital case the government prosecutes. Put simply, once the government decides not to seek the death penalty against a defendant charged with mass murder, how can it justify seeking the death penalty against anyone charged with murder—however atrocious—on a smaller scale?

Even a successful prosecution of Mr. Ghailani, with none of the possible obstacles described earlier, would offer no example of how the cases against other Guantanamo detainees can be handled. The embassy bombing case was investigated for prosecution in a court, with all of the safeguards in handling evidence and securing witnesses that attend such a prosecution. By contrast, the charges against other detainees have not been so investigated.

It was anticipated that if those detainees were to be tried at all, it would be before a military commission where the touchstone for admissibility of evidence was simply relevance and apparent reliability. Thus, the circumstances of their capture on the battlefield could be described by affidavit if necessary, without bringing to court the particular soldier or unit that effected the capture, so long as the affidavit and surrounding circumstances appeared reliable. No such procedure would be permitted in an ordinary civilian court.

Moreover, it appears likely that certain charges could not be presented in a civilian court because the proof that would have to be offered could, if publicly disclosed, compromise sources and methods of intelligence gathering. The military commissions regimen established for use at Guantanamo was designed with such considerations in mind. It provided a way of handling classified information so as to make it available to a defendant's counsel while preserving confidentiality. The courtroom facility at Guantanamo was constructed, at a cost of millions of dollars, specifically to accommodate the handling of classified information and the heightened security needs of a trial of such defendants.

Nevertheless, critics of Guantanamo seem to believe that if we put our vaunted civilian justice system on display in these cases, then we will reap benefits in the coin of world opinion, and perhaps even in that part of the world that wishes us ill. Of course, we did just that after the first World Trade Center bombing, after the plot to blow up airliners over the Pacific, and after the embassy bombings in Kenya and Tanzania.

In return, we got the 9/11 attacks and the murder of nearly 3,000 innocents. True, this

won us a great deal of goodwill abroad—people around the globe lined up for blocks outside our embassies to sign the condolence books. That is the kind of goodwill we can do without.

Mr. MCCAIN. Finally, I hope we will have the opportunity to come back to this debate during the floor consideration of the Commerce-Justice-State appropriations bill in the context of the Graham amendment on this issue, which I am proud to cosponsor along with Senator LIEBERMAN.

I am concerned, however, because I understand the administration will soon announce its decision on prosecuting the 9/11 detainees, and indications are the administration will seek such prosecutions in Federal criminal courts. Congress should have the opportunity to speak on this issue before the administration embarks on a course with which I and many law and national security experts strongly disagree.

I am also pleased this conference report does contain a provision that will allow the Secretary of Defense to prohibit the disclosure of detainee photographs under the Freedom of Information Act if he certifies that release of the photos would endanger U.S. citizens, members of the Armed Forces, or U.S. Government employees deployed outside the United States.

I do not have to, nor should I have to, remind my colleagues about the seriousness of the fiscal crisis our Nation is facing. There is no better way to prove we are serious about getting our country back on the right path than by ending the wasteful practice of earmarking funds in appropriations bills, especially a bill as important as this one that provides for funding of our critical homeland security programs.

Our current economic situation and our vital national security concerns require that now more than ever we prioritize our Federal spending. But this conference report does not do that. We cannot continue to spend taxpayer dollars in such an irresponsible manner. So, obviously, I am unable to support this legislation. I encourage my colleagues to vote against it, and if it is passed, I urge the President of the United States to send a message that this is going to stop and veto this bill and every other bill that is larded down with earmarked porkbarrel projects. It is time for a change, a real change.

Finally, there are some angry people out there. They call them tea parties. They come to the townhall meetings in huge numbers. They write. They call. They e-mail. They Twitter. They tell us they are sick and tired of this. I urge my colleagues to vote no.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, the junior Senator from South Carolina earlier raised concerns about dropping his amendment concerning the fence on the southwest border. He asserted that the decision to drop the language was

made behind closed doors. To be clear, the conference met in public session on October 7 during the full light of day.

As to the DeMint amendment, I fully support the goal of the amendment that was offered by the Senator from South Carolina. I am one of the strongest proponents in the Senate of securing our southwest border. That is why I supported legislation in 2006 to build the fence. I have led the effort to increase border security and immigration enforcement efforts.

However, the amendment that was offered by the able Senator from South Carolina is too prescriptive and too costly. Instead, in conference I worked to provide real resources to secure our borders. The conference agreement before the Senate today sustains the bipartisan congressional effort begun by the Byrd amendment to the fiscal year 2005 supplemental and continued in the fiscal year 2006–2009 appropriations acts to provide substantial increases in border security and immigration enforcement.

The number of Border Patrol agents has increased from 11,264 to a level of 20,019 agents, by the end of this year. Under this agreement, the conferees added over \$21 million above the request to hire an additional 144 agents. There will be 20,163 agents onboard at the end of fiscal year 2010.

Similarly, the number of detention beds has increased in the same time period from 18,500 beds to 33,400 beds. The agreement fully funds 33,400 detention beds and includes statutory language to maintain that level of bed space throughout the fiscal year.

The agreement also adds \$25 million to the President's request of \$112 million to expand the capacity of the E-Verify Program and increases its compliance rate.

The miles of fencing that have been constructed have increased from 119 miles in 2006 to more than 629 miles. The number of miles of the southwest border that are under "effective control," as determined by the Border Patrol, has grown from 241 miles to almost 700 miles this year. That is an increase of almost 80 miles since the end of the last fiscal year.

More than 655 miles of border fence will be complete in early 2010. The agreement provides \$800 million or \$25 million above 2009 for the deployment of additional sensors, cameras, and other technology on the southwest border. Since beginning major border fence and security construction along the southwest border in fiscal year 2007, when combined with the \$800 million in this bill and the \$100 million provided in the Recovery Act, nearly \$4.1 billion—spelled with a "b"—nearly \$4.1 billion has been appropriated for this purpose. That \$4.1 billion is a lot of money, a lot of money. That is \$4.10 for every minute since Jesus Christ was born the way I figure it.

However, it is estimated it could cost \$8.5 billion to construct the additional fencing required by the Senator's

amendment. That is money we do not have. The conference report strongly supports all aspects, all aspects of border security and immigration enforcement, and I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

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

The PRESIDING OFFICER. There is 3 minutes remaining.

Mr. DURBIN. I ask unanimous consent to have 5 additional minutes, for a total of 8 minutes allocated for us.

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

Mr. DURBIN. I rise today to speak in support of a provision in this bill and thank the chairman of this committee, Senator ROBERT C. BYRD of West Virginia, for his fine work not only on this bill but for his amazing contribution to America and to this institution of the Senate.

I rise today to speak in support of a provision in the bill which allows detainees held at Guantanamo to be transferred to the United States to be prosecuted and held responsible for their crime. The President has been clear. It is a priority of this administration to bring to justice those responsible for 9/11 and other terrorists who have attacked our country.

The conference report which we are considering would allow those people responsible for acts of terrorism to be brought here to be tried for their crimes. Unfortunately, some people on the other side of the aisle have spoken today and have a different view.

Earlier today, my colleagues, Senators CHAMBLISS and SESSIONS, argued that we should not transfer suspected terrorists from Guantanamo to the United States to be prosecuted for their crimes.

Senator CHAMBLISS said, "Prosecuting these individuals in our United States courts simply will not work."

Senator SESSIONS said, "There is no practical alternative" to prosecuting detainees in military commissions at Guantanamo Bay.

Those statements are very clear but they are also wrong. Look at the record. For 7 long years the Bush administration failed to convict any of the terrorists planning the 9/11 attacks. And for 7 long years only three individuals were convicted by military commissions at Guantanamo. In contrast, look at the record of our criminal justice system when it came to trying terrorists accountable for their crimes. Richard Sabel and James Benjamin, two former Federal prosecutors with extensive experience, published a detailed study of the prosecutions of terrorists in the courts of the United States of America. Here is what they found: From 9/11 until June 2009, 195 terrorists were convicted and sentenced for their crimes in our courts.

When the Senator on the other side says, "Prosecuting these individuals in

our United States courts simply will not work," he ignores 195 successful prosecutions.

According to the Justice Department, since January 1, 2009, more than 30 terrorists have been successfully prosecuted or sentenced in Federal courts. It continues to this day.

When you compare the record at Guantanamo, where Senators from the other side of the aisle say all these cases should be tried, it is clear the only way to deal with this is through our court system—not exclusively, but it should be an option that is available to the Department of Justice.

Recently, the administration transferred Ahmed Ghailani to the United States to be prosecuted for his involvement in the 1998 bombings of our Embassies in Kenya and Tanzania, killing 224 people, including 12 Americans.

My colleagues on the other side of the aisle have been critical of the administration's decision to bring this man to justice in America's courts. For example, ERIC CANTOR, who is a Member of the House on the Republican side, said:

We have no judicial precedents for the conviction of someone like this.

The truth is, there are many precedents for the conviction of terrorists in U.S. courts: Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing; Omar Abdel Rahman, the so-called Blind Sheikh; Richard Reid, the "Shoe Bomber;" Zacarias Moussaoui; Ted Kaczynski, the Unabomber; and Terry Nichols, the Oklahoma City co-conspirator.

In fact, there is a precedent for convicting terrorists who were involved in the bombing of the United States Embassies in Tanzania and Kenya, the same attack Ahmed Ghailani was indicted for. In 2001, four men were sentenced to life without parole at the Federal courthouse in lower Manhattan, the same court in which Mr. Ghailani will be tried.

I will tell you point blank: If they on the other side of the aisle are trying to create some fear that we cannot bring a terrorist to the United States of America, hold them successfully, try them in our courts, convict them and incarcerate them, history says otherwise.

Over 350 convicted terrorists have been tried in our courts and are being held in our prisons today successfully—held every single day. Is America less safe because of it? No. We are safer because would-be terrorists are off the streets, convicted in our courts, serving time in prison—exactly where they belong.

To argue we should eliminate this administration's right to try a terrorist in a U.S. court is to deny to our government a tool they need to fight terrorism. We also know that not a single person has ever escaped from maximum security in the Federal prisons of America. Somehow, to create the notion that the people tried in our courts are somehow going to be released in

America—President Obama has made it clear, that will never happen. He is not endorsing that, never has. And to suggest that is to suggest something that has never been endorsed by the administration. Furthermore, we know they can be held successfully in our courts.

This bill does the right thing. It gives the President the option, when the Department of Justice believes it is the most likely place to try, successfully, those accused of terrorism—to bring them into our court system, to detain them in the United States for that purpose.

There is nothing in this bill which would give the President—or anyone, if he wanted it—the authority to release a Guantanamo detainee in America. This is something that has been created, unfortunately, by a lot of talk show hosts who do not read the bill and do not understand the law and certainly do not understand what Guantanamo does to us today.

What does it cost for us to hold a terrorist at Guantanamo today? Mr. President, \$435,000 a year. That is what it costs—dramatically more than the cost of incarcerating in America's prisons.

I want to make it clear that I endorse the position not only of the administration but also of GEN Colin Powell; Republican Senators JOHN MCCAIN and LINDSEY GRAHAM; former Republican Secretaries of State James Baker, Henry Kissinger, and Condoleezza Rice; Defense Secretary Robert Gates; ADM Mike Mullen, the Chairman of the Joint Chiefs of Staff; and GEN David Petraeus, who have all said that closing Guantanamo will make America a safer place.

There are some on the other side of the aisle who have not accepted that. I do not believe they understand the threat which the continuation of Guantanamo as an imprisonment facility challenges us to acknowledge in this day and age when we face global terrorism.

Guantanamo must be closed because it has become a recruiting tool for al-Qaida and other terrorists. That is not just my opinion; it is the opinion of significant leaders of this country, such as former GEN Colin Powell.

I think we should endorse the language in this conference report. We should move forward with the adoption of this conference report, give the President another tool to fight terrorism.

I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from West Virginia.

Mr. BYRD. Mr. President, as we complete the debate today on the fiscal year 2010 Homeland Security Appropriations bill, I again thank the very able Senator from Ohio, GEORGE VOINOVICH, the ranking member, for his many contributions to this bipartisan legislation.

I thank all Senators. This conference report provides the Department of

Homeland Security with the resources it needs to succeed in its critical missions. I urge support for the conference report.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I thank the chairman of our subcommittee, Senator BYRD, for the outstanding job he has done in finally putting together this conference report so it can be considered by the Senate.

I also acknowledge the tremendous help we have gotten from our staff on this piece of legislation. I am sorry that Carol Cribbs cannot be here today. Carol worked very hard on this legislation. She is at home after taking a big fall and cutting her face, and I want to mention her name and let her know we miss her and we appreciate the good job she has done for us. Rebecca Davies has worked very hard on this legislation, and I appreciate it. She was bringing in a neophyte. This is my first opportunity to be on the Appropriations Committee.

There have been several issues raised here by some of my colleagues on our side of the aisle that are things that should be taken into consideration. The Senator from Arizona continues to make the case in terms of earmarks, and I am sure he will continue to do that, and we do respect what he has to say about that issue. But I believe the way this legislation is put together carefully justifies people on my side of the aisle supporting this legislation, in spite of some of the things the Senator from Arizona talked about.

In addition to the provisions that deal with Guantanamo Bay, I wish to point out that the language in this conference report is the same language that appeared in the June Defense supplemental that was passed in 2009, which continues to be the law under the continuing resolution. Fundamentally, what we do is put that same language here in this conference report.

If somebody reads the conference report, on page 38, they can see, in spite of the fine words of the Senator from Illinois, there is a large barrier the President has to go over before he could let anyone here into this country. And if he does let them here, as Senator DURBIN has said, they would be here for prosecution. But there are seven hurdles that have to be met by the President. Once he does that, then 45 days thereafter he could bring someone in for prosecution. So I think anyone who is concerned about bringing a bunch of the Gitmo people here in the United States for any other reason but prosecution should be comforted by the fact of this language. Also, I point out, there is language in the Senate Defense appropriations bill that also deals with this subject.

So for all intents and purposes, I think we have done a fairly good job. Frankly, I wish we had adopted this conference report a month and a half ago. But we did not. I urge my col-

leagues to support the conference report.

The PRESIDING OFFICER. The majority whip is recognized.

Mr. DURBIN. Mr. President, unless someone is seeking recognition—and I do not believe they are—I ask unanimous consent that all time be yielded back, and the Senate vote on adoption of the conference report, with no points of order in order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is on the adoption of the conference report.

Mr. DURBIN. 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 legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Carolina (Mrs. HAGAN) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 79, nays 19, as follows:

[Rollcall Vote No. 323 Leg.]

#### YEAS—79

Akaka	Gillibrand	Murray
Alexander	Graham	Nelson (NE)
Baucus	Grassley	Nelson (FL)
Begich	Gregg	Pryor
Bennet	Harkin	Reed
Bennett	Hatch	Reid
Bingaman	Inouye	Roberts
Bond	Johanns	Rockefeller
Boxer	Johnson	Sanders
Brown	Kaufman	Schumer
Brownback	Kirk	Shaheen
Burris	Klobuchar	Shelby
Byrd	Kohl	Snowe
Cantwell	Landrieu	Specter
Cardin	Lautenberg	Stabenow
Carper	Leahy	Tester
Casey	LeMieux	Thune
Cochran	Levin	Udall (CO)
Collins	Lieberman	Udall (NM)
Conrad	Lincoln	Vitter
Cornyn	Lugar	Voinovich
Dodd	McCaskill	Warner
Dorgan	McConnell	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Franken	Murkowski	

#### NAYS—19

Barrasso	Crapo	Kyl
Bayh	DeMint	McCain
Bunning	Ensign	Risch
Burr	Enzi	Sessions
Chambliss	Hutchison	Wicker
Coburn	Inhofe	
Corker	Isakson	

#### NOT VOTING—2

Hagan Kerry

The conference report was agreed to. Mr. COCHRAN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. GRASSLEY. Mr. President, while I voted in support of the fiscal year 2010 Homeland Security appropriations bill, I do want to take this opportunity to express my frustrations with the



fact that many good provisions were taken out of the final bill by the House-Senate conference committee. The provisions I want to talk about were intended to improve our ability to enforce immigration law in the interior and to secure the border to protect the homeland.

First, I want to talk about the amendment I pushed for during Senate consideration of the appropriations bill. It would have given businesses the tools to ensure that they have a legal workforce. My amendment would have allowed employers to voluntarily check their existing workforce and make sure their workers are legally in this country to work. It said that if an employer chooses to verify the status of all their workers—not just new hires—then they should be allowed to do so. And, it had protections in place. If an employer were to elect to check all workers, they would have to notify the Secretary of Homeland Security that they plan to verify their existing workforce. The employer would then have 10 days to check all workers. This short time period would prevent employers from targeting certain workers by claiming that they are “still working on” verifying the remainder of their workforce. And, my amendment would have required the employer to check all individuals if they plan to check their existing workforce. If they check one, they check them all.

Employers want to abide by the law and hire people that are legally in this country. Right now, E-Verify only allows them to check prospective employees. But, we should be allowing employers to access this free, online database system to check all their workers.

Second, while I am grateful that the committee recognizes the need to keep E-Verify operational and that the bill includes a three year reauthorization of the program, I am disappointed that the conference committee stripped an amendment to permanently reauthorize E-Verify. The amendment authored by Senator SESSIONS was passed with bipartisan support. The administration and the majority leadership claim they fully back the E-Verify program, but their actions don't show it. Our businesses need to know that this program will be around for the long-term, and that they can rely on the Federal Government to make sure that the workers they hire are legally in this country.

The third amendment stripped by the conference committee would have increased our ability to secure the border by putting funds into fencing to reduce illegal pedestrian border crossings. The DeMint provision would have required 700 miles of reinforced pedestrian fencing to be built along the southern border by December 31, 2010.

Finally, an amendment to allow the Department of Homeland Security to go forward with the “no match” rule was stripped. This amendment by Senator VITTER would have blocked the Obama administration from gutting

the “no-match” rule put in place in 2008 to notify employers when their employees are using a Social Security number that does not match their name. These “no match” letters help employers who want to follow the law and make sure they are employing legally authorized individuals.

I voted for this bill on the Senate floor because homeland security is not something we should play politics with. Defending our country is our No. 1 constitutional priority. Taxpayers expect us to get these bills passed and we have that responsibility. I voted for this bill today because it includes funding for essential border security and interior security efforts. However, there are a number of problems with this bill despite my vote for it. I am concerned that the House and Senate conference committee did a disservice to the American people by taking out language preventing illegal aliens from gaining work in this country. The conference committee, had they kept the provisions I talked about, would have helped many Americans who are looking for work and struggling to make ends meet. The provisions would have also held employers accountable for their hiring practices. It's my hope that this body will work harder to beef up our immigration enforcement efforts, and ensure that Americans are given a priority over illegal aliens during this time of high unemployment.

#### MORNING BUSINESS

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

#### NAKED SHORT SELLING

Mr. KAUFMAN. Mr. President, I rise to applaud the SEC's Enforcement Division for recently bringing two actions for insider trading against Wall Street actors. While our judicial system must run its course, I am nonetheless pleased that the investigators and prosecutors are working together to target Wall Street wrongdoing.

In white-collar crime, securities fraud, and insider trading, enforcement is critical to deterrence. In turn, deterrence is critical to maintaining the integrity of our capital markets.

The importance of these cases extends beyond deterring and punishing

criminal conduct. By identifying, prosecuting, and punishing alleged criminals on Wall Street, we are restoring the public's faith in our financial markets and the rule of law.

So while the Enforcement Division is sending a strong signal about insider trading, it still has not brought any enforcement actions against naked short sellers. This is despite the fact that naked short selling is widely acknowledged by many on Wall Street to have helped manipulate downward the prices of Lehman Brothers and Bear Stearns in their final days. Their resulting failure served as a catalyst for the ensuing financial crisis that affected millions of Americans.

I am pleased the SEC has flashed a red light in front of insider trading. But until it brings a case or makes the naked short selling that took place last year an investigative priority, the Commission is leaving a green light in front of naked short sellers. When you have a red light on one road and a green light on another road, everyone knows where the cars are going to go.

This concern is not mine alone. In the words of the Dow Jones Market Watch, in a recent article entitled “SEC Loses Taste for Short Selling Fight:”

More than a year after short sellers allegedly sucked the broader market lower by concentrating negative bets in troubled financial firms, the Nation's securities regulators appear to be backing off curbing the practice.

In a piece on the naked short-selling debate, Forbes magazine noted:

We have become a nation that ponders everything without resolution.

This is critical because the SEC's current rule against naked short selling—a reasonable belief standard that the underlying stock would be available if it is needed—is widely viewed as unenforceable. The market has recently been showing promise in moving upward, but if it goes south—and I am sorry to say eventually it will again—the bear raiders who destroyed our economy a year ago and made millions in the process will strike again.

If you know you can sell 5,000 umbrellas on a rainy day in New York, you are going to be out on the street with 5,000 umbrellas the next time it rains. The next time one of our TARP banks or other financial institutions look vulnerable, naked short sellers will seize the opportunity to profit again, and this time it could cost the taxpayers directly. The SEC will have no ability to stop them or punish them after the fact.

Given what is at stake, why have we not had action? Frankly, it is a story emblematic of problems on Wall Street. The story starts in July 2007, when the SEC decided to remove the uptick rule which forces short sellers to wait until a stock ticks up at least once before being allowed to sell without putting anything effective in its place.

When I was at Wharton back in the midsixties, the uptick rule was an article of faith. But a couple years ago, the 70-year-old uptick rule became another casualty of deregulation, an impediment to market liquidity, they said.

A little over a year later, two of the Nation's biggest banks—Bear Stearns and Lehman Brothers—had collapsed. Lehman's failure alone, with \$613 billion in debt, was far and away the largest bankruptcy in U.S. history. Both banks were victims of their own risky behavior and their own poor judgment. Their thinking was clouded by an aura of invincibility—willingly taking highly leveraged positions in what turned out to be toxic assets.

But while Bear and Lehman certainly are responsible for their actions, naked short selling played a crucial role in accelerating their fate.

I wish to make an important distinction. Short selling is a well-established market practice. It can enhance market efficiency and price discovery. I, myself, have sold stock short on many occasions, but I always had to borrow the stock first before I could sell into the market.

Naked short selling is another matter altogether. It occurs when someone sells a stock they do not own and have not borrowed. Naked short selling creates two risks in the marketplace. The seller may not be able to deliver the necessary shares on delivery date and bad actors can manipulate stocks downward, repeatedly selling something they do not own.

Naked short selling, without first borrowing or obtaining a so-called hard locate of the shares, essentially increases the number of shares in the market, which tends to lower the value of the stock.

It is exactly as if I made three copies of my car's title and then sold the title to three different people. By the time I sold my third title, it would likely be impossible to deliver the car to the third buyer and its value would also have declined.

When Bear Stearns and Lehman started to crumble, many believed manipulative naked short sellers, using a series of large and frequent short sales known as bear raids, helped drive both firms into the ground. Bear Stearns' stock dropped from \$57 to \$3 in 3 days. Let me repeat, Bear Stearns' stock dropped from \$57 to \$3 in just 3 days.

When Lehman collapsed, an astonishing 32.8 million shares in the company had been sold short and not delivered on time.

The SEC has proven incapable of both preventing market manipulation from happening and punishing those responsible for it. We cannot allow this to continue.

Since March, a bipartisan group of Senators and I have been calling on the Commission to reinstate some form of the uptick rule and put a rule in place that the SEC Enforcement Division could use to stop naked short sellers dead in their tracks.

At a recent SEC roundtable, major problems with the current regulatory structure were exposed. Even panelists heavily stacked in favor of industry admitted that compliance with the requirement is widely ignored. Commissioner Elisse Walter acknowledged, prosecuting naked short sellers on the reasonable belief standard is a "very difficult case to bring."

Because the "reasonable belief" standard is unenforceable, abusive short sellers are essentially free to engage in criminal activities without fear of facing criminal prosecution.

The SEC's silence speaks volumes. They have given no indication that there will ever be action. Nothing—from the SEC's strategic plan to various speeches by SEC executives—acknowledges that this is a priority. The SEC has taken action on insider trading; it should devote the same intensity of purpose to stopping abusive naked short selling.

I suspect the problem is that our financial institutions, which can now trade stocks with previously unimaginable speed and frequency, simply are unwilling to support any regulation that will slow down their profit-maximizing programs. High-frequency traders balk at the suggestion that they wait in line and get their ticket punched—by first obtaining a "hard locate" of the stock—before selling short. If that is the case, then we are letting technological developments on Wall Street dictate our regulatory and enforcement destiny rather than vice versa. That philosophy is simply unacceptable.

Clearly, the cost of inaction in this area is too great to ignore. Accordingly, I urge my colleagues to join Senators ISAKSON, TESTER, SPECTER, CHAMBLISS, and me as cosponsors of S. 605, which requires the SEC to move quickly to address naked short selling by reinstating the substance of the prior uptick rule and requiring traders to obtain a contractual hard locate before selling short. We need to send a strong message to the SEC that the Congress will not tolerate inaction on this critical issue.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona, the Republican whip.

#### HEALTH CARE REFORM

Mr. KYL. Mr. President, the goal shared by all of us in the Senate is to make health care more affordable for Americans. Some ask why there hasn't been more support for medical liability reform—a popular, cost-free measure that would unquestionably yield significant savings for patients and doctors. The most honest answer to that question came from former Vermont Governor and Democratic National Party Chairman Howard Dean, who said at an August townhall meeting in Virginia that medical liability reform has not been included in any of the

Democrats' bills because they don't want to take on the trial lawyers.

Protecting trial lawyers should not be the goal of health care reform. Their multimillion-dollar "jackpot justice" lawsuits drive up the cost of health care for everyone and are a big reason America's health care premiums have soared. Why? To help guard themselves from ruinous lawsuits, physicians must purchase expensive medical liability insurance, often at a cost of \$200,000 a year or more for some specialists such as obstetricians and anesthesiologists.

Because doctors pay for this insurance, patients do too. Hudson Institute economist Diana Furchtgott-Roth estimates that 10 cents of every dollar paid for health care goes toward the cost of doctors' medical liability insurance. Dr. Stuart Weinstein, the former president of the American Academy of Orthopedic Surgeons, has written about the extra cost of delivering a baby because of the high cost of these premiums. If a doctor delivers 100 babies a year and pays \$200,000 for medical liability insurance, then "\$2,000 of the delivery cost for each baby goes to pay the cost of the medical liability premium," Dr. Weinstein wrote. So the costs of this insurance, passed on to patients, are real.

An even bigger cost related to the threat of lawsuits is doctors' use of defensive medicine. The looming specter of lawsuits makes most doctors feel they have no choice but to take extra or defensive precaution when treating patients. A 2005 survey published in the *Journal of the American Medical Association* found that 92 percent of doctors said they had made unnecessary referrals or ordered unnecessary tests and procedures solely to shield themselves from medical liability litigation.

To say the costs of defensive medicine are high is an understatement. Sally Pipes, president of the Pacific Research Institute, has found that defensive medicine costs \$214 billion per year. A new study by PricewaterhouseCoopers reveals similar findings, pegging the annual cost at \$239 billion. So you have the approximate amount here—\$214 billion and \$239 billion. In any event, defensive medicine imposes a huge cost on the American public.

Medical liability reform would work to bring down health care costs for patients and doctors. Among the ways to do it are capping noneconomic damage awards and attorney's fees and implementation of stricter criteria for expert witnesses who are testifying in these medical liability lawsuits. Trial lawyers frequently use their own experts to criticize the defendant doctor's practice. Well, the experts should have no relationship with or financial gain from the plaintiff's lawyer, and they should have real expertise in the area of medicine at issue.

Some States, including my home State of Arizona, have already implemented medical liability reform measures with positive results.

Dr. James Carland, who is president and CEO of MICA, which is Arizona's largest medical liability insurer, wrote a letter to me recently to describe some of the results he has seen from medical liability laws implemented in Arizona, specifically from two statutes—one that reformed expert witness standards and another that imposed a requirement to inform the defendant, before trial, of expert witness testimony and to preview the substance of that testimony. Dr. Carland wrote that the enactment of these two statutes has “reduced meritless medical malpractice suits” in Arizona. Indeed, after their enactment, medical liability suits dropped by about 30 percent. That drop has been accompanied by a drop in medical liability premiums. Since 2006, MICA has reduced premiums and returned about \$90 million to its members in the form of policyholder dividends.

Another State that has had success with medical liability reform is Texas, which passed a series of measures in 2003, including limits on noneconomic damages and a higher burden-of-proof requirement for emergency room negligence. The number of doctors practicing in Texas has now skyrocketed, while costs have plummeted. It has been widely reported that since those reforms were implemented, medical licenses in Texas have increased by 18 percent and 7,000 new doctors have moved into the State.

To reduce costs for both physicians and patients, Senator CORNYN and I have introduced legislation that would achieve medical liability reform by combining what has worked best in our two States, Texas and Arizona. We have taken the Texas stacked cap model for noneconomic damages and coupled it with expert witness statutes proven to limit the filing of meritless lawsuits.

Republicans offered these kinds of liability reform amendments during the Finance Committee markup, but all of them were ruled out of order by the chairman of the committee. One of these amendments, recently scored by the Congressional Budget Office, would have saved the Federal Government \$54 billion in health care costs over the next 10 years. My colleague from Nevada, Senator ENSIGN, asked the Director of the CBO if we could expect a similar approximate reduction in cost in the private sector, since about half of all medical costs are paid for by government and the other half in the private sector. Dr. Elmendorf, the Director of the CBO, agreed that we could expect approximately the same additional amount of savings in the private sector. That would be well over \$100 billion.

Medical liability reform enjoys heavy support among our bosses—the American people. According to a new Manhattan Institute paper, 83 percent of Americans want to see it in any health care bill passed by the Congress. Despite this support and the concrete evi-

dence that it would lower health care costs for doctors, patients, and the government, none of the health care bills being written by congressional Democrats tackle medical liability reform. It makes no sense that in debates about bringing down cost, this commonsense measure is ignored by the majority party. If we are serious about making health care more affordable, we must have medical liability reform. We will work for the American people, not the trial lawyers.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Maryland is recognized.

Mr. CARDIN. I thank the Chair.

(The remarks of Mr. CARDIN pertaining to the introduction of S. 1816 are located in today's RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

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

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

#### FISCAL POLICY

Mr. DORGAN. Mr. President, in recent weeks, and especially in more recent days, we have had a lot of discussions on the floor of the Senate by Members about the Federal budget deficit and about fiscal policy. It is a serious issue in my judgment, one to which we have to pay a lot of attention. But some of the discussion on the floor of the Senate has been wrapped in partisan wrapping. The suggestion is the fingers are all pointing to the new President—new because he has been in office only 10 months. Somehow this very deep fiscal policy hole, these very large and growing Federal budget deficits, should be laid at his feet.

The fact is, in my judgment, there is plenty of responsibility to go around on all parts. I am going to talk a little about that. This administration knows it. They have some responsibility. This Congress certainly has major responsibility. The past administration has significant responsibility.

The American people are a lot less interested in who wants to own up to that responsibility than they are about who is going to try to do something to fix our deficit problems. We cannot have deficits that are growing far out

into the future. We cannot continue to deliver a level of government the American people are unable or unwilling to pay for without very serious consequences to the American way of life. I want to talk just a bit about that.

First and foremost, the deficits are growing and have been very serious. It is not unusual that in the middle of the deepest recession since the Great Depression we would have growing Federal budget deficits. Why? Because more people are unemployed, out of work. More people need the kind of social services and the stabilizing payments that we do. When people are in trouble and we are in a recession, that increases the spending.

It is also the case that the amount of revenue we expected this year is down about \$400 billion because people are making less money, corporations are making less money, less is coming in in tax revenue. So it is not unusual, in the middle of the most significant economic trouble since the 1930s that we have higher spending, less revenue, and therefore deficits that are ratcheting up.

Deficits just by themselves would not necessarily be something that we would object to if the deficits purchase something of great value that was necessary at this moment. Ask this question and I expect the answer is self-evident. What if someone said: You need to spend \$1 trillion that you do not have, \$1 trillion of deficits right now, but if you do that, if you spend that \$1 trillion, you will cure cancer. Do you think anyone would say: No, that is not a smart thing to do. Of course we would do that, because it would promote dramatic dividends for a long time.

But regrettably that is not what this deficit is about. This is not about having done something of significant merit. This is largely a structural deficit in which we have an expenditure base that is growing, and a revenue base that has not kept up, and now it has been aggravated, especially in a very deep recession. When I see the folks on the other side of this aisle come to the Senate to talk about generational theft, and to point fingers at the administration, let me be quick to point out, there is a long history to how we got to where we are, a very long history that does not start at 1600 Pennsylvania Avenue in January of this year. Let me revisit a little bit of that history, if I might. I am not doing it to suggest that one side is all right and the other side is all wrong. I am doing it because there are people who come to the floor of the Senate seeming to act as if they were exploring the surface of Mars while all of this was going on. In fact, they were not. Many of them were here in this Chamber.

When President Clinton left office in the year 2000, we had a \$236 billion budget surplus. That was called the “unified surplus.” The actual “on-budget surplus” which does not count

the Social Security revenues—and I do not think you should count Social Security revenues—was \$86 billion. So when President Clinton left office that year, for the first time in decades we had a real budget surplus, and the expectation was that the on-budget surplus was going to grow to more than \$3 trillion in the coming 10 years. That was the expectation. And as all of us know, President Bush came to town. And George W. Bush said: My first priority is to do very large tax cuts for the American people.

I stood here on the floor of this Senate and said: You know what. Let's be a little conservative about this. What if something should happen and we do not have these surpluses? These are only estimates. They are not in our hands. They are only estimates. Why don't we be a bit careful?

The President said: No, we are not going to do that. And most of my colleagues—by the way, the majority of my colleagues—said: No, we are not going to do that. We are going to enact a piece of legislation that will substantially cut taxes, the majority of which went to upper income people in this country.

The benefits to the upper income people in this country—somewhere around 5 percent of the taxpayers—will total almost \$1 trillion over the 10 years. The households in the top 1 percent, with incomes over \$450,000 in 2008, will on average get a \$489,000 tax break over ten years. Think of that. You say: Those of you who are fortunate to earn nearly half a million dollars in this 10-year period, we are going to give you close to \$500,000, half a million dollars in tax breaks.

Should that have been a priority? I don't think so. I did not support that. But it was for the President and the majority of the Congress. So the Congress cut the revenue very substantially to benefit the highest income Americans. Then what happened? Well, what happened was we discovered very quickly we were in a recession. In 2001, when President George W. Bush took over, at the end of March, we discovered we had a struggling economy. Then on 9/11 of that year we were attacked by terrorists, and very quickly we were in a war in Afghanistan, and soon thereafter in a war in Iraq.

The President said: Despite the fact that we now are in recession, and had a terrorist attack, and two wars, we are not going to pay for the cost of these wars. We are going to send emergency supplemental requests that are not paid for, and we expect you to support our soldiers in the field.

So nearly \$1 trillion was spent on the two wars in the last 9 years. And not a penny of it was paid for. Right onto the debt. Then in the year 2008, our economy fell off a cliff in October. And not surprisingly, having built up a substantial amount of deficits over this period of time fighting two wars, having had a recession, without paying for any of it, having built up these unbelievable defi-

cits, when we fell off the cliff last October into a very significant recession, very deep hole, the Federal budget deficit skyrocketed.

Let me put up a chart of Federal budget deficits. I do this because we are on an unsustainable path. The President knows that. In fact, today the Wall Street Journal talks about the President's plan to tackle the Federal budget deficit. The President understands and I understand, in the middle of a deep recession, as we have got our foot on the accelerator to try to get this economy moving again, you cannot decide to take a lot of money out of the economy. So you could not at this moment decide: You know what. We are just going to collapse all of this red ink immediately. It would be devastating and throw this country into a deep economic tailspin. I understand that.

But here is what we face. We face growing deficits fighting wars. When the President took over, had he done nothing in fiscal year 2009, we would have had a budget deficit, it is estimated, of about \$1.3 trillion.

Last fall it was the Troubled Asset Relief Fund, \$700 billion. Then when he took over, this President wanted an economic recovery fund. I supported that because I believed it was better to pump some money into the economy rather than risk the economy going into a much deeper economic hole.

But all of that, in my judgment, has put us on an unsustainable path. You see, out in 10 years, this is not sustainable. The President knows that. I have talked to the President personally about it. As I indicated, a story today talks about the President's determination, as the economy strengthens in the coming months, next year to turn to this issue and deal with it and solve it. We do not have a choice.

But what brings me to the floor is this discussion by some of our colleagues to say: Aha. Now we have got these big budget deficits. That belongs to the person in the White House. That is President Obama's fiscal policy. It is not. It just is not. This has a long history. It started when this country fought a war without paying for a penny of it, while at the same time enacting massive tax breaks primarily for the richest Americans.

By the way, it is the first time, I believe, in the history of this country that that has happened. And then steering this country into a circumstance where the previous administration hired regulators who were content to be willfully blind and say: You know what. I would like a job. I would like a salary. But count on me to be willfully blind. I will not regulate a thing.

As a result, we had unbelievable things happening in this country. Greed. Unbelievable things. I have given speech after speech about what happened with the subprime mortgage scandal, the Wall Street credit default swaps, CDOs, you name it.

The result was this economy was taken right into the ditch by a bunch of shysters who were making a lot of money. A lot of them left their firms with a lot of money and stuck this country with a big bill, and now we see today they are the ones getting the big bonuses.

By the way, the investment banks that are supposed to be lending money are not lending money. They are trading in securities, making money for themselves. Meanwhile, we have got a lot of small and medium businesses out there that are in desperate need of credit. It still has not all stopped. But the point is, to suggest somehow that this has all happened on the watch of a new President in his first 10 months is ridiculous. We all have a stake in this, and we all have responsibility for it. We are all going to have to start working on it together.

This morning in a meeting I quoted Ogden Nash, who had a little four-line poem about a guy who drinks and his wife who nagged him about it: She scolds because he drinks, she thinks. He drinks because she scolds, he thinks. Neither will admit what is really true, he is a drunk and she is a shrew.

Responsibility on both sides. Responsibility on both sides here for fiscal policy. We all have a stake in this. We all have a responsibility. The question is not having people come to the floor and point fingers at a new President who has been in office for just 10 months. The question is, who is going to come to the floor of the Senate and decide together—together—to try to pull this economy up and out of this desperate condition?

I think we are finally starting to see some improvement here. I understand that we do need to steer toward a fiscal policy that reconciles our revenues and expenditures. Yes, to do that we are going to have to cut some spending. We are. I understand that. I am prepared to do that. However, I do not think we have to do it right this moment while we are still trying to crawl out of an economic hole. But we need to do that.

We also need some additional revenue. I would say to some of my friends here in the Senate who continue to vote against commonsense proposals to get the revenue we need: Help us. When we see U.S. companies that want all the benefits America has to offer them so they can run their income through the Cayman Islands and avoid paying taxes to this government, help us recover those funds.

I have shown the photograph on the floor of the Senate about the Ugland House. I am guessing I have shown it at least a dozen times. When I first showed the picture of this white house in the Grand Cayman Islands on Church Street, a four-story little house, I said it is home to 12,748 corporations. Oh, they are not all there. It is just a lawyer who created a legal address for them at the Ugland House so they can avoid paying taxes.

When I first talked about that, it was 12,748 corporations. I am told now there are 18,857 entities that call that white stucco house in the Grand Cayman Islands home. Many of these companies have set up mailboxes in a tax haven country to avoid paying their fair share of taxes.

What about a bank such as Wachovia Bank that buys a sewer system in Germany from a German city? Is it because a bank in America should own a sewer system that they could pick up and bring back home? It is a complex sale-leaseback transaction in which an American bank buys a German city's sewer system, leases it back, and then they get to depreciate it on their American income taxes and save a couple of hundred million dollars in U.S. income taxes. The Wachovia Bank did that.

I have spoken of other corporations that have done exactly the same thing. We are going to have to cut spending, but we are going to have to increase some revenue. How about some help from all of our colleagues who say that sort of thing should stop. If you want everything that America has to offer you, how about paying your fair share of taxes? Most people do. They do not have a choice. They get a W-2, a W-4 form, get a wage, work hard and are exhausted at the end of the day. They have got a job. By the way, in April of each year, they understand they owe something. Yes, to build roads, to build schools, provide for defense, to make sure there are police on the beat, firefighters spending the night in a fire house. They owe something because the cost of government requires all of us to pay something. But some are paying nothing and some of them are the largest enterprises in the country, finding ways to slip through the cracks.

So we need to do a lot of things to fix these Federal budget deficits, a lot of things. It is going to require some courage and we need to start relatively soon.

I wanted to quote Franklin Delano Roosevelt in one of his fireside chats, because there is such a description sometimes of selfishness in our country today, only by some, not the majority. But here is what Franklin Delano Roosevelt said about our country during war:

He said:

Not all of us can have the privilege of fighting our enemies in distant parts of the world. Not all of us can have the privilege of working in a munitions factory or a ship yard, or on the farms or in the oil fields or mines, producing weapons or raw materials that are needed by our armed forces. But there is one front and one battle where everyone in the United States—every man, woman, and child—is in action. . . . That front is here at home, in our daily lives, and in our daily tasks. Here at home everyone will have the privilege of making whatever self-denial is necessary, not only to supply our fighting men [or women], but to keep the economic structure of our country fortified and secure . . .

He is talking about common purpose, the need for our country to come to-

gether, to work together. Our history is a long history of supporting the men and women who wear a military uniform. When the Civil War erupted, Congress passed the Revenue Act of 1861 to try to raise money for soldiers. The War Revenue Act of 1899 raised funds to pay for the Spanish-American War. The entry into World War I increased the need for revenue, and Congress responded by raising the funds for that war. Even before the United States entered the Second World War, defense spending and the need for money to support the allies led to passage of two tax laws in 1940. In the Vietnam war, there was a surcharge to help pay for it.

I don't come suggesting there is a great appetite to raise revenues. I understand that. I am saying those who come and talk about fiscal policy being a very serious problem are absolutely right. It is one of the most significant problems we face. We are on an unsustainable course. The President knows that. So does the Congress. The President has told me, as he said today in the Wall Street Journal, that he takes this seriously, and it will be at the top of his agenda as we turn this calendar year. I take him at his word. I believe he means that and knows that because we have talked about it. We are going to need help to try to fix this fiscal policy. We cannot continue to see increasing deficits far out into the future. It will weaken the country. Ultimately, it will cause a run on the dollar, with unbelievable consequences for the economy.

This is not rocket science. We understand the consequences of these issues. You go to war and you provide tax cuts for the wealthiest citizens? I don't think so. That doesn't make any sense. Ultimately, you will pay for that with consequences, and we have begun to see it. What I want for our country is to address these issues.

A couple issues that are significant are Social Security and Medicare. We can deal with those issues. We can deal with success. Why does Social Security and Medicare cost us more? It is called success. People are living longer and better lives so it costs us more in Social Security and Medicare. But a country that can't handle success is a country that can't handle difficult problems, let alone the easy ones. I believe we can do that. I believe we can address the big issues of Social Security and Medicare in a thoughtful way. Then we can also decide that budget deficits such as these are unsustainable and have to be dealt with. This is the President's priority. It is our priority. It ought to be a Republican priority and a Democratic priority. Instead of pointing fingers at each other, let's decide to link arms and see if we can find a way to bring fiscal policy under some control.

First and foremost, let's lift the economy out of this hole. I believe we are beginning to see progress there. This was not some natural disaster.

This was not a hurricane or tornado or flood that visited America. This was a very serious problem at a time in which regulators did not regulate. They decided not to watch. This country was stolen blind by a bunch of folks who made a lot of money doing it. Now we have to begin to repair and pick up the pieces. That requires financial reform in order to restore confidence in the economy going forward. It also requires, in this Chamber, a fiscal policy that relates to fiscal discipline, to say: We understand we have to deal with spending, and there are some areas where spending is out of control. We have to deal with revenues. There are some areas where additional revenues are needed and some areas where most of the American people pay up while others get by time after time, deciding to have all the benefits America is willing to offer but to pay none of the requirements to be an American citizen. Part of those requirements is for that which we do together to build a great country.

We had a discussion with Warren Buffett some while ago. I have known Warren Buffett for a long while. He is a very wealthy man. I have great admiration for him. He is the first or second most richest man in the world. He has no pretenses at all. He doesn't look like it. One of the most interesting things he did was take a survey in his office with 40 employees. Voluntarily, his employees described for him what they paid in income taxes and payroll taxes. The combined tax burden of all the employees in the office showed he actually paid the lowest percentage. The world's richest man paid the lowest percentage. His income all came from capital gains, which pays the lowest rate of 15 percent. I believe he said his receptionist pays a higher rate than he does. He said to us: That is wrong. You all ought to fix it.

Good for him. He is a role model in many ways for being able to speak up on these issues. But one of the things he was asked was: What do you think will happen to the economy in the next 6 months? His response was interesting. He said: I don't have the foggiest idea. I don't know what is going to happen in the next 6 months. I don't know what is going to happen in the next 16 months. But I know what is going to happen 6 years from now. Within the next 6 years, you will have an America that is growing and vibrant and healthy, expanding jobs, lifting the middle class. Why do I know that? Because that is what America does. It has always done that. It has created incentives for the hard-working nature of the American people.

Yes, we go through difficult times and troughs and trouble, but this country always picks itself up. I am convinced, while I don't know what is going to go on 6 months from now, I am absolutely convinced that 6 years from now this country will be right back on track and doing just fine, probably well before that.

I have his same faith in the future. I am convinced there isn't anything we can't do. In terms of inventing, we don't have to invent something to find a way to fix what I have described, a fiscal policy that needs fixing. We can do that. That only requires common sense.

The next time one of my colleagues comes out and says: We are in a deep economic hole, and we have all these deficit issues, we would like to point to a President who has been in office less than 10 months as the root cause of the problem, the fact is, this President knows there is a fiscal policy problem. But this problem has been building for a long time. The bubbling up of this fiscal policy dilemma has been with us a long time, and some of the same people who come to point their fingers have a significant hand in creating it.

I will talk about Afghanistan in the next day or two. But those who come to the floor and say: Let's send 40,000 more troops to Afghanistan, set aside for a moment the merits of that. I am not talking about the merits. But let me say, we are told that sending 1,000 troops abroad for a year costs \$1 billion. So the proposition is, if you are coming to say that, you are saying: Let's spend another \$40 billion in the coming year. I ask those who do that to tell us how we will spend the \$40 billion and how they propose we raise the funding. Because I think it is time, long past time that we decide to fund some of these things. Sending soldiers into the winds of war and deciding we are going to put whatever it costs on top of the deficit is hardly a courageous act.

This country deserves better from all of us, from me, from the President, from both sides in this Congress. All of us have to work together to put this back on track. I am convinced we will. I am convinced we will, in part, with the leadership of this President and, in part, because there are a lot of people of good will in this Congress who understand that this is a serious problem and we need to fix it.

I yield the floor.

The PRESIDING OFFICER (Mr. TESTER). The majority whip.

#### UNEMPLOYMENT BENEFITS EXTENSION

Mr. DURBIN. Mr. President, another day has passed in the Senate and another opportunity has been wasted to extend unemployment insurance benefits across America. Let's make the record clear. The Democrats have asked the Republicans to move to this item of business and to pass the extension of unemployment insurance benefits to the hundreds of thousands of Americans out of work. They have refused time and time again. They have had a long series of reasons, none of them valid from my point of view. Many of them think they want to argue a lot of other issues. They want to argue the issue of immigration.

They want to argue issues totally unrelated to unemployment. They don't seem to understand there are real people out there calling my office every day—and most Senators—explaining they are out of work and desperate.

Let me read an e-mail I received recently from one of my constituents in Gurnee, IL:

Dear Sir: I have worked my entire life from the age of 12 to 56 years old. I have never seen it this bad. Even during the Reagan recession, you could find something. All the emergency unemployment has expired. All everyone can talk about is health care. I realize it's important but I refuse to believe no one notices when we run out of help. When AIG and the banks needed money, the Congress was pretty quick to respond, and generous. So much so that the TARP fund still has more than enough money to do the job. But when it comes to the common man, we get help one piece at a time. Unemployment compensation is not welfare. We are working people. We are not invisible. But by the attention we get, that's how I feel. I know you're a busy man, but if you can, please say something about helping the unemployed. Emergency funding expired 2 weeks ago. We need help yesterday.

A lot of letters come into our office this way, e-mails. People are desperate. Last Friday, when I was in Chicago, I sat down with a group of about 20 unemployed people and let them tell their stories—invited the press in to let them hear the stories. Many people have a mistaken notion of who the unemployed are. Some Republicans argue they are folks who are not trying hard enough to find a job. Some argue that life on unemployment is so nice they don't even try to find other work. I wish a few of those Republican Senators would go home to their States and meet with the unemployed people whose benefits they are denying with this procedural obstacle. They could sit down and learn, as I did, that some of these folks have been working for more than a year to find a job. Republicans might acknowledge there are six people looking for every job out there. They might acknowledge that many of these people have lost their health care and health protection insurance during the period of their unemployment. They might hear some stories of families struggling to get by who have very little money and are exhausting what little savings they have left.

That is the reality of unemployment. Yet when we turn to the Republicans and say: Can we do the ordinary thing we do around here on a bipartisan basis and extend unemployment benefits in what is the worst recession we have faced since America's Great Depression, they say no. No, we don't want to get to that now. Maybe later. We have some other ideas.

For the people who are suffering under unemployment, that is not good enough. Republicans are ignoring the obvious. There are people all across America who are struggling to find work without success.

For example, 400,000 American families have run out of their unemployment insurance benefits already, in-

cluding 20,000 in my State who lost benefits at the end of September. Another 200,000 families across the country could lose their lifeline to unemployment benefits this month if Republicans continue to stall and stop us from extending unemployment insurance.

What are the Republicans waiting for? Mr. President, 1.3 million Americans will lose this temporary assistance by the end of the year if Congress does not pass this simple extension of benefits, and 50,000 of those families are in my home State. The unemployment check certainly doesn't replace the wages people have lost, but it may give them enough to get by.

According to the Center on Budget and Policy Priorities, the Recovery Act's unemployment insurance provisions have kept 800,000 Americans out of poverty so far this year. So if Republicans want to see unemployed people fall into the ranks of poverty, I can tell you what it means. It means that what is available to them is even less. What they will lose will be disastrous for them and their families. They will be the people you will find at the food banks, the soup lines. They will be similar to the one in my hometown heading out for township assistance which is, I am afraid, the bottom of the barrel for most people when you have run out of ideas on how to put some food on the table. That is what is going to happen if we don't extend unemployment insurance benefits.

Never in the history of the Nation's unemployment insurance program have more workers been unemployed for such a long period. Half of all jobless workers can't find a job within 6 months after they started receiving unemployment benefits. That is the highest percentage of prolonged unemployment in the history of the unemployment program. When we come to the floor and ask Republicans to join us in a bipartisan way to extend the safety net to unemployed people and they say no, they have to understand they are causing hardship and suffering for some of the people who are the least fortunate around us today.

The Democratic bill Republicans continue to block, even today, for unemployment insurance benefit extension would extend insurance for an additional 14 weeks for jobless workers in all 50 States, red States, blue States, purple States, Democratic States, Republican States, North, South, East and West, without any preference. If there are unemployed people, they would get the benefit. There is an additional 6 weeks of insurance for jobless workers in States with unemployment above 8.5 percent, which, unfortunately, today includes my State.

It is time to act. Are we going to finish this week with the Republicans stopping us from extending unemployment benefits? And if we do, how would we explain this to this man who wrote me and asked me about whether I know that unemployment compensation is



not welfare, it is a fund that workers pay into while they are working. As he said:

We are working people. We are not invisible, but by the attention we get that is how I feel.

### HEALTH CARE REFORM

Mr. DURBIN. Mr. President, that is the reality of the Republican approach to the issues we face. But it is not the only issue. There are other issues that relate to health care where the Republican position is impossible for me to defend or even understand.

Let me give you one specific example of a family in Joliet, IL. I will use their names because they have given me permission. Their story is so compelling, I want the CONGRESSIONAL RECORD to reflect it, and those who follow this debate to hear it.

A few weeks ago, a small business owner from Joliet, IL, called my office to say:

Please keep fighting for affordable health care and a public option. Don't back down.

That was the message.

The man's name is Dave Poll. He and his wife Claire own the Sir Speedy Printing business in Joliet. The Polls opened their business in 1980, in the middle of a bitter recession—almost 30 years ago. For years, they bought health insurance for their employees and themselves under a small group policy, but they had to drop that coverage 4 years ago after their premiums nearly doubled over just 3 or 4 years.

Then the recession hit, and they had to let their employees go. Now it is just Dave and Claire running their little printing business. Dave is 59 years old. His wife Claire, who works there with him, is 57. They have two grown sons and a daughter in college.

The week before Dave Poll called my office, his wife Claire had blacked out for a few seconds while waiting on a customer. She had been diagnosed with high blood pressure before, so they did not want to take any chances and Dave insisted she call her doctor. The doctor said she had to go to the hospital.

After 2 hours in the emergency room, and less than 10 minutes with a doctor—less than 10 minutes—the Polls left the hospital with test results that did not show anything and about \$2,000 in medical bills. Mr. President, 10 minutes, \$2,000.

Dave said:

A lot of people have it a lot worse. Please keep fighting for all of us.

Two weeks later, Dave Poll called my office again. Claire had felt bone-tired at work one day, so she went back to the hospital. Tests showed this time that she had advanced cancer, and it has already spread throughout her body.

A few days after her diagnosis, Claire spent 3 days in the hospital to have a port implanted and to receive her first dose of chemo. Just for those 3 days in the hospital—3 days now—her bill was

\$84,000—\$84,000. Additional chemo treatments are going to cost her \$25,000 a month.

Remember, the Polls—these small business owners—have no health insurance. They have no idea how they are going to pay these bills. In the first 6 months of this year, the Polls took out of their business a combined salary—in 6 months—of \$15,000.

That is how quickly families can be on the verge of bankruptcy in America, because of our broken health insurance system. One week you are getting by, hoping the medicines you need are on Wal-Mart's list of \$4-a-month prescriptions, and praying that you do not have a serious illness or accident. Two weeks later, you can be diagnosed with an illness that will not only cost you your health but everything you have ever accumulated in your life.

Could Claire Poll's cancer have been found sooner if they had not had to drop their health insurance? We will never know the answer to that. But we know this: 45,000 Americans each year—122 people every single day—die prematurely because they are uninsured. More Americans die every month because they do not have insurance than we lost in the tragedy of 9/11.

We know health care costs are a major factor in two-thirds of all bankruptcies in America today. And of those people filing for bankruptcy because of medical bills, three-fourths of them had health insurance, but it was not any good. It did not help them when they needed it or it was rescinded at the last minute when the health insurance company saw you were sick and dropped the coverage. It happens too often in this country today.

We know we cannot afford not to make this change. Health care spending in America doubles every 10 years. We are spending \$2.7 trillion a year on health care now. In 10 years, if we stay on this same path, America will be spending \$5.4 trillion on health care, and the average premium for a family health insurance policy will be in the range of \$25,000 to \$30,000 a year.

Health care spending will crowd out investments in education, green energy, and many other national priorities, and it will ruin more and more families financially. According to a new study by the Kaiser Family Foundation, if premiums continue to rise as quickly as they have over the last 5 years, the cost of the average family health policy will increase from \$13,375 a year today to over \$24,000 10 years from now.

How many families can afford to take \$24,000 out of their annual paycheck that they face now? How many families could even consider paying \$25,000 a month for chemotherapy? Almost none of us.

When Dave Poll called my office the second time, he said:

Now we may become some of those people who lose their home and business because of health care costs.

Think about that. Dave and Claire: 29 years in their business, they gave their

whole life to it, and now, because they did not have health insurance, they could lose everything—not just their business but their home as well—as Dave struggles to give Claire the care she needs to stay alive.

No family should have to go through what they have been through. No family should be forced into bankruptcy because of illness. Every other country in the world—every other advanced country in the world—provides basic health care for their citizens. These countries spend less than we do on health care and they ensure everybody. And on many important measures of health—from infant mortality to life expectancy at age 60—many of these countries, spending a lot less, get much better results.

Several years ago, the World Health Organization made the first major effort to rank the health systems of 191 countries in the world. France and Italy were the top two. The United States was not even in the top 10, not even in the top 20. We rank 37th in the world. We are No. 1 in health care spending, No. 37 in health care outcomes. That is what our current health care system gives us.

The health care and insurance companies spend millions of dollars to scare people into thinking that universal, affordable health coverage for all Americans will mean less coverage and less choice for Americans who already have health insurance. That is just a scare tactic. Look at all the other countries in the world that spend less than we do, cover everybody, and get better health results.

America—the wealthiest, most creative society on Earth—can solve this problem. It is not just a matter of science and economics, it is a test of our moral character, and it is a test of whether our democracy still works.

The profits of America's health insurance companies have increased 428 percent over the last 10 years. They do not need any more help from Congress. I wonder why my colleagues on the Republican side of the aisle have no alternative to this current system that has treated this poor family in Joliet, IL, so poorly. They do not have any proposal they bring before us which would address the issue of the cost, security, and stability of health insurance that every family and every business wants.

I have yet to hear the first Republican Senator come to the floor and call for health insurance reform saying that we have to end this practice of denying coverage for preexisting conditions or when families get sick or when kids reach the age of 23.

Don't they hear the same things we hear? Don't they receive the same kinds of e-mails and telephone calls we do? I am sure they do. But if they do, why aren't they joining us in this effort? Only one Republican Senator, OLYMPIA SNOWE of Maine, has had the political courage to step forward and join us in this effort—1 out of 40.

You would think there would be other Republican Senators open to this

idea, understanding the current system is indefensible. Some of them come to the floor and it sounds as if they are reading right from the playbook of the health insurance companies. Oh, they talk about all the problems if we had a so-called public option—a public option. And it is just that: an option.

Well, if you do the math—and this is rough math, but pretty close—we have about 300 million people in America. Currently, about 40 million of these people are under Medicaid, the health insurance for the poorest people and disabled people in our country. Another 45 million are under Medicare, the health insurance for people over the age of 65. We have another large group of those Americans who have served our country covered by the veterans' health care system—one of the best in our Nation. Eight million people—and I am one of them—are part of the Federal Employees Health Benefits Program. It is a program for Federal employees and Members of Congress and their staff. Then several million are under a plan of children's health insurance—a government-administered plan to provide that poor kids in families who are struggling have health insurance across America.

So more than one out of three Americans today has some form of government health insurance. The health insurance companies, the private companies, tell us this will ruin the system, if we had an option that was available such as Medicare for every family in America.

I think they are wrong. One of the most sensible things we could do would be to extend Medicare's reach. What if, in the next 5 years, we said we are going to start saying people at the age of 60 can start paying premiums to be part of Medicare—in a separate pool, but Medicare benefits—that they pay those premiums and they will have coverage. Well, it would mean some people would have a fighting chance then, as they reach the age of 60, to have basic health insurance coverage before Medicare. I would extend it even lower. I would extend it to the age of 50, and the Poll family would have been covered. They would have been able to buy basic Medicare protection for Dave and Claire that might have diagnosed this situation at an earlier point or reduced the cost. But it certainly would give them the peace of mind that they have access to the best care in America and will not lose their business and their home in the process.

I wait for the Republicans at some point in this debate to stop saying no and start stepping forward with some idea, some proposal, something that moves us on the path toward making this country an even healthier country, a country where the injustices of the current health care system are not part of our future and part of our country, but part of the past. That is the way it should be.

In the next couple weeks, we are going to start the debate on health

care reform here in the Senate. It has been a long time coming. This idea first came up under President Teddy Roosevelt a century ago. President Harry Truman suggested universal health care 60 years ago. President Lyndon Johnson tried his best to move it forward 40 years ago. Fifteen years ago, President Clinton and Mrs. Clinton tried to move us in this direction. They never—none of them—reached the point we are going to reach now, where comprehensive health care reform will be on the floor of the Senate, to be actively and openly debated.

This is our chance. This is our historic opportunity. We cannot miss it. For the Poll family in Joliet, IL, we wish them the best and hope Claire gets well and feels well very soon. We hope they do not lose their family's savings, their home, and their business in the course of looking for the same basic treatment we would expect for anybody in this country.

This may be one of the few places on Earth—one of the few advanced countries on Earth—where you can literally be driven into poverty because of your illness. That is what has happened to this family, who paid their dues and kept their business open for 29 years. We could do better. I hope our Republican friends will stop saying no and join us in this opportune moment of making history for this Nation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

#### AFGHAN ELECTION RUNOFF

Mr. KAUFMAN. Mr. President, I rise to welcome today's announcement of a runoff election in Afghanistan, to be held on November 7. This second round is absolutely critical, and I commend the Electoral Complaints Commission for successfully investigating reports of fraud surrounding the August 20 vote. The ECC fulfilled its mandate, and I applaud the Afghan people for demonstrating patience and resilience throughout this very difficult process.

I also want to recognize the efforts of the chairman of our Senate Foreign Relations Committee, Senator JOHN KERRY, and Ambassador Eikenberry in Afghanistan to secure greater transparency and encourage a second round.

When I was in Afghanistan in April, there was great promise that the election would usher in a new era of hope for the Afghan people. But when I returned to the region in September, it was clear this hope had been dashed by allegations of election fraud. Each story of corruption further undermines the confidence of the Afghan people in their government, which has hemorrhaged endlessly since the August vote. Today's news of a runoff gives hope to the Afghan people that their voices and political aspirations will finally be heard.

On October 8, I gave a statement on the eighth anniversary of the war. In it, I highlighted governance as an es-

sential component of our counterinsurgency strategy, particularly because our goal is to build support for the Afghan Government among the Afghan people. This battle for the hearts and minds is not between the Afghans and Americans; it is between the Afghan Government and the Taliban, a Taliban which has been bolstered by the allegations of fraud from the August vote.

Counterinsurgency cannot succeed in Afghanistan without a credible government. It is my hope that a credible Afghan partner can emerge from a second round of elections. Whether the winner is President Karzai or Dr. Abdullah, it is critical that the next Afghan Government take steps to root out corruption, improve security, and provide essential services to the Afghan people.

Just as the United States supports a transparent, fair election, we also support a transparent and effective Afghan Government that serves the interests of its people. It will be necessary to ensure that the mistakes made in August are not repeated in a second round. This is why the role of monitors should be strengthened to protect the integrity of the vote.

Afghan and international forces should also be present in sufficiently strong numbers to provide security and ensure that Afghan citizens can safely cast their votes. It is my hope that this second round will provide an opportunity to rectify problems encountered in August and, most importantly, help to build faith in government among the Afghan people.

As President Obama takes the time he needs to thoroughly consider all of our options in Afghanistan, issues of governance will inform this process because our policy is more than just about combat troop levels; it must include the promotion of effective governance, training of Afghan security forces, and economic development.

The Afghan people deserve a better and brighter future, and I hope this runoff election will bring them one step closer to their goal.

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

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

#### STREAMLINE ALTERNATIVE FUEL VEHICLE CONVERSIONS ACT

Mr. INHOFE. Mr. President, last summer in my hometown of Tulsa, OK, when gasoline prices were near \$4 a gallon, a person driving a compressed natural gas-powered car was able to fuel up for just 90 cents a gallon. This was when gasoline was at \$4 a gallon. That was a savings of \$3 a gallon. Consequently, I was the first in Congress to introduce a comprehensive bill to

promote the use of natural gas as a realistic alternative for the many Americans who were looking for price relief, which is about everybody. The bill I introduced was called the Drive America on Natural Gas Act.

A year later, I am encouraged to see that several Members on Capitol Hill have introduced similar bills promoting the use of natural gas and propane as transportation fuel. Last summer, I joined with Senator PRYOR to once again introduce a comprehensive bill to promote these fuels for America's drivers. Additionally, majority leader HARRY REID recently announced his firm support for natural gas vehicles and hopes to bring a standalone bill to the floor in the near future. I welcome the majority leader's support and encourage him to make this a priority for floor consideration.

One of the major components of my Drive America on Natural Gas Act addressed a desperate need to overhaul the EPA emissions certification process which effectively prohibits the ability of nearly all car owners the option to legally convert cars to bifuel operation. Bifuel is a car that can run on natural gas and via the flip of a switch go to gasoline. Now, why? With certification and emissions testing expenses ranging between \$50,000 and \$150,000 per conversion system type, the costs are prohibitive for the aftermarket conversion system manufacturers to produce these systems for more than just a handful of different vehicle models each year. These heavy costs are ultimately borne by the consumer. Due to the rigidity and the cost constraints of these regulations, the EPA has issued less than 300 certificates over the past 8 years—that is 300 certificates over the past 8 years.

This is a solution to the high price and the fluctuating price of automobile gas. Now, oftentimes the vehicle models eligible for conversion are only sold for a short period of time since the certification lasts less than a year before a conversion system manufacturer must decide it will rectify that particular system.

Today, I am pleased to join Senator WICKER, Congressman DAN BOREN from my State of Oklahoma, and Congressman HEATH SHULER to introduce bipartisan, bicameral legislation to simplify and streamline the EPA emission certification process for aftermarket conversion systems.

The Streamline Alternative Fuel Vehicle Conversions Act makes critical changes in five key ways so that vehicle conversions can become a commonplace option for all Americans:

First, our bill eliminates the need for subsequent yearly recertification systems that have already been certified. I might add that the EPA is a friend in this effort. They want these changes to take place as much as we do, but they are not able to do this right now. Under the current law, you have to get recertified, so we eliminate that problem.

Secondly, the legislation directs the EPA to establish criteria that would

cover several different yet similar makes and models under a single certification conformity.

Here is the problem. We have an organization in Tulsa that has a conversion system where they can actually change the fuel and refuel and they can change conversions into automobiles. The problem is, the way the law is today you have to get paid for this conversion each time. It might be the same engine that has already been converted before, but if it is in a different model, you have to convert it again. This is something we are going to be changing.

The third thing we change is to instruct the EPA to allow the submissions of previously tested data if a vehicle or the conversion system has not changed in a way which would affect compliance—very similar to the last problem, but nonetheless it is in the current law.

The fourth thing we would do is direct the EPA to promulgate regulations to help conversion system manufacturers comply with potentially different onboard diagnostics—which is called OBD—requirements and compatibility. Since 1996, these onboard diagnostics systems have been required in all light-duty cars and trucks to monitor engine and emission components.

Finally, we clarify the treatment of vehicles which are beyond their useful life as defined by the EPA. These older vehicles, typically those that are at least 10 years old and have at least 125,000 miles, are by default regulated under the Clean Air Act's tampering provision, causing regulatory uncertainty. Our legislation would allow the conversion of these vehicles as long as the conversion system manufacturer for the converter is able to demonstrate that the emissions would not degrade due to conversion.

Over the past several months, this legislation has been through numerous drafting reiterations with the assistance of the Natural Gas Vehicles of America, the National Propane Gas Association, and the Environmental Protection Agency. As I said before, they have been very helpful to us. I especially thank the EPA for their input and assistance in helping us craft a bill which will aid the agency in their efforts to streamline their compliance. They actually want to streamline. This is not normally the case.

I am also encouraged by EPA's internal efforts to reform the process, and I am pleased that our bill will complement and enhance their actions.

By simplifying this compliance process, the Streamline Alternative Fuel Vehicle Conversion Act will not only incentivize conversion system manufacturers to offer more systems for additional vehicle makes and models but will eventually reduce the cost of these conversion systems for interested car owners, perhaps by hundreds or even thousands of dollars.

Ultimately, the legislation will allow Americans to choose whether propane-

or natural-gas powered vehicles are right for their own individual and business needs while simultaneously preserving the country's stringent emission standards.

The promise of natural gas and propane as mainstream transportation fuels is achievable today—not 20 years from now or 25 years from now but today. It is something no one should be against. Stop and think about it. I know the price of gas is down to \$3. In my State of Oklahoma, it is down to around \$2 a gallon. But today's price for natural gas, a comparable gallon would be 90 cents, and that is one that would be stabilized. When we stop and think about the reserves that are out there in natural gas, what we can do and what is available for us today, it can only get better.

Hopefully, this bill will pass. I am very proud of the bipartisan support, the bicameral support. I encourage our colleagues to get involved in this very logical response to the high price of motor fuel.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, are we now in a period of morning business?

The ACTING PRESIDENT pro tempore. Yes, we are.

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010—CONFERENCE REPORT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the conference report to accompany H.R. 2647, the Department of Defense Authorization Act.

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

The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2647), to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2010, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the House proceedings of the RECORD of October 7, 2009.)

#### CLOTURE MOTION

Mr. REID. I send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. 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 Conference Report to accompany H.R. 2647, the Department of Defense Authorization Act for Fiscal Year 2010.

Harry Reid, Ben Nelson, Benjamin L. Cardin, Byron L. Dorgan, Robert Menendez, Richard J. Durbin, Charles E. Schumer, Tom Harkin, Evan Bayh, Patrick J. Leahy, Jack Reed, Robert P. Casey, Jr., Roland W. Burris, Edward E. Kaufman, Paul G. Kirk, Jr., Barbara Boxer, Sheldon Whitehouse, Carl Levin.

Mr. REID. I ask unanimous consent that the mandatory quorum be waived.

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

Mr. LEVIN. Mr. President, with respect to the conference report accompanying H.R. 2647, the National Defense Authorization Act for Fiscal Year 2010, I certify that the information required by rule XLIV of the Standing Rules of the Senate related to congressionally directed spending items has been identified in the joint statement of managers accompanying the conference report and that the required information has been available on a publicly accessible congressional Web site for more than 48 hours.

#### EXECUTIVE SESSION

#### NOMINATION OF WILLIAM K. SESSIONS III TO BE CHAIR OF THE UNITED STATES SENTENCING COMMISSION

Mr. REID. I now ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 132, the nomination of William Sessions, to be chairman of the United States Sentencing Commission.

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

The assistant legislative clerk read as follows:

Nomination of William K. Sessions III, of Vermont, to be Chair of the United States Sentencing Commission.

#### CLOTURE MOTION

Mr. REID. I now send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant 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 nomination of William K. Sessions, III, of Vermont, to be Chair of the United States Sentencing Commission.

Patrick J. Leahy, Thomas R. Carper, Byron L. Dorgan, Tom Udall, Benjamin L. Cardin, Roland W. Burris, Al Franken, Tom Harkin, Jon Tester, Charles E. Schumer, Mark Begich, Frank R. Lautenberg, Daniel K. Akaka, Sherrod Brown, Bernard Sanders, Richard J. Durbin, Jack Reed.

Mr. REID. I ask unanimous consent that the mandatory quorum be waived and the Senate now resume legislative session.

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

#### LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. The Senate will resume legislative session.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

#### VOTE EXPLANATION

• Mr. KERRY. Mr. President, I was necessarily absent for the vote on the conference report to accompany Homeland Security Appropriations Act, 2010, H.R. 2892. If I were able to attend today's session, I would have voted yes on the conference report.

#### THE RYAN WHITE HIV/AIDS TREATMENT EXTENSION ACT OF 2009

Mr. ENZI. Mr. President, I rise today to express my great appreciation to Senators HARKIN, DODD, and COBURN for working in a bipartisan manner to reauthorize the Ryan White HIV/AIDS program. I am also thankful to all of the members on the HELP Committee for their efforts to ensure that we passed this bill in a timely manner so that individuals receiving care under the Ryan White program would not see an interruption in their services.

This bill continues policies that seek to accomplish the goal of ensuring that Ryan White funding follows the patient. The bill, which will pass by unanimous consent, updates funding formulas and requires more accurate and reliable data reporting from the States, which will ensure that funds are allocated to the areas with the greatest need. It encourages aggressive testing strategies and establishes a national HIV/AIDS testing goal of 5 million tests per year. The bill also provides more flexibility to allow grantees to spend funds effectively.

Over the years we have seen a dramatic change in the geographic location of the HIV/AIDS epidemic from northern, metropolitan areas, to southern—and in many instances—rural areas. Today, more persons living with AIDS reside in the South than in any other area of the country. Of the 26,347 new HIV cases, 51.2 percent were diagnosed in the 17 Southern States and of the top 20 metropolitan areas with the highest AIDS case rates, 14 were in the

South. Thanks to the bipartisan efforts of the HELP Committee this reauthorization will ensure that funding is distributed in an equitable manner, reaching individuals with the greatest need.

The Ryan White program provides care for millions of Americans in need of medical care. Unfortunately we have also seen abuses, where these funds are misspent and patients do not receive the care they need. As the ranking member of the HELP Committee, I will continue to work to prevent these abuses and guarantee that funding is distributed to legitimate organizations that provide real services. It is a travesty that so many millions of dollars have been wasted due to poor oversight and corruption.

As Congress continues to authorize and provide funding for services under the Ryan White program, we must also commit to conduct proper oversight, so that these dollars actually reach the patients who need assistance, rather than being pocketed by criminals.

I close by again expressing my great appreciation to my colleagues for their hours of hard work and dedication to extend the Ryan White HIV/AIDS program. I also thank the HIV/AIDS community for their tireless efforts to provide care to individuals with HIV/AIDS. Many Americans with HIV/AIDS will continue to receive access to vital care because of the compassion and dedication of HIV/AIDS organizations receiving Ryan White dollars. Finally, I also thank my staff members Greg Dean, Chuck Clapton and Hayden Rhudy, as well as the staff members of Senator HARKIN's office, Connie Gardner and Jenelle Krishnamoorthy, for their hard work on this important bill.

#### ADDITIONAL STATEMENTS

##### REMEMBERING CAROL TOMLINSON-KEASEY

• Mrs. BOXER. Mr. President, I ask my colleagues to join me in honoring the memory of Dr. Carol Tomlinson-Keasey, a committed educator and administrator and the founding chancellor of University of California, Merced. Dr. Tomlinson-Keasey passed away on October 10th from complications related to breast cancer. She was 66 years old.

Dr. Carol Tomlinson-Keasey was born in Washington, DC, on October 15, 1942. The daughter of an Army officer, she moved around frequently before graduating from a high school in France. Dr. Tomlinson-Keasey received a bachelor's degree in political science from Penn State University, a master's in psychology from Iowa State University, and a Ph.D. in developmental psychology from University of California, Berkeley.

In 1977, Dr. Tomlinson-Keasey became an associate professor of psychology at the University of California, Riverside. During her 15-year tenure at UC Riverside, she earned faculty and

administrative appointments. In 1992, Dr. Tomlinson was named vice provost and professor at University of California, Davis. She was appointed dean of UC Davis College of Letters and Science in 1994 and vice provost for academic planning and personnel in 1995 before lending her considerable talents to the University of California Office of the President in 1997.

Beginning in 1998, Dr. Tomlinson-Keasey assumed a leadership role in the planning and building of University of California, Merced, the first new University of California campus in 40 years. A gifted administrator, Dr. Tomlinson-Keasey fully immersed herself in every aspect of the enormous task of starting a major public university. Whether it was selecting the eventual site of the campus, the recruitment of administrators and faculty members or even choosing the school mascot, Dr. Tomlinson-Keasey worked tirelessly to see that the dream of a University of California campus in the San Joaquin Valley became a reality. In 1999, Dr. Tomlinson-Keasey became the first female founding chancellor of a University of California campus.

UC Merced has been a model of growth and progress since its inception in 2005. Today, the burgeoning campus is a living testament to Dr. Tomlinson-Keasey's hard work, vision, and dedication. Dr. Tomlinson-Keasey has left behind a legacy that has resulted in greater opportunities for future generations of California students, especially those students who are the first in their families to attend college and come from underrepresented ethnic or racial minority groups in the Central Valley. Her family and friends should take great pride and comfort in knowing Dr. Tomlinson-Keasey's accomplishments will continue to positively impact many people in the future.

Dr. Tomlinson-Keasey is survived by her husband Blake Keasey; children, Amber and Kai; three brothers, Alen, Gene and John Tomlinson; and four grandchildren.●

#### RECOGNIZING THE SERVICE CORPS OF RETIRED EXECUTIVES

● Mr. CORNYN. Mr. President, today I recognize a dedicated group of volunteers for their service to small business owners in Texas. The Service Corps of Retired Executives, also known simply as SCORE, is a nonprofit organization that connects new entrepreneurs with seasoned business executives for expert advice and consultation.

Creating a new business enterprise can be challenging, and perhaps the most advantageous way for new entrepreneurs to seek advice is asking successful executives who have firsthand experience. SCORE provides a forum for entrepreneurs to engage experienced leaders in both one-on-one settings and group environments. SCORE offers complementary counseling services covering important topics such as business management, financing, marketing, and taxes, among many others.

SCORE was created on October 5, 1964, as a mission of the Small Business Administration, SBA. Since that time, the organization has evolved into a stand-alone nonprofit group, steadily increased its volunteer base, and embraced the Internet as a tool for outreach. SCORE is approaching a significant milestone this year—45 years of service to small business owners. It is worth noting that SCORE recently documented another achievement by providing services to its 8 millionth client.

Today SCORE offices can be found in 48 States and the District of Columbia. In 2008, 11,200 SCORE volunteers provided approximately 1.3 million hours of service saving business owners an estimated \$167 million. In Texas, 378 SCORE volunteers provided over 63,000 hours of complimentary counseling. SCORE's remarkable success continues to be recognized by the Federal Government, and today the SBA maintains a partnership with SCORE to help entrepreneurs turn their visions into reality.

I commend SCORE volunteers in Texas for sharing their time and expertise with the next generation of business owners. In so doing, SCORE volunteers are helping a new generation build their own American dream.●

#### REMEMBERING JEANNETTE GRUBB

● Mr. LUGAR. Mr. President, I was deeply saddened to learn that my dear friend and mentor for the past 63 years, Jeannette Grubb, passed away on Friday, October 9, 2009, at the age of 106 years old.

I last saw Jean on September 12, 2009, at the rededication ceremony at Shortridge High School, and I, as well as many others, enjoyed a wonderful visit with her. As always, Jean, herself a 1920 Shortridge High School graduate, was ever enthusiastic about Shortridge and recalled memories of her time as a Shortridge student, teacher and advisor. She was a special person, a woman of faith, whose concern for others was apparent.

Jean was well-educated and prepared for the important responsibilities of teaching. As a graduate of Indiana University, she earned her bachelor of arts, and later her master's in journalism from the Medill School of Journalism at Northwestern University. I am grateful that in 1944, Jean was asked to give up teaching mathematics to become the director of publications for Shortridge, a post she held until her retirement in 1970. Jean inspired us to be better students, and focused on creative and excellent writing skills.

Jean is one of the most memorable teachers in my life. When I was a Thursday columnist for the Shortridge High School Daily Echo, she served as the faculty adviser of the publication that she also served on as a Shortridge student.

As a high school student, the opportunity to publish a column, and to

know that at least a few of my classmates read what I had written, provided an unparalleled privilege. On one occasion, an unflattering column which I authored about the unhealthy habits of the basketball team was read by the Indianapolis School Board—whose members only received copies of the Thursday edition of the school paper. This incident caused a temporary shutdown of the Echo's headquarters and a sudden trip for me to the principal's office to hear the consequences that unbridled journalism could have on the school, Jean, and me.

During this traumatic experience, Jean was my heroine, and the freedom of the press prevailed.

Furthermore, Jean has always been an active member of the Shortridge High School alumni community. As publications adviser, she organized the 50th anniversary celebration of the Echo. She also has worked to gather names and contact information for the Shortridge High School Alumni Association so that each of us can stay closely in touch with our friends and classmates. Following her retirement, Jean worked with the Indiana Historical Society to compile a complete history of our alma mater.

In 2005, Jean deservedly received the Lifetime Achievement Award from the Indiana High School Press Association for her tireless commitment to journalistic excellence among young people, and her unwavering support of the alumni and history of Shortridge High School. On this occasion, I included remarks about Jean in the CONGRESSIONAL RECORD to honor her achievement.

Throughout my public service, I have enjoyed frequent communications with Jean. She was always optimistic and supportive.

She was loved and appreciated. Her friendship and compassion will be greatly missed by her many students and friends whose lives she influenced through her exemplary dedication to teaching.●

#### TRIBUTE TO RAJIV KUMAR

● Mr. WHITEHOUSE. Mr. President, today I congratulate Rajiv Kumar, a medical student at the Warren Alpert Medical School of Brown University, for receiving the Community Health Leaders Award from the Robert Wood Johnson Foundation. Mr. Kumar received this prestigious award for his efforts to reduce obesity among Rhode Island residents. In 2005, he established Shape Up RI—a statewide exercise and weight loss challenge. Since then, over 35,000 Rhode Islanders have participated in the program including my staff and me, and I can personally attest to its fun and effectiveness. I had the pleasure of meeting with Mr. Kumar earlier this month to discuss the great work he has done to encourage personal responsibility in an engaging and innovative new format, and I look forward to the continued growth and success of Shape Up RI.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, 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 Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

# REPORT ON THE CONTINUATION OF THE NATIONAL EMERGENCY DECLARED IN EXECUTIVE ORDER 13413 WITH RESPECT TO BLOCKING THE PROPERTY OF PERSONS CONTRIBUTING TO THE CONFLICT TAKING PLACE IN THE DEMOCRATIC REPUBLIC OF THE CONGO—PM 35

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying reports and papers; which was referred to the Committee on Banking, Housing, and Urban Affairs:

*To the Congress of the United States:*

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice stating that the national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo, and the related measures blocking the property of certain persons contributing to the conflict in that country, are to continue in effect beyond October 27, 2009.

The situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities that continue to threaten regional stability, continues to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, I have determined that it is necessary to continue the national emergency to deal with that threat and the related measures blocking the property of certain persons contributing to the conflict in that country.

BARACK OBAMA.  
THE WHITE HOUSE, October 20, 2009.

## MESSAGE FROM THE HOUSE

## ENROLLED BILL SIGNED

At 3:13 p.m., a message from the House of Representatives, delivered by

Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 3183. An act making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. BYRD).

## 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. BROWN:

S. 1800. A bill to amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to provide compensation for certain persons injured in the course of employment at the Feed Materials Production Center (commonly referred to as "Fernald") or the Piqua Organic Moderated Reactor in Ohio; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CARPER (for himself and Mr. KAUFMAN):

S. 1801. A bill to establish the First State National Historical Park in the State of Delaware, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BURRIS:

S. 1802. A bill to require a study of the feasibility of establishing the United States Civil Rights Trail System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MERKLEY (for himself and Mr. CORKER):

S. 1803. A bill to amend title 31, United States Code, to authorize reviews by the Comptroller General of the United States of emergency credit facilities established by the Board of Governors of the Federal Reserve System or any Federal Reserve bank, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KYL:

S. 1804. A bill to extend the temporary suspension of duty on pyridaben technical; to the Committee on Finance.

By Mr. KYL:

S. 1805. A bill to suspend temporarily the duty on fenarimol technical; to the Committee on Finance.

By Mr. KYL:

S. 1806. A bill to suspend temporarily the duty on Phosmet Technical; to the Committee on Finance.

By Mr. KYL:

S. 1807. A bill to extend the temporary suspension of duty on hexythiazox technical; to the Committee on Finance.

By Mr. FEINGOLD:

S. 1808. A bill to control Federal spending now; to the Committee on Finance.

By Mr. WICKER (for himself and Mr. INHOFE):

S. 1809. A bill to amend the Clean Air Act to promote the certification of aftermarket conversion systems and thereby encourage the increased use of alternative fueled vehicles; to the Committee on Environment and Public Works.

By Mr. HARKIN (for himself, Mr. BROWNBACK, and Mr. UDALL of Colorado):

S. 1810. A bill to direct the Secretary of Health and Human Services to publish physical activity guidelines for the general public, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEVIN:

S. 1811. A bill to suspend temporarily the duty on certain chime rod assemblies; to the Committee on Finance.

By Mr. LEVIN:

S. 1812. A bill to suspend temporarily the duty on DMDPA; to the Committee on Finance.

By Mr. LEVIN:

S. 1813. A bill to extend the temporary suspension of duty on DPA; to the Committee on Finance.

By Mr. LEVIN:

S. 1814. A bill to suspend temporarily the duty on urea, polymer with formaldehyde and 2-methylpropanal; to the Committee on Finance.

By Mr. LEVIN:

S. 1815. A bill to suspend temporarily the duty on certain clock movements; to the Committee on Finance.

By Mr. CARDIN (for himself, Ms. MIKULSKI, Mr. CARPER, and Mr. KAUFMAN):

S. 1816. A bill to amend the Federal Water Pollution Control Act to improve and reauthorize the Chesapeake Bay Program; to the Committee on Environment and Public Works.

By Mr. BROWN:

S. 1817. A bill to temporarily raise the limits on certain loans under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mr. BINGAMAN (for himself and Mr. MCCAIN):

S. 1818. A bill to amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to honor the legacy of Stewart L. Udall, and for other purposes; considered and passed.

## ADDITIONAL COSPONSORS

S. 250

At the request of Mr. SCHUMER, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 250, a bill to amend the Internal Revenue Code of 1986 to provide a higher education opportunity credit in place of existing education tax incentives.

S. 252

At the request of Mr. AKAKA, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 252, a bill to amend title 38, United States Code, to enhance the capacity of the Department of Veterans Affairs to recruit and retain nurses and other critical health-care professionals, to improve the provision of health care for veterans, and for other purposes.

S. 663

At the request of Mr. NELSON of Nebraska, the name of the Senator from Vermont (Mr. SANDERS) 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. 700

At the request of Mr. BINGAMAN, the name of the Senator from Maryland



(Ms. MIKULSKI) was added as a cosponsor of S. 700, a bill to amend title II of the Social Security Act to phase out the 24-month waiting period for disabled individuals to become eligible for Medicare benefits, to eliminate the waiting period for individuals with life-threatening conditions, and for other purposes.

S. 729

At the request of Mr. DURBIN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 729, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

S. 908

At the request of Mr. BAYH, the name of the Senator from Florida (Mr. LEMIEUX) was added as a cosponsor of S. 908, a bill to amend the Iran Sanctions Act of 1996 to enhance United States diplomatic efforts with respect to Iran by expanding economic sanctions against Iran.

S. 1055

At the request of Mrs. BOXER, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 1055, a bill to grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II.

S. 1065

At the request of Mr. BROWNBACK, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1065, a bill to authorize State and local governments to direct divestiture from, and prevent investment in, companies with investments of \$20,000, 000 or more in Iran's energy sector, and for other purposes.

S. 1076

At the request of Mr. MENENDEZ, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1153

At the request of Mr. SCHUMER, the names of the Senator from Vermont (Mr. SANDERS) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 1153, a bill to amend the Internal Revenue Code of 1986 to extend the exclusion from gross income for employer-provided health coverage for employees' spouses and dependent children to coverage provided to other eligible designated beneficiaries of employees.

S. 1155

At the request of Ms. COLLINS, the name of the Senator from Wisconsin

(Mr. FEINGOLD) was added as a cosponsor of S. 1155, a bill to amend title 38, United States Code, to establish the position of Director of Physician Assistant Services within the office of the Under Secretary of Veterans Affairs for health.

S. 1158

At the request of Ms. STABENOW, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1158, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 1340

At the request of Mr. LEAHY, the names of the Senator from Minnesota (Mr. FRANKEN) and the Senator from Oklahoma (Mr. COBURN) were added as cosponsors of S. 1340, a bill to establish a minimum funding level for programs under the Victims of Crime Act of 1984 for fiscal years 2010 to 2014 that ensures a reasonable growth in victim programs without jeopardizing the long-term sustainability of the Crime Victims Fund.

S. 1343

At the request of Mr. BROWN, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 1343, a bill to amend the Richard B. Russell National School Lunch Act to improve and expand direct certification procedures for the national school lunch and school breakfast programs, and for other purposes.

S. 1360

At the request of Mr. BINGAMAN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1360, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 1624

At the request of Mr. WHITEHOUSE, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1624, a bill to amend title 11 of the United States Code, to provide protection for medical debt homeowners, to restore bankruptcy protections for individuals experiencing economic distress as caregivers to ill, injured, or disabled family members, and to exempt from means testing debtors whose financial problems were caused by serious medical problems, and for other purposes.

S. RES. 312

At the request of Mr. DODD, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. Res. 312, a resolution expressing the sense of the Senate on empowering and strengthening the United States Agency for International Development (USAID).

AMENDMENT NO. 2669

At the request of Mr. GRAHAM, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of amendment No. 2669 proposed to H.R. 2847, a bill making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2693

At the request of Mrs. LINCOLN, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of amendment No. 2693 intended to be proposed to S. 1776, a bill to amend title XVIII of the Social Security Act to provide for the update under the Medicare physician fee schedule for years beginning with 2010 and to sunset the application of the sustainable growth rate formula, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CARPER (for himself and Mr. KAUFMAN):

S. 1801. A bill to establish the First State National Historical Park in the State of Delaware, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. CARPER. Mr. President, I am delighted to be joined this afternoon by my colleague, Senator KAUFMAN, from Delaware. Today, he and I are going to do something I don't think has ever been done in the Senate in the 200 years since this institution has been together. We will be introducing legislation which will establish the First State National Historic Park within the State of Delaware.

There are, as we all know, 50 States, and 49 States have national parks. In all, there are 58 national parks. There are something like more than 300 units of national parks. The first State to ratify the Constitution—that would be Delaware—was the entire United States of America for 1 week beginning December 7, 1787, and it still has no national park—not that we don't have historical and cultural heritage that is noteworthy in Delaware.

Think back roughly 400 years ago when the first settlements in this country from Europe were that of the Dutch in what is now Lewes, DE. And 372 years ago, the Swedes and Finns sailed across the Atlantic Ocean up the Delaware Bay and the Delaware River, took a left turn on the river they decided to name after the child queen of Sweden, Christina, and established the colony of New Sweden and what is now known as Wilmington, DE.

To the south in Dover, DE, at the Golden Fleece Tavern for roughly 3 days in December 1787, 25 or so men holed up in the Golden Fleece Tavern drinking what I describe as hot chocolate in order to decide whether the State of Delaware was going to be the first State to ratify the Constitution.

A few miles south of there is the childhood home of John Dickinson,

who worked with folks in Connecticut at the Constitutional Convention to come up with a grand compromise which says every State will have two U.S. Senators and we will apportion the seats in the House of Representatives in accordance with the population of the States.

From one end of the State of Delaware to the other, there are any number of things that are important to our Nation's heritage and I think certainly to the people of Delaware. Yet we have no national park commemorating any of that at all. Roughly 8 years ago, shortly after I came to the Senate, we went to work to see whether we could change that situation. A lot of good people in my State submitted ideas, from one end of the State to the other, what they thought might be reasonable, acceptable, appropriate items or places to designate as our national park. We created a wonderful citizens group about 3 or 4 years ago. They went the length and breadth of the State, led by professor emeritus Jim Solis of the University of Delaware. They came back with a wonderful group of ideas they collected from people from all over the State.

They said: This is what we think the national park should be—a unique concept. If you can imagine four bicycle wheels, each has a hub, and from the hubs emanate the spokes. The vision of our working group was to have four hubs—one in northern Delaware, Wilmington; one maybe in Delaware City; another in Kent County, the central part of our State; and another in Lewes, DE, the southern part of our State. From each of those hubs—think of the spokes emanating—is a variety of attractions to which people could come. Each hub would be a hub established with some presence by the National Park Service.

These were the ideas we submitted to the National Park Service roughly 3 years ago. The National Park Service went to work on it. To their credit, they came to our State. They covered our State and met with all kinds of people from one end of Delaware to the other and came up with another idea. They said: We like what you came up with, but here is what the National Park Service would like you to do. It is this: Create a national park that focuses on Delaware from the early settlement of the Dutch, the Swedes and the Finns and the English—a national park theme to run from that period of time until first statehood, December 7, 1787, roughly 130, 140 years.

The idea is to place in old New Castle, colonial New Castle, about 10 miles south of Wilmington, DE, on the Delaware River, a national park site that would be colocated and located in an existing structure that is suitable for that purpose. That spot will be populated by park rangers, who will be there to serve as interpreters and help welcome people to the site and help inform them, share with them other ideas and places to visit.

We are excited about what the National Park Service has decided. Is it everything we had hoped for? No, it is not. Is it a whole lot better than being the only State in the country without a national park? It sure is a lot better than that.

I express great thanks to all the men and women in my State who for almost 8 years worked on this concept, created and gathered good ideas and suggested those to the Park Service. I thank the Delaware Division of Parks and Recreation, the Delaware Division of Historical and Cultural Affairs, the National Park Service, former Secretary of the Interior Dirk Kempthorne; and certainly our current Secretary of the Interior, Ken Salazar, for their steadfast support for this initiative.

About half a dozen or so years ago, my family and I—my boys are now 19 and 21, but when they were younger, we liked to travel in the summers and visit national parks. We visited national parks from Pennsylvania, the second State in the Union, to Illinois, the Lincoln sites. We went to Alaska, to Denali, the great one, a huge national park that is two to three times the size of Delaware. We loved to visit national parks. This summer, our boys took a cross-country tour to the west coast for a summer job for one of our boys. They drove all the way across the northern part of our country and got to spend time in the Badlands, Mount Rushmore and Yellowstone and other sites along the way.

National parks were described as—I think it was Wallace Stegner who said our national parks are America's best ideas. Ken Burns, the documentary filmmaker whose series on national parks was on National Public Television—beautifully done, beautifully videographed, and the story told of our national parks and how the first national park began about 140 years ago. Here we are 140 years later. They are a national treasure. People come from all over the world.

When we went on the national park Web site 6 years ago to look for a place to go as a family, do you know what we ended up with? Nothing. There was a lot of stuff to visit from Alabama to Wyoming, A to W, but when we got to Delaware, nothing.

We have a lot in our State of which we are proud. We have a lot in our State of which our country can be proud. We want not only people in Delaware to know but people throughout the country and the world. When they are looking for a good place to visit for some culture and history and, frankly, for a good time, we want them to know that Delaware—little Delaware—is on the map. We are ready. The doors are open. The “welcome” mat is out. We are ready to receive them.

I want to say a big thanks to everyone who got us to this point. We are delighted to introduce the legislation that will designate and establish the first national park in the State of Delaware. Fortunately, I am not intro-

ducing the bill by myself. I am joined by my colleague, Senator KAUFMAN, and in the House by Congressman MIKE CASTLE. This will be a bipartisan, bicameral initiative.

I yield to Senator KAUFMAN.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Mr. President, this has been a great journey for me, before I came to the Senate, watching my present senior Senator, TOM CARPER, then junior Senator—I am proud to say one of my greatest accomplishments as a Senator was to promote TOM CARPER from junior Senator to senior Senator—to watch him work on this bill for a national park for Delaware for 8 years.

I think if you were trying to do a case study on what it takes to make an accomplishment in the Senate, his efforts would be an excellent case study. He has been working for 8 years to bring a national park to Delaware. It is the only State in the Nation that does not have a national park, and yet it has so many wonderful things to see. I think people who visit Delaware will know that.

I am proud to be a cosponsor of a bill that really my senior Senator has worked so hard on. He already explained much of the history of how we came to this point, so I want to simply say again that I appreciate how he has worked with the National Park Service to design a national historical park for Delaware.

Earlier this year, when we were discussing the Travel Promotion Act, I discussed many of Delaware's attractions, from the colonial history dating back to before it became the first State to ratify the Constitution, to the beautiful beaches. We have a wealth of opportunities for tourism. However, until this bill is signed into law, we will not have a national park.

No one needs to be told about the value of national parks, the way they offer recreational opportunities, support local businesses, and protect natural and cultural heritage. What is perhaps most important about them, however, is the way they define and preserve our relationship with possibility. They speak of a quintessential American world view that everyone has a right to share in what is greatest and magnificent in our world, in this case our national parks.

Since the creation of Yellowstone and Yosemite over a century ago, millions of Americans have had their eyes opened by breathtaking vistas and the rich history of our wonderful country. The park in Delaware will play an important role in preserving our colonial history. Remember, Delaware was a crossroads for early Dutch, English, and Swedish settlers. Our State has a rich endowment of colonial landmarks.

Bringing these together the way Senator CARPER has proposed in a national historical park, this bill will allow all Americans to appreciate our history leading up to the signing of the Constitution. That is why I am glad to join

with my senior Senator, TOM CARPER, in cosponsoring this bill. It is high time Delaware has a national park, and I believe this bill will create one that preserves Delaware's rich pre-Constitution history for generations to come.

I thank my senior Senator for what he is doing, not just for me, not just for the people of Delaware, but for the country. This will be a great place for people to come from all over the country and all over the world to see the glorious history that is in Delaware.

Mr. CARPER. Mr. President, in conclusion, I say a special thanks to Senator KAUFMAN. I thank members of our staff who worked on this bill—not just us—literally for years in Delaware and here as well.

I want to thank my colleagues who earlier voted with us to authorize a study, and to the National Park Service to fund that study, which came back to us with the recommendations of the National Park Service literally earlier this year.

I also want to say that in this proposal we give a nod to the fact that these are trying fiscal times in which we live, and we don't have the ability to spend boatloads of money for a national park anywhere, including the First State. The proposal that we have before us is one that recognizes that and is, I think, responsible, and fiscally responsible, too.

So with all that having been said, we are delighted to say that while this is not the end, this may be the beginning of the end, we hope, of the journey that will lead us to a national park, and we are delighted to stand here together to get us on the last part of that journey.

By Mr. MERKLEY (for himself and Mr. CORKER):

S. 1803. A bill to amend title 31, United States Code, to authorize reviews by the Comptroller General of the United States of emergency credit facilities established by the Board of Governors of the Federal Reserve System or any Federal Reserve bank, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. MERKLEY. Mr. President, today Senator BOB CORKER of Tennessee and I come together to introduce the Federal Reserve Accountability Act. Over the course of the financial crisis, the Federal Reserve has taken extraordinary actions to stabilize our financial system. In doing so, it has departed significantly from its traditional relationship with markets. It is essential, therefore, that we bring greater openness and transparency to the Federal Reserve.

We are introducing the Federal Reserve Accountability Act because we believe that it strikes the right balance in making the Federal Reserve's new emergency lending activities subject to a robust financial audit by the Government Accountability Office, GAO, without disturbing the Federal Reserve's monetary policy independence

or its role as emergency lender of last resort. The Federal Reserve Accountability Act would require the GAO to audit the accounting, financial reporting, and internal controls of all Federal Reserve emergency credit programs that are not already subject to audit. To protect against the risk that disclosure of the participation of particular institutions could disrupt markets, the GAO would be required to redact the names of specific institutions. Names would, however, be made available 1 year after each emergency program is no longer used. For additional transparency and public accessibility, the legislation would also require that the Federal Reserve place these GAO audits along with additional audit materials under a new "Audit" section on its website.

The many emergency lending programs created over the past year have certainly helped bring the financial markets back from the brink of collapse. But it is now time to set up a process for each lending facility to be fully audited by the GAO and reaffirm our commitment to openness and transparency whenever taxpayer dollars are used.

I am hopeful that we can move quickly to enact this important legislation, and I urge my colleagues to join us in this effort.

By Mr. FEINGOLD:

S. 1808. A bill to control Federal spending now; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, fiscal responsibility is a Wisconsin tradition and it has been a major priority of mine throughout my years in the Senate. In 1992 when I first ran for the job I hold now, I put together an 82-point plan to save hundreds of billions of dollars in wasteful, inefficient or unneeded government spending. Back then, the country was facing huge budget deficits and Americans were understandably concerned about the debt we were piling up. Fortunately, we took some strong steps in the 1990s to clean up that fiscal mess—including passing some of the reforms I championed in my 82-point plan—and we were able to get the country back on the right track.

Unfortunately, we face a similar crisis today. In fact, in many ways it is worse because the deficits are even bigger while the economy is in such bad shape. The reckless fiscal policies of the past eight years, combined with the current recession those policies helped create, have dug a deep hole, and we need to start filling it in. Some may argue that we can't cut government spending now because that would make the recession we are in even worse. I don't agree—while we shouldn't be slashing, say, unemployment insurance or education funding, we should absolutely be targeting the waste and fat in the federal budget. That's the message I am consistently hearing as I travel around Wisconsin.

My constituents are rightly concerned about the burden that their children and grandchildren will be forced to shoulder.

That is why I am introducing the Control Spending Now Act. This bill consists of dozens of different initiatives that would collectively reduce the deficit by over \$½ trillion over 10 years. It includes procedural reforms that would make it easier to eliminate funding for pet projects slipped into larger spending bills, as well as cuts to spending that isn't working or needed, from \$4 billion for C-17 aircraft the Department of Defense didn't ask for and doesn't want to \$30 million for a program that sends a radio and TV signal to Cuba that nobody gets. The bill also would save \$244 billion by rescinding unobligated TARP payments and returning them to the Treasury—I opposed the Wall Street bail-out from the start, and it's high time we brought it to an end.

The ideas I am proposing are not all new—for example, I have been fighting to end earmark abuses and give the president a line-item veto for some time. And not all the ideas were thought up by me—there are a lot of good proposals out there, and I have tried to bring them together in one comprehensive bill. I have included legislation drafted by Senators BYRON DORGAN and JEFF BINGAMAN that would save the Federal Government and consumers money by bringing down prescription drug prices, as well as biennial budgeting reforms that former Senator Pete Domenici championed, and that Senator JOHNNY ISAKSON is now seeking to advance. I also included provisions crafted by Senators KIT BOND, JAY ROCKEFELLER and DIANNE FEINSTEIN and included in the Senate-passed intelligence authorization bill for fiscal year 2010 that would help eliminate wasteful spending in the intelligence budget. I am grateful to my colleagues for the work they are doing to return the country to the path of fiscal responsibility.

Not everyone will agree with every one of my proposals—in fact, for every proposal, there is probably one or more entrenched group committed to preserving the status quo. But the status quo isn't good enough—we need to make tough spending choices, which is why I am proposing this legislation, and why I will continue working to control spending now.

By Mr. CARDIN (for himself, Ms. MIKULSKI, Mr. CARPER, and Mr. KAUFMAN):

S. 1816. A bill to amend the Federal Water Pollution Control Act to improve and reauthorize the Chesapeake Bay Program; to the Committee on Environment and Public Works.

Mr. CARDIN. Mr. President, today I am introducing the Chesapeake Clean Water and Ecosystem Restoration Act. I am joined in this effort by original cosponsors, Ms. MIKULSKI, Mr. CARPER, and Mr. KAUFMAN. Together we are committed to giving our states and

municipalities the tools they need to finally restore water quality in the Chesapeake Watershed and return this national treasure to its rightful position as one of the world's most important ecological regions.

Yesterday morning I stood on the shores of the Chesapeake Bay, near Annapolis, Maryland, to outline the provisions of this legislation. I was joined by Martin O'Malley, Governor of Maryland and a tireless champion of the bay. Standing with him was Preston Bryant, Virginia's Secretary of Natural Resources, representing Governor Tim Kaine. Both states, which embrace the entirety of the Chesapeake Bay, were there to lend their support to this legislative effort. Two of my colleagues from the other body, Congressman ELIJAH CUMMINGS and Congressman CHRIS VAN HOLLEN, also joined us, noting that they intend to introduce a companion bill in the House of Representatives today. A powerful coalition of more than 100 local watershed organizations was there, too, to lend its support. And finally, we were joined by Mr. Luke Brubaker, a dairy and poultry farmer from Pennsylvania who is already demonstrating how local actions can result in real water quality benefits.

Today we take a major step forward in writing the next chapter in the history of one of America's most cherished and celebrated bodies of water—the Chesapeake Bay. The original English colony in Jamestown was settled on its shores. George Washington built his home overlooking one of its great rivers. The War of 1812 was fought on its waters, and generations of Americans came to live off its bounty of oysters and blue crabs and rockfish. Harriet Tubman led a life of slavery and heroic freedom among its vast marshes, and James Michener wrote a saga celebrating its majesty.

Today, 17 million people live in its watershed. Its tributaries are home to three state capitals as well as America's center of government. The bay has been called a "National Treasure" by American Presidents ranging from Ronald Reagan to Barack Obama. The United Nation's Ramsar Convention recognizes the bay as an ecological region of global significance. In Maryland it is the economic, environmental, cultural and historic heart of the state.

But, the bay and its watershed are in trouble.

By every scientific measure, the ecological health of the Chesapeake Bay is poor. The Chesapeake Bay and its tributaries are unhealthy primarily because of excess nitrogen, phosphorus and sediment entering the water.

These pollutants threaten not just the legacy we have inherited but also our future. The multi-million seafood industry is suffering from chronically small harvests. That is not all. Recreational fishermen, duck hunters, sail boat and power boat operators, bird watchers and others bring tens of millions of dollars into our economies an-

nually. Business leaders and realtors tell us that healthy rivers and a healthy bay add immeasurably to their ability to attract a quality workforce and add value to homes.

At least one estimate suggests that the Bay's economic value to the region tops \$1 trillion. The challenge before us is great, but so is the opportunity.

The Chesapeake Clean Water and Ecosystem Restoration Act gives the states strong new tools to restore the Bay and for the first time sets a firm deadline of 2025 for all restoration efforts to be in place.

The internal and final deadlines for action coincide with the Chesapeake Executive Council's timeline for Chesapeake restoration. Unlike earlier, missed deadlines, this one will become a legally binding part of the Clean Water Act.

The bill also significantly expands federal grants. The Chesapeake Restoration bill authorizes a new \$1.5 billion grants program to control urban/suburban polluted stormwater, the only pollution sector that is still growing. Grants to the states, small watershed organizations, and for comprehensive monitoring programs are all newly created or expanded in the legislation. At least 10 percent of State implementation grants are set aside for Delaware, New York, and West Virginia. These headwater States have never been guaranteed any access to these funds in the past.

At least 20 percent of the implementation grants will go for technical assistance to farmers and foresters to help them access Farm Bill funds and implement conservation practices. The bill also requires the Environmental Protection Agency to build on the positive experiences of Virginia and Pennsylvania by establishing the framework for an innovative interstate trading program. As Mr. Brubaker recounted for us yesterday, farmers can partner with those who need to reduce the amount of nitrogen and phosphorus that they are releasing into the Bay. These groups can meet their legal obligation to reduce pollution by giving farmers the extra financial support they need to implement additional conservation practices on their agricultural lands. It is a classic win-win situation, and by 2012 it will be available throughout the six state watershed.

The bill codifies President Obama's Chesapeake Bay Executive Order, which requires annual Federal Action Plans across all federal departments to restore the Bay.

The basics of this bill are very simple, as most good ideas are. Scientists are telling us what the maximum amounts of pollution that the Bay can withstand and still be healthy. The Chesapeake Clean Water and Ecosystem Restoration Act sets a hard cap on pollution, and then we give the states until 2025 to reduce their proportional share of the pollution load. The states have maximum flexibility to reach these goals, but it still won't be

easy. In the 25 years since the Chesapeake Bay program started, the number of people living in the watershed has exploded.

The population of the Chesapeake Bay Watershed has grown from 12 million when the Program started to over 17 million residents today. That is a 40 percent increase. And it is not just more people producing more pollution. The amounts of impervious surfaces, the hardened landscapes that funnel polluted water into our streams and rivers and eventually the Bay, have increased by about 100 percent over the same time frame. We are losing an astounding 100 acres of forest lands every day in the Bay watershed. Simply put, there are millions more of us, and the size of our impact on the Bay watershed has grown twice as fast as our population rate. Without the Bay Program, the health of the Chesapeake would undoubtedly be worse than it is.

As I have said before, barely holding our own is not good enough. So merely fine tuning the Bay Program will not be good enough either. Fortunately, Federal, State and local governments, in cooperation with community organizations are standing up around our region to help renew the region's precious water resources.

We are focused on three major sources of water pollution: runoff from agricultural lands, effluent from wastewater treatment plants, and polluted stormwater runoff from the developed lands in our cities, towns and suburbs.

Last year we passed a Farm Bill that today is providing Chesapeake farmers with unprecedented financial support in putting conservation programs into practice. Two years ago we provided our farmers with about \$8 million in conservation funding. In the past year, that figure went up to \$23 million. This year it is growing to \$43 million and next year it reaches \$72 million—nearly a ten-fold increase in just 3 years.

Eight years of chronic under-funding for wastewater treatment plants changed dramatically in January. President Obama and the new Congress have teamed up to provide a 350 percent increase in Federal funding this year to up-grade and repair sewage treatment plants. The EPA funding bill that is now nearing final action will sustain that record investment into 2010. We need to make a major investment in our cities and towns, too, to combat the growing problem we have with polluted stormwater. That is why this bill authorizes \$1.5 billion to provide the federal funds needed to really attack this problem.

All of us, States and cities, farmers and foresters, sewage treatment plant operators and new home builders, ardent environmentalists and average residents, want to do our part to have clean water flowing through our streams and rivers. All of us want a healthy Bay.

The Chesapeake Clean Water and Ecosystem Restoration Act gives all of the Bay States a clear and fully enforceable goal to clean up our waters

and restore our Bay by 2025. The bill also gives us the resources to get the job done and the tools to do so in a way that is flexible and cost effective.

The Chesapeake Bay is the heart of our region. It is where we work, play, farm, and enjoy the beauty and abundance of the natural resources that surround us. But as anyone who has experienced the shortage of blue crabs and oysters or read about “dead zones” in the water knows, the Bay continues to be in trouble. We’ve made great strides in the last few decades through the EPA’s Chesapeake Bay Program. But we remain far from attaining the goals necessary to restore the Bay to a healthy state, one that can sustain native fish and wildlife and maintain the viability of our farmland and regional economy for the near- and long-term future.

Accomplishing these goals starts with the local implementation of the most innovative, sustainable, and cost-effective strategies for restoring and protecting water quality and vital habitats within the Chesapeake Bay watershed. Everywhere I go there is a strong desire to see local streams returned to good health and the Chesapeake Bay restored to its former glory. People are ready to take action to control pollution, restore water quality and see the living resources of the Bay return in abundance.

The Chesapeake is a region steeped in history. Today, we add our own contribution to that storied past. With the Chesapeake Clean Water and Ecosystem Restoration Act, we are proposing the most sweeping legislative effort in the history of the Clean Water Act. With the firm commitments and cooperation from the communities across the 64,000 square mile watershed, we will restore the health, productivity and beauty of the Chesapeake Bay for generations to come.

Today marks the beginning of that legislative effort. It will not be easy, and we will need all of our best efforts if we are to be successful. But we cannot and will not come up short.

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. 1816

*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 “Chesapeake Clean Water and Ecosystem Restoration Act of 2009”.

#### SEC. 2. FINDINGS.

Congress finds that—

(1) the Chesapeake Bay and the tributary waters of the Chesapeake Bay are natural resources of outstanding ecological, economic, and cultural importance to the United States;

(2) for more than 20 years, the Federal Government and the States of the Chesapeake Bay Watershed, the Chesapeake Bay Commission, and various local government, sci-

entific, and citizen advisory boards have worked through the Chesapeake Bay Program of the Environmental Protection Agency to develop an unparalleled body of scientific information and cooperative partnerships to advance the Chesapeake Bay restoration effort;

(3) despite significant efforts by Federal, State, and local governments and other interested parties, water pollution in the Chesapeake Bay prevents the attainment of existing State water quality standards and the ecological goals of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(4) the Chesapeake Bay Program partnership has developed a rich body of environmental data based on an extensive network of monitors, which provide a critical measure of success in attainment of the goals of the restoration effort;

(5) the Chesapeake Bay Program partnership has also developed some of the world’s foremost water quality and ecosystem computer models, which are invaluable planning tools for resource managers;

(6) the major pollutants affecting the water quality of the Chesapeake Bay and related tidal waters are nitrogen, phosphorus, and sediment;

(7) the largest developed land use in the Chesapeake Bay watershed, and the largest single-sector source of nitrogen, phosphorus, and sediment pollution, is agriculture;

(8) conservation practices have resulted in significant reductions in pollution loads from the agricultural sector;

(9) to speed continued progress in the agricultural sector, the Federal Government and State governments have initiated a number of agricultural conservation programs, including the Chesapeake Bay watershed initiative under section 1240Q of the Food Security Act of 1985 (16 U.S.C. 3839bb-4);

(10) atmospheric deposition of nitrogen oxides and ammonia on the Chesapeake Bay watershed contributes as much as 1/3 of the nitrogen pollution in the Chesapeake Bay;

(11) for years, a steady stream of technology development and increasingly stringent permit requirements have resulted in a steady decline in the nitrogen and phosphorus pollution derived from wastewater treatment plants in the Chesapeake Bay watershed;

(12) suburban and urban development is the fastest growing land use sector in the Chesapeake Bay watershed, and stormwater runoff from that sector is the only major source of pollution in the watershed that is increasing;

(13) during the period beginning in 1990 and ending in 2000, impervious cover, the hardened surfaces through which water cannot penetrate, increased by nearly 250,000 acres, about 41 percent, or the size of 5 Districts of Columbia;

(14) during that period, the watershed population of the Chesapeake Bay grew by just 8 percent;

(15) the population of the watershed is estimated to be growing by about 157,000 people per year;

(16) continuing at that rate, the population will increase to nearly 20,000,000 by 2030;

(17) about 58 percent of the watershed of the Chesapeake Bay is undeveloped and mostly forested, but as many as 100 hundred acres of forest are lost to development each day;

(18) States, local governments, developers, and nonprofit organizations have developed numerous low-impact development techniques since the late 1990s, which use natural area protection, infiltration, and pervious surfaces to reduce stormwater runoff and associated sediment and nutrient pollution;

(19) many of those techniques are less expensive than traditional pollution stormwater control management techniques;

(20) the decline of key aquatic habitats and species has resulted in a loss of the important water quality benefits that the habitats and species traditionally provided;

(21) native oysters, the numbers of which have declined precipitously in the Chesapeake Bay in significant part because of diseases brought into the watershed by non-native oysters, are natural filters that once effectively filtered a volume of water equivalent to that of the entire Chesapeake Bay in a matter of days;

(22) although less well-understood, menhaden, a species of fish found in the Chesapeake Bay, also provide important filtering capacity as well as a number of other key ecosystem functions;

(23) wetlands are a vital part of any major ecosystem;

(24) studies have demonstrated that nontidal wetland near the Chesapeake Bay removed as much as 89 percent of the nitrogen and 80 percent of the phosphorus that entered the wetland through upland runoff, groundwater, and precipitation;

(25) riparian forests remove as much as 90 percent of nitrogen and phosphorus that would otherwise enter the water;

(26) the loss of forests and wetlands in the Chesapeake Bay has resulted in diminished water quality, among other effects;

(27) in certain locations in the Chesapeake Bay, nutria, a nonnative species, has caused extensive destruction of key wetlands; and

(28) in spite of the achievements of the Chesapeake Bay Program partnership and increasing knowledge about ecosystem functions, the restoration of the Chesapeake Bay will require significantly stronger tools to manage pollution levels and other impediments to water quality.

#### SEC. 3. CHESAPEAKE BAY PROGRAM.

Section 117 of the Federal Water Pollution Control Act (33 U.S.C. 1267) is amended to read as follows:

##### “SEC. 117. CHESAPEAKE BAY PROGRAM.

“(a) DEFINITIONS.—In this section:

“(1) ADMINISTRATIVE COST.—The term ‘administrative cost’ means the cost of salaries and fringe benefits incurred in administering a grant under this section.

“(2) ASIAN OYSTER.—The term ‘Asian oyster’ means the species *Crassostrea ariakensis*.

“(3) BASELINE.—The term ‘baseline’ means the basic standard or level used for measuring (as applicable)—

“(A) the nutrient control requirements credit sellers must achieve before becoming eligible to generate saleable nutrient credits; or

“(B) the nutrient load reductions required of individual sources to meet water quality standards or goals under a TMDL or watershed implementation plan.

“(4) BASIN COMMISSIONS.—The term ‘basin commissions’ means—

“(A) the Interstate Commission on the Potomac River Basin established under the interstate compact consented to and approved by Congress under the Joint Resolution of July 11, 1940 (54 Stat. 748, chapter 579) and Public Law 91–407 (84 Stat. 856); and

“(B) the Susquehanna River Basin Commission established under the interstate compact consented to and approved by Congress under Public Law 91–575 (84 Stat. 1509) and Public Law 99–468 (100 Stat. 1193).

“(5) CHESAPEAKE BAY AGREEMENT.—The term ‘Chesapeake Bay Agreement’ means the formal, voluntary agreements executed to achieve the goal of restoring and protecting the Chesapeake Bay ecosystem and the living resources of the Chesapeake Bay ecosystem and signed by the Chesapeake Executive Council.

“(6) CHESAPEAKE BAY ECOSYSTEM.—The term ‘Chesapeake Bay ecosystem’ means the ecosystem of the Chesapeake Bay watershed.

“(7) CHESAPEAKE BAY PROGRAM.—The term ‘Chesapeake Bay Program’ means the program directed by the Chesapeake Executive Council in accordance with the Chesapeake Bay Agreement.

“(8) CHESAPEAKE BAY STATE.—The term ‘Chesapeake Bay State’ means any of—

“(A) the States of Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia; or

“(B) the District of Columbia.

“(9) CHESAPEAKE BAY WATERSHED.—The term ‘Chesapeake Bay watershed’ means the Chesapeake Bay and the area consisting of 19 tributary basins within the Chesapeake Bay States through which precipitation drains into the Chesapeake Bay.

“(10) CHESAPEAKE EXECUTIVE COUNCIL.—The term ‘Chesapeake Executive Council’ means the signatories to the Chesapeake Bay Agreement.

“(11) CLEANING AGENT.—The term ‘cleaning agent’ means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound, or other substance that is intended to be used for cleaning purposes.

“(12) DIRECTOR.—The term ‘director’ means the Director of the Chesapeake Bay Program Office of the Environmental Protection Agency.

“(13) LOCAL GOVERNMENT.—The term ‘local government’ means any county, city, or other general purpose political subdivision of a State with jurisdiction over land use.

“(14) MENHADEN.—The term ‘menhaden’ means members of stocks or populations of the species *Brevoortia tyrannus*.

“(15) NUTRIA.—The term ‘nutria’ means the species *Myocaster coypus*.

“(16) POINT-OF-REGULATION.—The term ‘point-of-regulation’ means any entity that—

“(A) is subject to a limitation on pollution or other regulation under this Act; and

“(B) has sufficient technical capacity and legal authority to meet the obligations of the entity under this Act.

“(17) SIGNATORY JURISDICTION.—The term ‘signatory jurisdiction’ means a jurisdiction of a signatory to the Chesapeake Bay Agreement.

“(18) TMDL.—

“(A) IN GENERAL.—The term ‘TMDL’ means the total maximum daily load that the Administrator establishes or approves for nitrogen, phosphorus, and sediment loading to the waters in the Chesapeake Bay mainstem and tidal tributaries identified on the list of a Chesapeake Bay State under section 303(d).

“(B) INCLUSIONS.—The term ‘TMDL’ may include nitrogen, phosphorus, and sediment allocations in temporal units of greater than daily duration if applicable allocations—

“(i) are demonstrated to achieve water quality standards; and

“(ii) do not lead to exceedances of other applicable water quality standards for local receiving waters.

“(19) TRIBUTARY BASIN.—The term ‘tributary basin’ means an area of land or body of water that—

“(A) drains into any of the 19 Chesapeake Bay tributaries or tributary segments; and

“(B) is managed through watershed implementation plans under this Act.

“(b) CONTINUATION OF CHESAPEAKE BAY PROGRAM.—

“(1) IN GENERAL.—In cooperation with the Chesapeake Executive Council (and as a member of the Council), the Administrator shall continue the Chesapeake Bay Program.

“(2) PROGRAM OFFICE.—

“(A) IN GENERAL.—The Administrator shall maintain in the Environmental Protection Agency a Chesapeake Bay Program Office.

“(B) FUNCTION.—The Chesapeake Bay Program Office shall provide support to the Chesapeake Executive Council by—

“(i) implementing and coordinating science, research, modeling, support services, monitoring, data collection, and other activities that support the Chesapeake Bay Program;

“(ii) developing and making available, through publications, technical assistance, and other appropriate means, information pertaining to the environmental quality and living resources of the Chesapeake Bay ecosystem;

“(iii) in cooperation with appropriate Federal, State, and local authorities, assisting the signatories to the Chesapeake Bay Agreement in developing and implementing specific action plans to carry out the responsibilities of the signatories to the Chesapeake Bay Agreement;

“(iv) coordinating the actions of the Environmental Protection Agency with the actions of the appropriate officials of other Federal agencies and State and local authorities in developing strategies to—

“(I) improve the water quality and living resources in the Chesapeake Bay ecosystem; and

“(II) obtain the support of the appropriate officials of the agencies and authorities in achieving the objectives of the Chesapeake Bay Agreement; and

“(v) implementing outreach programs for public information, education, and participation to foster stewardship of the resources of the Chesapeake Bay.

“(c) INTERAGENCY AGREEMENTS.—The Administrator may enter into an interagency agreement with a Federal agency to carry out this section.

“(d) TECHNICAL ASSISTANCE AND ASSISTANCE GRANTS.—

“(1) IN GENERAL.—In cooperation with the Chesapeake Executive Council, the Administrator may provide technical assistance, and assistance grants, to nonprofit organizations, State and local governments, colleges, universities, and interstate agencies to carry out this section, subject to such terms and conditions as the Administrator considers appropriate.

“(2) FEDERAL SHARE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the Federal share of an assistance grant provided under paragraph (1) shall be determined by the Administrator in accordance with guidance issued by the Administrator.

“(B) CHESAPEAKE BAY STEWARDSHIP GRANTS PROGRAM.—The Federal share of an assistance grant provided under paragraph (1) to carry out an implementing activity under subsection (h)(2) shall not exceed 75 percent of eligible project costs, as determined by the Administrator.

“(3) NON-FEDERAL SHARE.—An assistance grant under paragraph (1) shall be provided on the condition that non-Federal sources provide the remainder of eligible project costs, as determined by the Administrator.

“(4) ADMINISTRATIVE COSTS.—Administrative costs shall not exceed 10 percent of the annual grant award.

“(e) IMPLEMENTATION AND MONITORING GRANTS.—

“(1) IN GENERAL.—On the request of the chief executive of the Chesapeake Bay State, the Administrator—

“(A) shall make an implementation grant to the Chesapeake Bay State, or a designee of a Chesapeake Bay State (such as a soil conservation district, nonprofit organization, local government, college, university, interstate basin commission, or interstate agency), for the purpose of implementing the TMDL plans of the Chesapeake Bay State and achieving the goals established under

the Chesapeake Bay Agreement, subject to such terms and conditions as the Administrator considers to be appropriate; and

“(B) may make a monitoring grant to—

“(i) a Chesapeake Bay State, or a designee of a Chesapeake Bay State (such as a soil conservation district, nonprofit organization, local government, college, university, interstate basin commission, or interstate agency), for the purpose of monitoring the ecosystem of freshwater tributaries to the Chesapeake Bay; or

“(ii) the States of Delaware, Maryland, or Virginia, the District of Columbia, or a designee (such as a nonprofit organization, local government, college, university, or interstate agency) for the purpose of monitoring the Chesapeake Bay, including the tidal waters of the Chesapeake Bay.

“(2) ADMINISTRATION.—In making implementation grants to each of the Chesapeake Bay States for a fiscal year under this subsection, the Administrator shall ensure that not less than—

“(A) 10 percent of the funds available to make such grants are made to the States of Delaware, New York, and West Virginia; and

“(B) 20 percent of the funds available to make such grants are made to States for the sole purpose of providing technical assistance to agricultural producers and foresters to access conservation programs and other resources devoted to improvements in water quality in the Chesapeake Bay and the tributaries of the Chesapeake Bay.

“(3) PROPOSALS.—

“(A) IMPLEMENTATION GRANTS.—

“(i) IN GENERAL.—A Chesapeake Bay State described in paragraph (1) may apply for a grant under this subsection for a fiscal year by submitting to the Administrator a comprehensive proposal to implement programs and achieve the goals established under the Chesapeake Bay Agreement.

“(ii) IMPLEMENTATION GRANT CONTENTS.—A proposal under clause (i) shall include—

“(I) a description of proposed actions that the Chesapeake Bay State commits to take within a specified time period that are designed—

“(aa) to achieve and maintain all applicable water quality standards, including standards necessary to support the aquatic living resources of the Chesapeake Bay and related tributaries and to protect human health;

“(bb) to restore, enhance, and protect the finfish, shellfish, waterfowl, and other living resources, habitats of those species and resources, and ecological relationships to sustain all fisheries and provide for a balanced ecosystem;

“(cc) to preserve, protect, and restore those habitats and natural areas that are vital to the survival and diversity of the living resources of the Chesapeake Bay and associated rivers;

“(dd) to develop, promote, and achieve sound land use practices that protect and restore watershed resources and water quality, reduce or maintain reduced pollutant loadings for the Chesapeake Bay and related tributaries, and restore and preserve aquatic living resources;

“(ee) to promote individual stewardship and assist individuals, community-based organizations, businesses, local governments, and schools to undertake initiatives to achieve the goals and commitments of the Chesapeake Bay Agreement; or

“(ff) to provide technical assistance to agricultural producers, foresters, and other eligible entities, through technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses;



“(II) a commitment to dedicate not less than 20 percent of the grant of the Chesapeake Bay under this subsection to support technical assistance for agricultural and forestry land or nutrient management practices that protect and restore watershed resources and water quality, reduce or maintain reduced pollutant loadings for the Chesapeake Bay and related tributaries, and restore and preserve aquatic living resources; and

“(III) the estimated cost of the actions proposed to be taken during the fiscal year.

“(B) MONITORING GRANTS.—

“(i) IN GENERAL.—A Chesapeake Bay State described in paragraph (1) may apply for a grant under this subsection for a fiscal year by submitting to the Administrator a comprehensive proposal to monitor freshwater or estuarine ecosystems, including water quality.

“(ii) MONITORING GRANT CONTENTS.—A proposal under this subparagraph shall include—

“(I) a description of the proposed monitoring system;

“(II) certification by the Chesapeake Bay Program Director that such a monitoring system includes such parameters as the Chesapeake Bay Program Director determines to be necessary to assess progress toward achieving the goals of the Chesapeake Clean Water and Ecosystem Restoration Act of 2009; and

“(III) the estimated cost of the monitoring proposed to be conducted during the fiscal year.

“(iii) CONCURRENCES.—The Administrator shall—

“(I) obtain the concurrence of the Director of the United States Geological Survey regarding the design and implementation of the freshwater monitoring systems established under this subsection; and

“(II) obtain the concurrence of the Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration regarding the design and implementation of the estuarine monitoring systems established under this subsection.

“(iv) CONSULTATION.—The Administrator shall—

“(I) consult with the Interstate Commission on the Potomac River Basin, the Susquehanna River Basin Commission, and the Chesapeake Bay States regarding the design and implementation of the freshwater monitoring systems established under this subsection, giving particular attention to the measurement of the water quality effectiveness of agricultural conservation program implementation (including geospatial agricultural conservation program data), including the Chesapeake Bay Watershed Initiative under section 1240Q of the Food Security Act of 1985 (16 U.S.C. 3839bb-4);

“(II) consult with Old Dominion University, the Virginia Institute of Marine Science, the University of Maryland Center for Environmental Science, and the Chesapeake Bay States regarding the estuarine monitoring systems established under this subsection;

“(III) consult with the Chesapeake Bay Program Scientific and Technical Advisory Committee regarding independent review of monitoring designs giving particular attention to integrated freshwater and estuarine monitoring strategies; and

“(IV) consult with Federal departments and agencies regarding cooperation in implementing monitoring programs.

“(f) FEDERAL FACILITIES COORDINATION.—

“(1) SUBWATERSHED PLANNING AND RESTORATION.—A Federal agency that owns or operates a facility (as defined by the Administrator) within the Chesapeake Bay watershed shall participate in regional and sub-

watershed planning and restoration programs.

“(2) COMPLIANCE WITH AGREEMENTS AND PLANS.—The head of each Federal agency that owns or occupies real property in the Chesapeake Bay watershed shall ensure that the property, and actions taken by the agency with respect to the property, comply with—

“(A) the Chesapeake Bay Agreement;

“(B) the Federal Agencies Chesapeake Ecosystem Unified Plan;

“(C) the Chesapeake Bay action plan developed in accordance with subparagraph (g)(1)(A); and

“(D) any subsequent agreements and plans.

“(g) FEDERAL ANNUAL ACTION PLAN AND PROGRESS REPORT.—The Administrator, in accordance with Executive Order 13508 entitled ‘Chesapeake Bay Protection and Restoration’ and signed on May 12, 2009 (74 Fed. Reg. 23099), shall—

“(1) make available to the public, not later than March 31 of each year—

“(A) a Chesapeake Bay action plan describing, in the greatest practicable degree of detail, how Federal funding proposed in the annual budget of the United States submitted by the President to Congress will be used to protect and restore the Chesapeake Bay during the upcoming fiscal year; and

“(B) an annual progress report that—

“(i) assesses the key ecological attributes that reflect the health of the Chesapeake Bay ecosystem;

“(ii) reviews indicators of environmental conditions in the Chesapeake Bay;

“(iii) distinguishes between the health of the Chesapeake Bay ecosystem and the results of management measures;

“(iv) assesses implementation of the action plan during the preceding fiscal year;

“(v) recommends steps to improve progress in restoring and protecting the Chesapeake Bay; and

“(vi) describes how Federal funding and actions will be coordinated with the actions of States, basin commissions, and others;

“(2) create and maintain, with the concurrence of the Secretary of Agriculture, a Chesapeake Bay-wide database containing comprehensive data on implementation of conservation management practices in the Chesapeake Bay watershed that—

“(A) includes baseline conservation management practice implementation data as of the effective date of the Chesapeake Clean Water and Ecosystem Restoration Act of 2009;

“(B) includes data on subsequent conservation management practice implementation projects funded by or reported to the Agency or the Department;

“(C) presents the required data in statistical or aggregate form without identifying any—

“(i) individual owner, operator, or producer; or

“(ii) specific data gathering site; and

“(D) is made available to the public not later than December 31, 2010.

“(h) CHESAPEAKE BAY PROGRAM.—

“(1) MANAGEMENT STRATEGIES.—The Administrator, in coordination with other members of the Chesapeake Executive Council, shall ensure that management plans are developed and implemented by Chesapeake Bay States to achieve and maintain—

“(A) the nutrient goals of the Chesapeake Bay Agreement for the quantity of nitrogen and phosphorus entering the Chesapeake Bay and the watershed of the Chesapeake Bay;

“(B) the water quality requirements necessary to restore living resources in the Chesapeake Bay ecosystem;

“(C) the Chesapeake Bay Basinwide Toxins Reduction and Prevention Strategy goal of reducing or eliminating the input of chem-

ical contaminants from all controllable sources to levels that result in no toxic or bioaccumulative impact on the living resources of the Chesapeake Bay ecosystem or on human health;

“(D) habitat restoration, protection, creation, and enhancement goals established by Chesapeake Bay Agreement signatories for wetland, riparian forests, and other types of habitat associated with the Chesapeake Bay ecosystem; and

“(E) the restoration, protection, creation, and enhancement goals established by the Chesapeake Bay Agreement signatories for living resources associated with the Chesapeake Bay ecosystem.

“(2) CHESAPEAKE BAY STEWARDSHIP GRANTS PROGRAM.—The Administrator, in cooperation with the Chesapeake Executive Council, shall—

“(A) establish a Chesapeake Bay Stewardship Grants Program; and

“(B) in carrying out that program—

“(i) offer technical assistance and assistance grants under subsection (d) to local governments, soil conservation districts, academic institutions, and nonprofit organizations in the Chesapeake Bay region to implement—

“(I) cooperative watershed strategies that address the water quality, habitat, and living resource needs in the Chesapeake Bay ecosystem;

“(II) locally based protection and restoration programs or projects within a watershed that complement the State watershed implementation plans, including the creation, restoration, or enhancement of habitat associated with the Chesapeake Bay ecosystem; and

“(III) innovative nitrogen, phosphorus, or sediment reduction efforts; and

“(ii) give preference to cooperative projects that involve local governments.

“(i) TOTAL MAXIMUM DAILY LOAD.—

“(1) TMDL.—

“(A) ESTABLISHMENT.—Not later than December 31, 2010, the Administrator shall establish a Chesapeake Bay-wide TMDL.

“(B) REQUIREMENTS.—The Administrator shall not establish or approve a TMDL described in subparagraph (A) unless the TMDL includes—

“(i) wasteload allocations for nitrogen, phosphorus, and sediment necessary to implement the applicable water quality standards in the Chesapeake Bay watershed and achieve those standards in the Chesapeake Bay and the tidal tributaries of the Chesapeake Bay;

“(ii) enforceable or otherwise binding load allocations for all nonpoint sources, including atmospheric deposition, agricultural runoff, and stormwater sources for which a permit under section 402 is not required;

“(iii) a margin of safety so as to ensure that the TMDL does not exceed any applicable water quality standard; and

“(iv) a requirement for no net increase of nitrogen, phosphorus, and sediment loads above the pollution limitations necessary to meet water quality standards for the Chesapeake Bay, including no net projected increased pollutant loads from—

“(I) new or increased impervious surfaces;

“(II) concentrated animal feeding operations;

“(III) transportation systems; and

“(IV) septic systems.

“(2) PERMITS.—

“(A) IN GENERAL.—Effective beginning on January 1, 2011, a new or reissued permit issued by the Administrator under section 402(a) or a State authorized to administer a permit program under section 402(b) shall include limits consistent with all applicable wasteload allocations in the Chesapeake Bay TMDL.

“(B) PERMITS.—

“(i) IN GENERAL.—Effective beginning on January 1, 2011, each Chesapeake Bay State shall submit to the Administrator copies of any permit for discharges of nitrogen, phosphorus, or sediment into the Chesapeake Bay watershed that is allowed to continue beyond 5 years pursuant to a State law analogous to section 558(c) of title 5, United States Code, not later than 60 days after the expiration date of the permit.

“(ii) REVIEW.—The Administrator shall have the opportunity to review and object to the continuance of the permit in accordance with the process described in section 402(d) for permits proposed to be issued by a State.

“(j) ACTIONS BY STATES.—

“(i) WATERSHED IMPLEMENTATION PLANS.—

“(A) PLANS.—

“(i) IN GENERAL.—Not later than May 12, 2011, each Chesapeake Bay State shall, after providing for reasonable notice and 1 or more public hearings, adopt and submit to the Administrator for approval a watershed implementation plan for the portion of each of the 92 tidal water segments that is subject to the jurisdiction of the Chesapeake Bay State that together comprise the Chesapeake Bay.

“(ii) TARGETS.—The watershed implementation plan shall establish reduction targets, key actions, and schedules for reducing, to levels that will attain water quality standards, the loads, of nitrogen, phosphorus, and sediment, including pollution from—

“(I) agricultural runoff;

“(II) point sources, including point source stormwater discharges;

“(III) nonpoint source stormwater runoff; and

“(IV) septic systems and other onsite sewage disposal systems.

“(iii) POLLUTION LIMITATIONS.—

“(i) IN GENERAL.—The tributary pollution limitations shall be the nitrogen, phosphorus, and sediment cap loads identified in the tributary cap load agreement numbered EPA 903-R-03-007, date December 2003, and entitled ‘Setting and Allocating the Chesapeake Bay Basin Nutrient and Sediment Loads: The Collaborative Process, Technical Tools and Innovative Approaches,’ or a Chesapeake Bay TMDL established by the Administrator.

“(II) STRINGENCY.—A watershed implementation plan shall be designed to attain, at a minimum, the pollution limitations described in subclause (I).

“(iv) PLAN REQUIREMENTS.—Each watershed implementation plan shall—

“(I) include State-adopted management measures, including rules or regulations, permits, consent decrees, and other enforceable or otherwise binding measures, to require and achieve reductions from pollution sources;

“(II) include programs to achieve voluntary reductions from pollution sources, including funding commitments necessary to implement those programs;

“(III) include any additional requirements or actions that the Chesapeake Bay State determines to be necessary to attain the pollution limitations by the deadline established in this paragraph;

“(IV) provide for enforcement mechanisms, including a penalty structure for failures, such as fees or forfeiture of State funds, including Federal funds distributed or otherwise awarded by the State to the extent the State is authorized to exercise independent discretion in amounts of such distributions or awards, for use in case a permittee, local jurisdictions, or any other party fails to adhere to assigned pollutant limitations, implementation schedules, or permit terms;

“(V) include a schedule for implementation divided into 2-year periods, along with computer modeling to demonstrate the projected

reductions in nitrogen, phosphorus, and sediment loads associated with each 2-year period;

“(VI) include the stipulation of alternate actions as contingencies;

“(VII) account for how the Chesapeake Bay State will address additional loadings from growth through offsets or other actions; and

“(VIII) provide assurances that—

“(aa) if compared to an estimated 2008 baseline based on modeled loads, the initial plan shall be designed to achieve, not later than May 31, 2017, at least 60 percent of the nutrient and sediment limitations described in clause (iii)(I);

“(bb) the management measures required to achieve a 50-percent reduction of nutrient and sediment limitations shall be in effect upon submission of the plan;

“(cc) the Chesapeake Bay State will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out the implementation plan, and is not prohibited by any provision of Federal or State law from carrying out the implementation plan; and

“(dd) in a case in which a Chesapeake Bay State has relied on a local government for the implementation of any plan provision, the Chesapeake Bay State has the responsibility for ensuring adequate implementation of the provision.

“(B) IMPLEMENTATION.—

“(i) IN GENERAL.—In implementing a watershed implementation plan, each Chesapeake Bay State shall follow a strategy developed by the Administrator for the implementation of adaptive management principles to ensure full implementation of all plan elements by not later than May 12, 2025, including—

“(I) biennial evaluations of State actions;

“(II) progress made toward implementation;

“(III) determinations of necessary modifications to future actions in order to achieve objectives; and

“(IV) appropriate provisions to adapt to climate changes.

“(ii) DEADLINE.—Not later than May 12, 2025, each Chesapeake Bay State shall—

“(I) fully implement the watershed implementation plan of the State; and

“(II) have in place all the mechanisms outlined in the plan that are necessary to attain the applicable pollutant limitations for nitrogen, phosphorus, and sediments.

“(C) PROGRESS REPORTS.—Not later than May 12, 2014, and biennially thereafter, each Chesapeake Bay State shall submit to the Administrator a progress report that, with respect to the 2-year period covered by the report—

“(i) includes a listing of all management measures that were to be implemented in accordance with the approved watershed implementation plan of the Chesapeake Bay State, including a description of the extent to which those measures have been fully implemented;

“(ii) includes a listing of all the management measures described in clause (i) that the Chesapeake Bay State has failed to fully implement in accordance with the approved watershed implementation plan of the Chesapeake Bay State;

“(iii) includes monitored and collected water quality data;

“(iv) includes Chesapeake Bay Program computer modeling data that detail the nitrogen, phosphorus, and sediment load reductions projected to be achieved as a result of the implementation of the management measures and mechanisms carried out by the Chesapeake Bay State;

“(v) includes, for the subsequent 2-year period, implementation goals and Chesapeake Bay Program computer modeling data de-

tailing the projected pollution reductions to be achieved if the Chesapeake Bay State fully implements the subsequent round of management measures;

“(vi) identifies compliance information, including violations, actions taken by the Chesapeake Bay State to address the violations, and dates, if any, on which compliance was achieved; and

“(vii) specifies any revisions to the watershed implementation plan submitted under this paragraph that the Chesapeake Bay State determines are necessary to attain the applicable pollutant limitations for nitrogen, phosphorus, and sediments.

“(2) ISSUANCE OF PERMITS.—

“(A) IN GENERAL.—Notwithstanding any other provision of this Act (including any exclusion or exception contained in a definition under section 502), for the purpose of achieving the nitrogen, phosphorus, and sediment reductions required under a watershed implementation plan, a Chesapeake Bay State may issue a permit in accordance with section 402 for any pollution source the Chesapeake Bay State determines to be necessary.

“(B) ENFORCEMENT.—The Administrator shall enforce any permits issued in accordance with the watershed implementation plan in the same manner as other permits issued under section 402 are enforced.

“(3) STORMWATER PERMITS.—

“(A) IN GENERAL.—Effective beginning January 1, 2013, the Chesapeake Bay State shall provide assurances to the Administrator that—

“(i) the owner or operator of any development or redevelopment project possessing an impervious footprint that exceeds a threshold to be determined by the Administrator through rulemaking, will use site planning, design, construction, and maintenance strategies for the property to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow; and

“(ii) as a further condition of permitting such a development or redevelopment, the owner or operator of any development or redevelopment project possessing an impervious footprint that exceeds a threshold to be determined by the Administrator through rulemaking will compensate for any unavoidable impacts to the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow, such that—

“(I) the compensation within the jurisdictional boundaries of the local government shall provide in-kind mitigation of function at a ratio to be determined by the Administrator through rulemaking; and

“(II) the compensation outside the jurisdictional boundaries of the local government shall provide in-kind mitigation, at a ratio to be determined by the Administrator through rulemaking, within the tributary watershed in which the project is located.

“(B) ADMINISTRATION.—Not later than December 31, 2012, the Administrator shall promulgate regulations that—

“(i) define the term ‘predevelopment hydrology’ in subparagraph (A);

“(ii) establish the thresholds under subparagraph (A); and

“(iii) establish the compensation ratios under subparagraph (A)(ii).

“(4) PHOSPHATE BAN.—

“(A) PHOSPHORUS IN CLEANING AGENTS.—Each Chesapeake Bay State shall provide to the Administrator, not later than 3 years after the date of enactment of the Chesapeake Clean Water and Ecosystem Restoration Act of 2009, assurances that within the

jurisdiction, except as provided in subparagraph (B), a person may not use, sell, manufacture, or distribute for use or sale any cleaning agent that contains more than 0.0 percent phosphorus by weight, expressed as elemental phosphorus, except for a quantity not exceeding 0.5 percent phosphorus that is incidental to the manufacture of the cleaning agent.

“(B) PROHIBITED QUANTITIES OF PHOSPHORUS.—Each Chesapeake Bay State shall provide to the Administrator, not later than 3 years after the date of enactment of the Chesapeake Clean Water and Ecosystem Restoration Act of 2009, assurances that, within the jurisdiction, a person may use, sell, manufacture, or distribute for use or sale a cleaning agent that contains greater than 0.0 percent phosphorus by weight, but does not exceed 8.7 percent phosphorus by weight, if the cleaning agent is a substance that the Administrator, by regulation, excludes from the limitation under subparagraph (A), based on a finding that compliance with that subparagraph would—

“(i) create a significant hardship on the users of the cleaning agent; or

“(ii) be unreasonable because of the lack of an adequate substitute cleaning agent.

“(k) ACTION BY ADMINISTRATOR.—

“(1) IN GENERAL.—Not later than 60 days after the date of enactment of the Chesapeake Clean Water and Ecosystem Restoration Act of 2009, the Administrator shall establish minimum criteria that any proposed watershed implementation plan must meet before the Administrator may approve such a plan.

“(2) COMPLETENESS FINDING.—

“(A) IN GENERAL.—Not later than 60 days after the date on which the Administrator receives a new or revised proposed watershed implementation plan from a Chesapeake Bay State, the Administrator shall determine whether the minimum criteria for the plan established under paragraph (1) have been met.

“(B) EFFECT OF FINDING OF INCOMPLETENESS.—If the Administrator determines under subparagraph (A) that all or any portion of a submitted watershed implementation plan does not meet the minimum criteria established under paragraph (1), the Chesapeake Bay State submitting the plan shall be treated as not having made the submission.

“(3) APPROVAL AND DISAPPROVAL.—

“(A) DEADLINE.—Not later than 90 days after determining that a watershed implementation plan meets minimum criteria in accordance with paragraph (2)(A), the Administrator shall approve or disapprove the plan.

“(B) FULL AND PARTIAL APPROVAL AND DISAPPROVAL.—In carrying out this paragraph, the Administrator—

“(i) shall approve a watershed implementation plan if the plan meets all applicable requirements under this section; and

“(ii) may approve the plan in part and disapprove the plan in part if only a portion of the plan meets those requirements.

“(C) CONDITIONAL APPROVAL.—The Administrator—

“(i) may conditionally approve a revised watershed implementation plan based on a commitment of the Chesapeake Bay State submitting the plan to adopt specific enforceable management measures by not later than 1 year after the date of approval of the plan revision; but

“(ii) shall treat a conditional approval as a disapproval under this paragraph if the Chesapeake Bay State fails to comply with the commitment of the Chesapeake Bay State.

“(D) FULL APPROVAL REQUIRED.—A new or revised watershed implementation plan shall

not be treated as meeting the requirements of this section until the Administrator approves the entire new or revised plan.

“(E) CORRECTIONS.—In any case in which the Administrator determines that the action of the Administrator approving, disapproving, conditionally approving, or promulgating any new or revised watershed implementation plan was in error, the Administrator—

“(i) may, in the same manner as the approval, disapproval, conditional approval, or promulgation, revise the action of the Administrator, as appropriate, without requiring any further submission from the Chesapeake Bay State; and

“(ii) shall make the determination of the Administrator, and the basis for that determination, available to the public.

“(F) EFFECTIVE DATE.—The provisions of a State watershed implementation plan shall take effect upon the date of approval of the plan.

“(4) CALLS FOR PLAN REVISION.—In any case in which the Administrator determines that watershed implementation plan for any area is inadequate to attain or maintain applicable pollution limitations, the Administrator—

“(A) shall notify the Chesapeake Bay State of, and require the Chesapeake Bay State to revise the plan to correct, the inadequacies;

“(B) may establish reasonable deadlines (not to exceed 180 days after the date on which the Administrator provides the notification) for the submission of a revised watershed implementation plan;

“(C) make the findings of the Administrator under paragraph (3) and notice provided under subparagraph (A) public; and

“(D) require the Chesapeake Bay State to comply with the requirements applicable under the initial watershed implementation plan, except that the Administrator may adjust any dates (other than attainment dates) applicable under those requirements, as appropriate.

“(5) FEDERAL IMPLEMENTATION.—If a Chesapeake Bay State fails to submit a watershed implementation plan, to submit a biennial report, or to correct a previously missed 2-year commitment made in a watershed implementation plan, the Administrator shall, after issuing a notice to the State and providing a 90-day period in which the failure may be corrected—

“(A) withhold all funds otherwise available to the Chesapeake Bay State under this Act;

“(B) develop and administer a watershed implementation plan for that Chesapeake Bay State until such time as the Chesapeake Bay State has remedied the plan, reports, or achievements to the satisfaction of the Administrator;

“(C) require that all permits issued under section 402 for new or expanding discharges of nitrogen, phosphorus, or sediments acquire offsets that exceed by 100 percent an amount that would otherwise be required, taking into account attenuation, equivalency, and uncertainty; and

“(D) for the purposes of developing and implementing a watershed implementation plan under subparagraph (B)—

“(i) notwithstanding any other provision of this Act (including any exclusion or exception contained in a definition under section 502), promulgate such regulations or issue such permits as the Administrator determines to be necessary to control pollution sufficient to meet the water quality goals defined in the watershed implementation plan; and

“(ii) enforce any permits issued in accordance with the watershed implementation plan in the same manner as other permits issued under section 402 are enforced.

“(6) NITROGEN AND PHOSPHORUS TRADING PROGRAM.—

“(A) ESTABLISHMENT.—Not later than May 12, 2012, the Administrator, in cooperation with each Chesapeake Bay State, shall establish an interstate nitrogen and phosphorus trading program for the Chesapeake Bay for the generation, trading, and use of nitrogen and phosphorus credits to facilitate the attainment and maintenance of the Chesapeake Bay-wide TMDL for nitrogen and phosphorus.

“(B) TRADING SYSTEM.—The trading program established under this subsection shall, at a minimum—

“(i) define and standardize nitrogen and phosphorus credits and establish procedures or standards for ensuring equivalent water quality benefits for all credits;

“(ii) establish procedures or standards for certifying and verifying nitrogen and phosphorus credits to ensure that credit-generating practices from both point sources and nonpoint sources are achieving actual reductions in nitrogen and phosphorus;

“(iii) establish procedures or standards for generating, quantifying, trading, and applying credits to meet regulatory requirements and allow for trading to occur between and across point source or nonpoint sources;

“(iv) establish baseline requirements that a credit seller must meet before becoming eligible to generate saleable credits;

“(v) establish points-of-regulation at the sub-State level to facilitate trading and promote water quality goals under which—

“(I) States may designate point sources as points-of-regulation;

“(II) States may aggregate multiple sources to serve as points-of-regulation; and

“(III) the Administrator shall establish guidelines or standards to ensure that points-of-regulation shall be generally consistent across States;

“(vi) ensure that credits are used in accordance with permit requirements under the national pollutant discharge elimination system established under section 402 and trade requirements have been adequately incorporated into the permits;

“(vii) ensure that private contracts between credit buyers and credit sellers contain adequate provisions to ensure enforceability under applicable law;

“(viii) establish procedures or standards for providing public transparency on nutrient trading activity;

“(ix) ensure that, if the local receiving water is impaired for the nutrient being traded but a TMDL has not yet been implemented for the impairment—

“(I) trades are required to result in progress toward or the attainment of water quality standards in the local receiving water; and

“(II) sources in the watershed may not rely on credits produced outside of the watershed;

“(x) require that the application of credits to meet regulatory requirements under this section not cause or contribute to exceedances of water quality standards, total maximum daily loads, or wasteload or load allocations for affected receiving waters, including avoidance of localized impacts;

“(xi) except as part of a consent agreement, prohibit the purchase of credits from any entity that is in significant noncompliance with an enforceable permit issued under section 402;

“(xii) consider and incorporate, to the maximum extent practicable, elements of State trading programs in existence as of the date of enactment of the Chesapeake Clean Water and Ecosystem Restoration Act of 2009; and

“(xiii) allow for, as appropriate, the aggregation and banking of credits by third parties.

“(C) FACILITATION OF TRADING.—In order to attract market participants and facilitate the cost-effective achievement of water-quality goals, the Administrator shall ensure that the trading program established under this paragraph—

“(i) includes measures to mitigate credit buyer risk;

“(ii) makes use of the best available science in order to minimize uncertainty and related transaction costs to traders, including the Administrator, in consultation with the Secretary of Agriculture, supporting research and other activities that increase the scientific understanding of nonpoint nutrient pollutant loading and the ability of various structural and nonstructural alternatives to reduce the loads;

“(iii) eliminates unnecessary or duplicative administrative processes; and

“(iv) incorporates a permitting approach under the national pollutant discharge elimination system established under section 402 that allows trading to occur without requiring the reopening or reissuance of permits to incorporate individual trades.

“(7) AUTHORITY RELATING TO DEVELOPMENT.—The Administrator shall—

“(A) establish, for projects resulting in impervious development, guidance relating to site planning, design, construction, and maintenance strategies to ensure that the land maintains predevelopment hydrology with regard to the temperature, rate, volume, and duration of flow;

“(B) establish model ordinances and guidelines with respect to the construction of low-impact development infrastructure and nonstructural low-impact development techniques for use by States, local governments, and private entities; and

“(C) not later than 180 days after promulgation of the regulations under subsection (j)(3)(B), issue such guidance, model ordinances, and guidelines as are necessary to carry out this paragraph.

“(8) ASSISTANCE WITH RESPECT TO STORMWATER DISCHARGES.—

“(A) GRANT PROGRAM.—The Administrator may provide grants to any local government within the Chesapeake Bay watershed that adopts the guidance, ordinances, and guidelines issued under paragraph (7).

“(B) USE OF FUNDS.—A grant provided under subparagraph (A) may be used by a local government to pay costs associated with—

“(i) developing, implementing, and enforcing the guidance, ordinances, and guidelines issued under paragraph (7); and

“(ii) implementing projects designed to reduce stormwater discharges.

“(9) CONSUMER AND COMMERCIAL PRODUCT REPORT.—Not later than 3 years after the date of enactment of the Chesapeake Clean Water and Ecosystem Restoration Act of 2009, the Administrator, in consultation with the Chesapeake Executive Council, shall—

“(A) review consumer and commercial products, the use of which may affect the water quality of the Chesapeake Bay watershed or associated tributaries, to determine whether further product nutrient content restrictions are necessary to restore or maintain water quality in the Chesapeake Bay watershed and those tributaries; and

“(B) submit to the Committees on Appropriations, Environment and Public Works, and Commerce, Science, and Transportation of the Senate and the Committees on Appropriations, Natural Resources, Energy and Commerce, and Transportation and Infrastructure of the House of Representatives a product nutrient report detailing the findings of the review under subparagraph (A).

“(I) PROHIBITION ON INTRODUCTION OF ASIAN OYSTERS.—Not later than 2 years after the date of enactment of the Chesapeake Clean

Water and Ecosystem Restoration Act of 2009, the Administrator shall promulgate regulations—

“(1) to designate the Asian oyster as a ‘biological pollutant’ in the Chesapeake Bay and tidal waters pursuant to section 502;

“(2) to prohibit the issuance of permits under sections 402 and 404 for the discharge of the Asian oyster into the Chesapeake Bay and tidal waters; and

“(3) to specify conditions under which scientific research on Asian oysters may be conducted within the Chesapeake Bay and tidal waters.

“(m) CHESAPEAKE NUTRIA ERADICATION PROGRAM.—

“(1) GRANT AUTHORITY.—Subject to the availability of appropriations, the Secretary of the Interior (referred to in this subsection as the ‘Secretary’), may provide financial assistance to the States of Delaware, Maryland, and Virginia to carry out a program to implement measures—

“(A) to eradicate or control nutria; and

“(B) to restore marshland damaged by nutria.

“(2) GOALS.—The continuing goals of the program shall be—

“(A) to eradicate nutria in the Chesapeake Bay ecosystem; and

“(B) to restore marshland damaged by nutria.

“(3) ACTIVITIES.—In the States of Delaware, Maryland, and Virginia, the Secretary shall require that the program under this subsection consist of management, research, and public education activities carried out in accordance with the document published by the United States Fish and Wildlife Service entitled ‘Eradication Strategies for Nutria in the Chesapeake and Delaware Bay Watersheds’, dated March 2002, or any updates to the document.

“(n) STUDY ON THE IMPACTS OF THE COMMERCIAL HARVESTING OF MENHADEN ON THE WATER QUALITY OF THE CHESAPEAKE BAY.—

“(1) DEFINITIONS.—In this subsection:

“(A) FISHERIES COMMISSION.—The term ‘Fisheries Commission’ means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by pursuant to the Act of May 4, 1942 (56 Stat. 267, chapter 283) and the Act of May 19, 1949 (63 Stat. 70, chapter 238).

“(B) FISHING.—Except as otherwise provided, the term ‘fishing’—

“(i) means—

“(I) the commercial catching, taking, or harvesting of menhaden, except when incidental to harvesting that occurs in the course of commercial or recreational fish-catching activities directed at a species other than menhaden;

“(II) the attempted commercial catching, taking, or harvesting of menhaden; or

“(III) any operation at sea in support of, or in preparation for, any activity described in subclause (I) or (II); and

“(ii) does not include any scientific research authorized by the Federal Government or by any State Government.

“(2) STUDY.—Not later than 5 years after the date of enactment of the Chesapeake Clean Water and Ecosystem Restoration Act of 2009, building on the research underway or conducted under the oversight of the National Oceanic and Atmospheric Administration, the Administrator, in cooperation and consultation with the Administrator of the National Oceanic and Atmospheric Administration and the Fisheries Commission, shall conduct and submit to Congress a study for the purposes of determining—

“(A) progress toward understanding the structure of the menhaden population of the Atlantic Coast of the United States and of the Chesapeake Bay;

“(B) the role of the population as filter feeders, including the role of the population with respect to impacting water clarity, dissolved oxygen levels, and other ecosystem functions;

“(C) the role of the population as prey species for predatory fish in the Chesapeake Bay and in coastal ecosystems;

“(D) the impact on the Atlantic coastal and Chesapeake Bay ecosystems of fishing for menhaden;

“(E) the impact on attainment of the water quality goals of this Act of commercial fishing for menhaden; and

“(F) the recommendations of the Administrator, if any, for future sustainable management of such fishing and additional research needed to fully address the progress, roles, and impacts described in this paragraph.

“(o) EFFECT ON OTHER REQUIREMENTS.—

“(1) IN GENERAL.—Nothing in this section removes or otherwise affects any other obligation for a point source to comply with other applicable requirements under this Act.

“(2) VIOLATIONS BY STATES.—The failure of a State to submit a watershed implementation plan or biennial report, or to correct a previously missed 2-year commitment made in a watershed implementation plan, by the applicable deadline established under this section shall—

“(A) constitute a violation of this Act; and

“(B) subject the State to—

“(i) enforcement action by the Administrator; and

“(ii) civil actions commenced pursuant to section 505.

“(3) FAILURE OF ADMINISTRATOR TO ACT.—The failure of the Administrator to act under this section shall subject the Administrator to civil actions commenced pursuant to section 505.

“(p) EVALUATION BY THE INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall evaluate the implementation of this section on a periodic basis of not less than once every 3 years.

“(q) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IMPLEMENTATION AND MONITORING GRANTS.—

“(A) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated or otherwise made available to carry out this section, there are authorized to be appropriated to the Administrator—

“(i) to provide implementation grants under subsection (e)(3)(A), \$80,000,000 for each of fiscal years 2010 through 2015, to remain available until expended;

“(ii) to carry out a freshwater monitoring program under subsection (e)(3)(B), \$5,000,000 for each of fiscal years 2010 through 2015; and

“(iii) to carry out a Chesapeake Bay and tidal water monitoring program under subsection (e)(3)(B), \$5,000,000 for each of fiscal years 2010 through 2015.

“(B) COST SHARING.—The Federal share of the cost of a program carried out using funds from a grant provided—

“(i) under subparagraph (A)(i) shall not exceed 50 percent; and

“(ii) under clause (ii) or (iii) of subparagraph (A) shall not exceed 80 percent.

“(2) CHESAPEAKE STEWARDSHIP GRANTS.—There is authorized to be appropriated to carry out subsection (h)(2) \$15,000,000 for each of fiscal years 2010 through 2014.

“(3) STORM WATER POLLUTION PLANNING AND IMPLEMENTATION GRANTS.—

“(A) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized or otherwise made available to carry out this section, there are authorized to be appropriated to the Administrator—

“(i) to carry out subsection (k)(8)(B)(i), \$10,000,000; and

“(i) to carry out subsection (k)(8)(B)(ii), \$1,500,000,000.

“(B) COST-SHARING.—A grant provided for a project under—

“(i) subsection (k)(8)(B)(i) may not be used to cover more than 80 percent of the cost of the project; and

“(ii) subsection (k)(8)(B)(ii) may not be used to cover more than 75 percent of the cost of the project.

“(4) NUTRIA ERADICATION GRANTS.—

“(A) IN GENERAL.—There is authorized to be appropriated to the Secretary of the Interior to provide financial assistance in the Chesapeake Bay watershed under subsection (m) \$4,000,000 for each of fiscal years 2010 through 2015.

“(B) COST-SHARING.—

“(i) FEDERAL SHARE.—The Federal share of the cost of carrying out the program under subsection (m) may not exceed 75 percent of the total costs of the program.

“(ii) IN-KIND CONTRIBUTIONS.—The non-Federal share of the cost of carrying out the program under subsection (m) may be provided in the form of in-kind contributions of materials or services.

“(5) LIMITATION ON ADMINISTRATIVE EXPENSES.—Not more than 10 percent of the annual amount of any grant provided by the Administrator or Secretary under any program described in paragraph (1), (2), (3), or (4) may be used for administrative expenses.

“(6) AVAILABILITY.—Amounts authorized to be appropriated under this subsection shall remain available until expended.”.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 2694. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 1776, to amend title XVIII of the Social Security Act to provide for the update under the Medicare physician fee schedule for years beginning with 2010 and to sunset the application of the sustainable growth rate formula, and for other purposes; which was ordered to lie on the table.

SA 2695. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 3548, to amend the Supplemental Appropriations Act, 2008 to provide for the temporary availability of certain additional emergency unemployment compensation, and for other purposes; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

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At the appropriate place, insert the following:

#### TITLE—MEDICAL CARE ACCESS PROTECTION

##### SEC. 1. SHORT TITLE.

This title may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

##### SEC. 2. DEFINITIONS.

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution system” or “ADR” means a sys-

tem that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and

hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this title, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care

institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

### **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this title applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

### **SEC. 4. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered

against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

### **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) **CONTINGENCY FEES.**—

(A) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant’s damage recovery to such attorney, and to redirect such damages to the claimant

based upon the interests of justice and principles of equity.

(B) **LIMITATION.**—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33½ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) **EXPERT WITNESSES.**—

(1) **REQUIREMENT.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) **PHYSICIAN REVIEW.**—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) **SPECIALTIES AND SUBSPECIALTIES.**—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) **LIMITATION.**—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanence of medical or physical impairment.

### **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

(a) **IN GENERAL.**—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) **PRESERVATION OF CURRENT LAW.**—Where a payor of collateral source benefits has a right of recovery by reimbursement or



subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

#### SEC. 7. PUNITIVE DAMAGES.

##### (a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

##### (b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

##### (c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or med-

ical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term “medical product” means a drug or device intended for humans. The terms “drug” and “device” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

#### SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

#### SEC. 9. EFFECT ON OTHER LAWS.

##### (a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

##### (b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

#### SEC. 10. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title shall preempt, subject to

subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this title shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this title) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this title, notwithstanding section 5(a).

##### (c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this title;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this title;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

#### SEC. 11. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this title, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

**SA 2695.** Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 3548, to amend the Supplemental Appropriations Act, 2008 to provide for the temporary availability of certain additional emergency unemployment compensation, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, after line 9, insert the following:

#### **TITLE II—EMPLOYMENT ELIGIBILITY VERIFICATION**

#### **SEC. 201. REPEAL OF TERMINATION OF THE E-VERIFY PROGRAM.**

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1324a note) is amended by striking “Unless” and all that follows.

**SEC. 202. DESIGNATION OF THE E-VERIFY PROGRAM.**

(a) DESIGNATION.—Sections 401(c)(1), 403(a), 403(b)(1), 403(c)(1), and 405(b)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1324a note) are amended by striking “basic pilot program” each place that term appears and inserting “E-Verify Program”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1324a note) is amended—

(1) in the heading of section 403(a) by striking “BASIC PILOT” and inserting “E-VERIFY”; and

(2) in section 404(h)(1) by striking “under a pilot program” and inserting “under this subtitle”.

**SEC. 203. REQUIREMENT FOR RECIPIENTS OF UNEMPLOYMENT COMPENSATION BENEFITS TO PARTICIPATE IN THE E-VERIFY PROGRAM.**

(a) IN GENERAL.—No individual may receive unemployment compensation benefits under any State or Federal law until after the date that the individual's identity and employment eligibility are verified through E-Verify Program (as designated by section 202) under title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1324a note).

(b) EFFECTIVE DATE.—The requirements of subsection (a) shall take effect on the date that is 180 days after the date of enactment of this Act.

**SEC. 204. REQUIREMENT FOR CONTRACTORS TO PARTICIPATE IN THE E-VERIFY PROGRAM.**

The head of each agency or department of the United States that enters into a contract shall require, as a condition of the contract, that the contractor participate in the E-Verify Program (as designated by section 202) under title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1324a note) to verify the identity and employment eligibility of—

(1) all individuals hired during the term of the contract by the contractor to perform employment duties within the United States; and

(2) all individuals assigned by the contractor to perform work within the United States the under such contract.

**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, October 22, 2009, at 2:15 p.m. in room 628 of the Dirksen Senate Office Building to conduct a business meeting pending committee issues, to be followed immediately by an oversight hearing on Indian Energy and Energy Efficiency.

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. BYRD. 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 October 20, 2009, at 9:30 a.m. to conduct a hearing entitled “The State of the Nation's Housing Market.”

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

**COMMITTEE ON FINANCE**

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on October 20, 2009, at 10 a.m. in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled “S. 1631, the Customs Facilitation and Trade Enforcement Act of 2009.”

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

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

Mr. BYRD. 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 Tuesday, October 20, 2009, at 2:30 p.m.

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

**COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP**

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate on October 20, 2009, at 10:30 a.m. to conduct a hearing entitled “Reform Done Right: Sensible Health Care Solutions for America's Small Businesses.”

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

**SELECT COMMITTEE ON INTELLIGENCE**

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on October 20, 2009, at 2:30 p.m.

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

**SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS**

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, be authorized to meet during the session of the Senate, on October 20, 2009, at 10 a.m. in room SD-226 of the Dirksen Senate Office Building, to conduct a hearing entitled “Medical Debt: Can Bankruptcy Reform Facilitate a Fresh Start?” The witness list is attached.

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

**PRIVILEGES OF THE FLOOR**

Mr. BYRD. Mr. President, I ask unanimous consent that Alex Avanni, a detailee to the Committee on Appropriations, be given full privileges during debate on H.R. 2892 today.

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

**UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR**

Mr. REID. I now ask unanimous consent that on Wednesday morning, October 21, following the period of morning business, the Senate proceed to executive session to consider Calendar No. 469, the nomination of Roberto Lange to be U.S. District Judge for the District of South Dakota; that debate on the nomination be limited to 2 hours equally divided and controlled between Senators LEAHY and SESSIONS or their designees, with the vote on confirmation occurring at 2 p.m.; that upon confirmation, the motion to reconsider be considered made and laid on the table, no further motions be in order, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

**MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY AMENDMENTS ACT OF 2009**

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 1818.

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

The legislative clerk read as follows:

A bill (S. 1818) to amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to honor the legacy of Stewart L. Udall, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, there be no intervening action or debate, and any statements relating to this bill be printed in the RECORD.

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

The bill (S. 1818) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1818

*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 “Morris K. Udall Scholarship and Excellence in National Environmental Policy Amendments Act of 2009”.

**SEC. 2. SHORT TITLE.**

Section 1 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5601 note; Public Law 102-259) is amended to read as follows:

**“SECTION 1. SHORT TITLE.**

“This Act may be cited as the ‘Morris K. Udall and Stewart L. Udall Foundation Act.’”

**SEC. 3. FINDINGS.**

Section 3 of the Morris K. Udall and Stewart L. Udall Foundation Act (20 U.S.C. 5601) is amended—

(1) in paragraph (3), by striking “and” at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(5) the Foundation—

“(A) since 1995, has operated exceptional scholarship, internship, and fellowship programs for areas of study related to the environment and Native American tribal policy and health care;

“(B) since 1999, has provided valuable environmental conflict resolution services and leadership through the United States Institute for Environmental Conflict Resolution; and

“(C) is committed to continue making a substantial contribution toward public policy in the future by—

“(i) playing a significant role in developing the next generation of environmental and Native American leaders; and

“(ii) working with current leaders to improve decisionmaking on—

“(I) challenging environmental, energy, and related economic problems; and

“(II) tribal governance and economic issues;

“(6) Stewart L. Udall, as a member of Congress, Secretary of the Interior, environmental lawyer, and author, has provided distinguished national leadership in environmental and Native American policy for more than 50 years;

“(7) as Secretary of the Interior from 1961 to 1969, Stewart L. Udall oversaw the creation of 4 national parks, 6 national monuments, 8 national seashores and lakeshores, 9 recreation areas, 20 historic sites, and 56 wildlife refuges; and

“(8) it is fitting that the leadership and vision of Stewart L. Udall in the areas of environmental and Native American policy be jointly honored with that of Morris K. Udall through the foundation bearing the Udall name.”.

#### SEC. 4. DEFINITIONS.

Section 4 of the Morris K. Udall and Stewart L. Udall Foundation Act (20 U.S.C. 5602) is amended—

(1) in paragraph (1), by striking “Morris K. Udall Scholarship and Excellence in National Environmental Policy”;

(2) in paragraph (5), by striking “Scholarship and Excellence in National Environmental Policy” and inserting “and Stewart L. Udall”; and

(3) in paragraph (9), by striking “Scholarship and Excellence in National Environmental Policy” and inserting “and Stewart L. Udall”.

#### SEC. 5. ESTABLISHMENT OF FOUNDATION.

Section 5 of the Morris K. Udall and Stewart L. Udall Foundation Act (20 U.S.C. 5603) is amended—

(1) in the section heading, by striking “**SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY**” and inserting “**AND STEWART L. UDALL**”;

(2) in subsection (a), by striking “Scholarship and Excellence in National Environmental Policy” and inserting “and Stewart L. Udall”; and

(3) in subsection (f)(2), by striking “the rate specified for employees in level IV of the Executive Schedule under section 5315 of title 5, United States Code” and inserting “a rate determined by the Board in accordance with section 5383 of title 5, United States Code”.

#### SEC. 6. AUTHORITY OF FOUNDATION.

Section 7 of the Morris K. Udall and Stewart L. Udall Foundation Act (20 U.S.C. 5605) is amended—

(1) in subsection (a)(5)—

(A) in subparagraph (C), by striking “and” at the end;

(B) in subparagraph (D), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(E) to conduct training, research, and other activities under section 6(7).”; and

(2) by striking subsection (b) and inserting the following:

“(b) UDALL SCHOLARS.—Recipients of scholarships, fellowships, and internships under this Act shall be known as ‘Udall Scholars’, ‘Udall Fellows’, and ‘Udall Interns’, respectively.”.

#### SEC. 7. ESTABLISHMENT OF TRUST FUND.

Section 8 of the Morris K. Udall and Stewart L. Udall Foundation Act (20 U.S.C. 5606) is amended—

(1) in the section heading, by striking “**SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY**” and inserting “**AND STEWART L. UDALL**”; and

(2) in subsection (a), by striking “Scholarship and Excellence in National Environmental Policy” and inserting “and Stewart L. Udall”.

#### SEC. 8. EXPENDITURES AND AUDIT OF TRUST FUND.

Section 9(a) of the Morris K. Udall and Stewart L. Udall Foundation Act (20 U.S.C. 5607(a)) is amended by inserting before the period at the end the following: “, including a reasonable amount for official reception and representation expenses, as determined by the Board, not to exceed \$5,000 for a fiscal year”.

#### SEC. 9. USE OF INSTITUTE BY FEDERAL AGENCY OR OTHER ENTITY.

Section 11 of the Morris K. Udall and Stewart L. Udall Foundation Act (20 U.S.C. 5607b) is amended by adding at the end the following:

“(f) AGENCY MANAGEMENT OR CONTROL.—Use of the Foundation or Institute to provide independent and impartial assessment, mediation, or other dispute or conflict resolution under this section shall not be considered to be the establishment or use of an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).”.

#### SEC. 10. ADMINISTRATIVE PROVISIONS.

Section 12(a) of the Morris K. Udall and Stewart L. Udall Foundation Act (20 U.S.C. 5608(a)) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1)(A) appoint such personnel as may be necessary to carry out the provisions of this Act, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

“(B) fix the compensation of the personnel appointed under subparagraph (A) at a rate not to exceed the maximum rate for employees in grade GS-15 of the General Schedule under section 5332 of title 5, United States Code, except that up to 4 employees (in addition to the Executive Director under section 5(f)(2)) may be paid at a rate determined by the Board in accordance with section 5383 of that title.”;

(2) in paragraph (6), by striking “and” at the end;

(3) by redesignating paragraph (7) as paragraph (8); and

(4) by inserting after paragraph (6) the following:

“(7) to rent office space in the District of Columbia or its environs; and”.

#### APPOINTMENTS

The ACTING PRESIDENT pro tempore. The Chair announces, on behalf of the President pro tempore, pursuant to P.L. 110-315, the appointment of the following to be members of the Na-

tional Advisory Committee on Institutional Quality and Integrity: Daniel Klaich of Nevada, Cameron Staples of Connecticut, and Larry Vanderhoef of California.

#### ORDERS FOR WEDNESDAY, OCTOBER 21, 2009

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, October 21; 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 for 2 hours, with Senators permitted to speak for up to 10 minutes each, with the time divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the final half; that following morning business, the Senate proceed to executive session as provided for under the previous order.

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

#### PROGRAM

Mr. REID. Mr. President, Senators should expect two rollcall votes tomorrow at around 2 p.m. The first vote will be on the confirmation of Roberto Lange to be a U.S. district judge for the District of South Dakota. We anticipate setting up a second vote which would be on the motion to invoke cloture on the motion to proceed to S. 1776, the Medicare Physicians Fairness Act.

#### ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 7:38 p.m., adjourned until Wednesday, October 21, 2009, at 9:30 a.m.

#### NOMINATIONS

Executive nominations received by the Senate:

##### IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY 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. KEITH B. ALEXANDER

##### IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

##### To be vice admiral

REAR ADM. JOHN T. BLAKE