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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:

Eternal God, source of our strength, we come before You today remembering that Your presence and power sustain us during life's rigorous demands. Lord, it is comforting to know that in every situation You are always present to empower us with Your love.

Today, use our lawmakers as instruments of Your peace and love. Examine their hearts and minds, providing them with the courage to walk continually in Your truth. Look favorably upon their efforts to build a better nation and world, guiding them with Your wisdom.

Lord, lead our Nation also. May our efforts at home and abroad reflect Your character and grace.

We pray in Your Holy 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, NOVEMBER 17, 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 Republican leader.

Mr. McCONNELL. Mr. President, pending the arrival of the majority leader, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The majority leader is recognized.

### SCHEDULE

Mr. REID. Mr. President, I apologize to my counterpart, the distinguished Senator from Kentucky, for not being here, but I was occupied outside the Chamber.

Mr. President, following leader remarks, there will be a period for morning business for 1 hour, with Senators permitted to speak for up to 10 minutes each. The majority will control the first 30 minutes, the Republicans will control the final 30 minutes.

Following morning business, the Senate will resume consideration of H.R. 3082, the Military Construction-Veterans Affairs appropriations bill. Several amendments are still in order to the bill. We expect a vote for up to three of those amendments prior to lunch. Following the recess, we will have a number of votes we have to

take. It is important that we do that. The Senate will recess from 12:30 to 2:15 for the weekly party caucuses, but following the recess the Senate will proceed to vote in relation to the Inhofe amendment, No. 2774, to be followed by a vote on passage of the bill, as amended.

Upon disposition of H.R. 3082, there will be 1 hour of debate prior to a cloture vote on the nomination of David Hamilton to be U.S. circuit judge for the Seventh Circuit.

### RECOGNITION OF THE MINORITY LEADER

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

### HEALTH CARE REFORM

Mr. McCONNELL. Mr. President, we know the House-passed health care bill will cut Medicare, raise taxes, and raise premiums. We also know the bill being developed by the majority leader will do the same. This morning, I want to focus on the \$½ trillion cuts in Medicare—\$½ trillion over 10 years.

We have here the House-passed health care bill in its entirety. This is a 2,000-page, as the Wall Street Journal called it, "monstrosity." In the area of the Medicare cuts, what does that mean? When you say you are going to cut Medicare by \$½ trillion over 10 years, what does it mean? It means cuts to hospitals, cuts to Medicare Advantage, cuts to nursing homes, cuts to home health care, and cuts to hospice. Those vital programs would be collectively subjected to \$½ trillion in cuts over 10 years.

Focusing on hospice, this is the section of the bill that deals with hospice. The legalese is a little bit mind-boggling, but to give you a sense of how these things are written, it says, "Subclause (VII) of section"—and it goes on:

. . . 1814(i)(1)(c)(ii) of the Social Security Act . . . is amended by inserting after "the

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



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market basket percentage increase" the following: "(which is subject to the productivity adjustment . . . )"

Described in another section.

You would have to be steeped in legalese and minutia to understand what that means, so I am going to interpret it for our colleagues so they will know what that means. It means an \$8 billion cut to hospice. That is what that language means, an \$8 billion cut to hospice.

What does that mean for seniors? According to Victoria Scarborough, who is a nurse in Danville, KY, it means sacrificing patient care. Here is what she had to say about the prospect of an \$8 billion cut to hospice:

We are able to do this—provide excellent health care at low cost—because we are present at the bedside with the patient, sitting at the kitchen table, holding a spouse's hand. We depend upon our highly skilled personnel; our "services" are our people. For hospices the productivity adjustment makes little sense, we need our people.

That illustrates the impact of an \$8 billion cut in hospice.

On the chart behind me, I mention the other areas that are being cut: hospitals, Medicare Advantage, nursing homes, home health, and hospice, which I just described.

Another cut would be to Medicare Advantage. The section of the bill—this is the front page—dealing with the Medicare Advantage reforms, they are called, says "Phase-In Of Payment Based On Fee-For-Service Costs." What does that mean? What does "Phase-In Of Payment Based On Fee-For-Service Costs" mean? It means that \$236 billion in cuts to Medicare will occur—\$236 billion in this program out here, Medicare Advantage, that will occur as a result of this bill. What does that mean, the \$236 billion of cuts to Medicare Advantage? The Congressional Budget Office has said it means fewer benefits for seniors. That is the Congressional Budget Office that says it means fewer benefits for seniors.

Norma Hylton of Lexington, KY, recently wrote:

Mr. Obama says he'll take away the Medicare Advantage plans. . . . This makes us very concerned about the healthcare plans being debated. I truly believe all seniors (maybe others) will suffer.

We know the overall bill raises taxes, raises health insurance premiums for the 85 percent of Americans who already have health insurance, and cuts Medicare by \$½ trillion. This morning, what I tried to do is point out what some of those cuts mean; what taking \$8 billion out of hospice means, this important program dealing with folks who are at the end of life; and what taking \$236 billion out of Medicare Advantage means, as a practical matter, to constituents in my State and across the country.

I yield the floor.

#### 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, there will be a period of morning business for 1 hour, 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 Illinois is recognized.

#### HEALTH CARE REFORM

Mr. DURBIN. Mr. President, the Republican leader just came to the floor, as he has with regularity, to speak to the issue of health care reform. We are all addressing it because it is a major issue we are facing in this Congress, a major opportunity for this country to deal with a health care system that needs to be fixed. There are parts of it that are very strong but parts of it that need to be fixed.

The cost of health care today in America is going up so fast that it is outstripping the ability of individuals and businesses to buy health insurance coverage. We have seen the cost of premiums go up three times faster than wages. The story is obvious. For most workers across America, the choice each year is take-home pay or increased costs for health insurance, and they understand it is unsustainable.

Just 10 years ago, the cost of a health insurance plan for a family of four was \$6,000. This year, it is \$12,000, on average. Ten years from now, it will be \$24,000. To think that 10 years from now people will have to work to earn \$2,000 a month just to pay for the health care for a small family tells you we have to make a change.

The Senator from Kentucky on the Republican side came to the floor to criticize not the Senate bill but the House bill. I would say to the Senator from Kentucky, in all fairness, let's address the Senate bill which will be reported this week. It has literally been reviewed by the Congressional Budget Office for the last 3 or 4 weeks, and it will come out this week and be posted on the Internet for everyone to read in its entirety. At that point, I think the criticisms leveled by the Senator from Kentucky will be put in context. Let's look at the Senate bill.

I would also like to stand here and wave before you a copy of the Republican bill on health care reform, but it does not exist. There is no Republican alternative to health care reform. They are satisfied with the current system. They want to keep the status quo. Like the health insurance companies, they are happy with what exists. But most Americans, and certainly those I represent in Illinois, know better. They know we are at a distinct disadvantage when it comes to health care if we have to rely on health insurance companies for permission for coverage because

they are going to say no. Repeatedly, they say no. They deny you coverage when you need it the most, because of a preexisting condition. They deny you coverage because they say it costs too much. They deny you coverage because they don't want to cover a certain drug and they want to challenge you to fight them and appeal that decision. They deny coverage when you decide to change a job or lose a job. They deny coverage when a child reaches the age of 23 and is so-called emancipated and on his own. That is the existing system which the Republicans are supporting. They can support it if they wish, but most Americans do not. Most Americans want to see real health care reform.

Let's spend a moment speaking about Medicare, which the Senator from Kentucky addressed. Our goal is not only to preserve Medicare. As a political party, it was Democrats who created Medicare. It was Republicans who called it socialized medicine and opposed it. Over the years, they have tried to trim back on Medicare benefits, to reduce coverage and turn Medicare over to private insurers. That effort was called Medicare Advantage. When private health insurance companies came before Congress and said: We can do a better job than the government, we can offer Medicare coverage at a lower cost and do it more efficiently because we are the private sector, Republicans accepted that premise and tried to take away Medicare coverage from the government and offer it to private health insurance companies.

What happened? Some private health insurance companies did do it at a lower cost but not all of them. In fact, when it was all said and done, Medicare Advantage, this so-called private rescue of the Medicare Program, ended up costing 14 percent more than the Medicare Program itself. In other words, the Medicare Program was subsidizing private health insurance companies that couldn't keep their promise to deliver Medicare at a lower cost.

The Senator from Kentucky comes to the Chamber to defend those private health insurance companies, defend the subsidy they receive at the expense of Medicare. That is unacceptable and indefensible. Medicare offers the basic plan most Americans trust when they reach the age of 65. We are going to find a way to make sure we put Medicare on sound footing. The future of Medicare is in doubt if we don't deal with the underlying problems in our health care system today.

The Senator from Kentucky and his Republican side have no alternative. They are not offering health care reform or change. They are standing with the health insurance companies, defending Medicare Advantage, which enjoys this healthy subsidy from the Federal Government, and, frankly, not supporting our efforts to bring real reform to health insurance.

I can tell my colleagues the Medicare provisions in the House bill referred to

by the Senator from Kentucky were supported by AARP. They have been supported by other organizations: the Leadership Council of Aging Organizations, the National Committee to Preserve Social Security and Medicare. How does the Senator from Kentucky explain that; that they would endorse this approach to Medicare while he says it would destroy Medicare. Frankly, he happens to be mistaken. What we are doing is putting Medicare on a sound financial footing, reducing the increase in cost in medical procedures so Medicare isn't stripped of the basic funds it has.

In fact, when it is all said and done, we find that the House bill, the bill the Senator from Kentucky references, extends the life of the Medicare trust fund by an additional 5 years. How does the Senator from Kentucky explain that? If this is destroying Medicare, how does this health care reform extend its life?

Under the bill, overall national spending on health care would increase by only .8 percent over the next 10 years, compared to current law, even though 34 million Americans would be gaining coverage. Under the bill, out-of-pocket spending on health care would decline by more than \$200 billion over what it would have been by the year 2019.

When it comes to Medicare Advantage, the Senator from Kentucky says it offers more benefits for seniors. I am not opposed to offering more benefits for seniors, but I wish to make sure each and every senior under Medicare has a basic Medicare package they can count on and afford and that Medicare is put on a permanent, sound financial footing. Unfortunately, on the Republican side, they have offered no alternative.

#### MILCON APPROPRIATIONS

Mr. DURBIN. Mr. President, there is a proposal by the Federal Government that relates to a small town in the State I represent. The town is Thomson, IL. It is in Carroll County. It is 150 miles from Chicago in the northwestern portion. Carroll County is one of the small, rural counties which has been struggling because a lot of employers have gone and a lot of people have moved. Those who remain are hit hard by the recession and desperate for employment. The mayor of Thomson, Jerry "Duke" Hebel, wrote a letter to me and Governor Quinn and others asking for us to consider a prison which had been opened there for expansion as a Federal prison, and the administration is now looking at that possibility. If the Federal Government moves to take over this prison, it could create up to 3,000 jobs in the area, good-paying jobs with benefit packages. It would be a dramatic infusion into the local economy. In fact, it is estimated it would increase growth in the local economy by over \$200 million a year, almost \$1 billion over 4 years.

There is nothing that could be brought more quickly to have that kind of positive impact on a local economy. Part of this is to transfer the detainees from Guantanamo to this new prison and basically close Guantanamo. Guantanamo detainees cost the Government about \$430,000 a year per detainee. It is an extremely expensive facility, manned by the Department of Defense. Of course, we have to provide barracks and accommodations and creature comforts that we want our men and women in uniform to have at Guantanamo. Moving it to Thomson, IL, will dramatically reduce that cost.

There are those who resist this and do not want to see us move forward. I say they don't understand these detainees would be placed in a portion of this Thomson facility run by the Department of Defense. They would be in what is virtually the most secure prison in America today, where there has, incidentally, never been an escape from the supermax facility since it was built. They would be housed in this situation with no visitors. In military prisons, there is no requirement for visitation, even though some critics have said otherwise. They would not be released into the general population under any conditions because we have passed laws saying that will never happen, prohibiting release of these detainees into America. The net result is to create a dramatic number of new jobs.

Today we are going to consider amendment No. 2774 to the Military Construction appropriations bill, offered by Senator INHOFE of Oklahoma. It prohibits any funds in this bill from being used to construct or modify a facility to hold a detainee from Guantanamo. The Obama administration strongly opposes this amendment, and I hope my colleagues will join. This morning Senators REID and MCCONNELL received a letter from Defense Secretary Robert Gates, Homeland Security Secretary Janet Napolitano, and Attorney General Eric Holder, expressing strong opposition to the Inhofe amendment. It reads, in part:

Like the President and numerous others, both Republicans and Democrats, we are convinced that closing the Guantanamo Bay detention center is in the national security interests of the United States. . . . We acknowledge that closing Guantanamo has proven difficult, but that is not a reason for the Congress to preclude this important national security objective. . . . We need to get on with the work of enhancing our national security by finally closing the Guantanamo Bay detention center. The Inhofe amendment would have the opposite effect and would likely prevent further progress on this important issue. We ask that you join us in opposing the Inhofe amendment.

Let me be clear. This amendment would not prevent Guantanamo detainees from being transferred to the United States. Under current law, detainees can be transferred to the United States to be prosecuted. The Inhofe amendment does not change this. Here is what it would do: It would

prohibit the Obama administration from upgrading security at any facility in the United States where Guantanamo detainees would be held. That is unwise and unprecedented. It certainly is not in the best interests of homeland security in the United States.

Let's take a hypothetical situation. In fact, let's move beyond a hypothetical. Let's take a real-life example. Last Friday, Attorney General Eric Holder announced five Guantanamo detainees who were allegedly involved in the 9/11 terrorist attack will be prosecuted in Federal court in the Southern District of New York. They include Khalid Shaikh Mohammed, the alleged mastermind of the 9/11 attacks. I agree with Michael Bloomberg, the Republican mayor of New York, who recently said:

I support the Obama Administration's decision to prosecute 9/11 terrorists here. It is fitting that 9/11 suspects face justice near the World Trade Center where so many New Yorkers were murdered. . . . I have great confidence that the [New York Police Department], with federal authorities, will handle security expertly.

Federal courts are clearly capable of prosecuting terrorists. Since 9/11, we have successfully prosecuted 195 terrorists in our article III Federal courts. I strongly support the Attorney General's decision to prosecute these suspects in Federal court. But regardless of how one feels about the issue, every Member of Congress should know what the Inhofe amendment means. Under the Inhofe amendment, the government could not spend any money to upgrade security facilities in New York City to make certain any of these terrorist suspects are held safely. We would be prohibited from spending money because Guantanamo detainees are involved. How much sense does that make? If there is the need to upgrade security so they can be tried in a safe environment with no danger to the people of New York City, we want to spend that money, if necessary. The Inhofe amendment stops us, precludes us from spending that money. Why would the Senator from Oklahoma want to tie the President's hands?

In his zeal to keep open Guantanamo, he is trying to limit this administration. I think that is a mistake. He believes—others do as well—we should not close Guantanamo. I agree with GEN Colin Powell. He said: If I had my way, I wouldn't close Guantanamo tomorrow. I would close it this afternoon. He knows, and we know, it has become a dangerous symbol to the world, a dangerous symbol being used by terrorist organizations to recruit more for their ranks. That is why GEN Colin Powell has called for the closure of Guantanamo. That is why it has also been called on to close by former President George W. Bush, who on eight different occasions called for its closure. GEN David Petraeus has also called for its closure, as has ADM Mike Mullen, Chairman of the Joint Chiefs of Staff, as well as Robert Gates, Secretary of

Defense under Presidents Bush and Obama. I urge colleagues to oppose the Inhofe amendment, give this administration the tools it needs to keep America safe. Let us not second-guess them when it comes to safety and security for America's people. That is what the Inhofe amendment would do. That, in and of itself, would be a serious mistake.

#### FOOD SAFETY MODERNIZATION ACT

Mr. DURBIN. Mr. President, tomorrow, Chairman TOM HARKIN will lead the Health, Education, Labor, and Pensions Committee in the markup of a food safety bill, S. 510, the FDA Food Safety Modernization Act. I introduced this bill with Senator JUDD GREGG of New Hampshire and a broad coalition of Senators from both sides of the aisle. I thank those Senators—especially the late Senator Ted Kennedy, who joined as a cosponsor of the bill, and Senators DODD, BURR, ISAKSON, ALEXANDER, KLOBUCHAR, and CHAMBLISS—for joining me to fight for America's food safety. Since we introduced this bill, a number of other Members have signed on, including Senators HATCH, GILLIBRAND, TOM UDALL, and Senator BURRIS. We are pleased to have their support. There is bipartisan support for the FDA Food Safety Modernization Act because food safety is not a partisan issue. The safety of our food supply affects everybody every day.

As we learned from recent events, eating unsafe food—whether it is spinach contaminated with *E. coli*, peanut butter laced with salmonella or melamine-spiked candy—can lead to serious illness and death. Every year 76 million Americans suffer from preventable foodborne illness; 325,000 are hospitalized each year and 5,000 will die. Every 5 minutes, three people are rushed to the hospital because the food they ate made them sick. At the end of each day, 13 will die. The tragedy of these deaths is clear. We certainly recognize the anguish of loved ones who lose someone to food contamination. What is less understood are the long-term consequences for those who do survive. Victims are affected for months, sometimes years, after they leave the hospital.

Last week, the Center for Foodborne Illness, Research & Prevention released a report on the long-term health consequences of foodborne illness. The report shows it is often the lasting damage that causes more pain and suffering than the immediate effects felt right after eating contaminated food. That means that after the initial stomach aches and diarrhea have run their course, many foodborne illness victims will suffer from a lifetime of paralysis, kidney failure, seizures and mental disability and sometimes premature death. What is worse, children, pregnant women, and elderly Americans are among the most vulnerable.

I wish to show you a photo of this lovely young girl. Her name is Rylee.

She knows the story of foodborne illness personally. On the morning of her ninth birthday, Rylee learned her family would celebrate by taking a road trip to an aquarium. Rylee couldn't have been more excited. Similar to many 9-year-olds, this cute little girl loved to sing and dance. On the morning of her birthday, she was doing both. Before the end of the day, Rylee was rushed to the hospital, where she was hospitalized for a month. Before she got to the aquarium, Rylee ate a salad. What she didn't know was the salad contained spinach that was laced with *E. coli*. The next day, Rylee had a stomach ache and severe diarrhea.

Her condition continued to worsen. Days later she was in excruciating pain. Her blood pressure was abnormally low. She was dehydrated, and her kidneys began to fail. As her parents watched in horror, Rylee began to hallucinate on the hospital bed. Rylee and her family were suffering more pain than they ever thought imaginable—all because Rylee had eaten a salad she thought was safe.

She escaped this incident with her life. But she, like millions of foodborne illness victims, will endure health complications indefinitely. She will need multiple kidney transplants over the course of her life. She had to endure a painful surgery and challenging speech therapy, so she can no longer sing or speak with a loud voice.

Rylee has not given up hope. She was recently walking the Halls of Congress advocating for food safety reform. I heard her share her story with hundreds of parents, victims, and other supporters of the Make Our Food Safe Coalition.

Although her voice is now permanently softer and lower than it was before her illness, we heard Rylee's message loudly and clearly: All Americans deserve food that is safe.

Mr. President, I would like to show you another photo I have in the Chamber. This is a picture of Mary Ann of Mendota, IL. She is 80 years old. Mary Ann is pictured with her young grandson. I shared her story with the HELP Committee just a few weeks ago.

Mary Ann was planning a big Labor Day family celebration, and she decided to make a spinach salad. She used spinach which she did not know was contaminated with *E. coli*.

Hours after eating the spinach, Mary Ann was sprawled across her bathroom floor—vomiting violently and experiencing uncontrollable diarrhea. Then her kidneys failed.

Instead of spending time with her family on that holiday, she spent it in the hospital, staying there for 6 weeks, receiving medical treatment intravenously. Thankfully, Mary Ann is alive, but the quality of her life is never going to be the same.

This country has a good system, and most of our food is safe. But there are far too many lives—such as Mary Ann's and Rylee's—that have been compromised by the long-term effects of foodborne illness.

Parsing the FDA Food Safety Modernization Act is an important step toward ensuring that the food we eat is safe and that we no longer hear these heartbreaking stories. This act will finally provide the FDA with the authority and resources it needs to prevent, detect, and respond to food safety problems.

The bill will increase the frequency of inspection at all food facilities, according to the risk they present. Because FDA does not currently have the resources or statutory mandate to inspect more frequently, most facilities are only inspected by the FDA about once every decade. The FDA Food Safety Modernization Act will require high-risk facilities to be inspected annually. Lower risk facilities would be inspected every 4 years.

The bill gives the FDA long-overdue authority to conduct mandatory recalls of contaminated food. Most people are stunned to know that the Federal Government does not have the authority to recall contaminated food. This bill will change that when it is signed into law.

Most companies cooperate with the FDA's recall efforts, but we have to make sure those who hesitate and are uncooperative are called into line.

Some—such as the Peanut Corporation of America, which distributed thousands of pounds of peanuts and peanut paste contaminated with salmonella—did not fully or quickly recall the food that was on the markets that made people sick. The food safety bill in HELP will change that by ensuring that the FDA can compel a company to recall food.

Experts agree that individual businesses are in the best position to identify and prevent food safety hazards. People who run these facilities know where the vulnerabilities are on their assembly lines, and they know which hazards the food products they work with are most at risk for. That is why the bill asks each business to identify the food safety hazards at each of its locations and then implement a plan that addresses the hazards.

The bill gives FDA the authority to review and evaluate those food safety hazard prevention plans and to hold companies accountable for not complying with the requirements of the plan.

Finally, the bill gives the FDA the authority to prevent contaminated food from other countries from entering the United States. Importers will have to verify the safety of foreign suppliers and imported food so we know the food we are bringing into our country is safe. If a foreign facility refuses U.S. food safety inspections, the FDA will then have the authority to deny entry to imports from that facility.

The FDA Food Safety Modernization Act employs these and other common-sense approaches to help the FDA do its job of ensuring the food we eat is safe. The bill is balanced, bipartisan, and it is supported by a broad coalition

of not just consumer advocates but the major business interests in food production and marketing.

I thank Chairman TOM HARKIN of Iowa and Senator MIKE ENZI of Wyoming for leading the markup of S. 510. I hope this bill will come to the Senate floor. I know my Republican colleagues who have joined me as cosponsors believe, as I do, this is a step in the right direction of ensuring the food supply in America is even safer.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

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

The assistant bill clerk proceeded to call the roll.

Mr. ALEXANDER. 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. ALEXANDER. Mr. President, would you kindly let me know when 9 minutes have expired in my remarks?

The ACTING PRESIDENT pro tempore. The Senator will be notified.

Mr. ALEXANDER. Thank you, Mr. President.

#### HEALTH CARE REFORM

Mr. ALEXANDER. Mr. President, not long ago, eight Democratic Senators wrote to the majority leader and said what all 40 Republican Senators have expressed and what most Americans—I think maybe 99 percent of Americans—would say we need to do. They said: Before we proceed to a vote on the health care bill that is so much in discussion across this country today, that we, No. 1, have a complete legislative text; that we, No. 2, have a complete estimate of its costs from the Congressional Budget Office; and, No. 3, it be on the Internet for 72 hours so the American people can read it—read the text, know what it costs, have time to consider both.

We are looking forward to that bill. What we know is, we have a 2,000-page bill that has been passed by the House of Representatives narrowly. The majority leader has had in his office a secret bill that he is working on which we have not seen yet.

This morning, I would like to talk about one of the reasons it is important we be able to read the text, know what it costs, and know how it affects each American. We have talked a lot about how the bills we have seen so far have the effect of raising insurance premiums, increasing taxes, cutting Medicare, and increasing the Federal debt, when what we are supposed to be doing is reducing the cost of health care for individuals and families and reducing the cost of health care to the government which is spiraling out of control in terms of deficit spending.

But all of that obscures an even more serious problem with the health care bills we have seen so far; that is, the effect on the States. As a former Gov-

ernor of Tennessee, that is what I want to address for a few minutes this morning.

I picked up my newspaper in Nashville on Sunday morning, and here was the headline: “[Governor] Bredesen Faces Painful Choices as [Tennessee] Begins Budget Triage.” “Triage”—that is a sort of talk usually reserved for an emergency room.

I have said several times—and some people, I am sure, thought I was being facetious—that any Senator who votes to expand Medicaid and transfer enormous costs to the States ought to be sentenced to go home and serve as Governor for 2 terms and try to implement the Medicaid Program, which is bankrupting States and ruining public higher education. I am not facetious when I say that because if we have a chance to read these bills and know what they cost, they have the potential to literally bankrupt States and ruin public higher education.

But do not take my word for it. Here is the Nashville Tennessean and the Knoxville News Sentinel writing about Governor Bredesen of Tennessee. Knoxville.com reports: “relentless bad news.” Now, Tennessee is “fiscally better off than many States.” The “shortfall is less severe than the Bredesen administration estimate[d].” “But there is no quarrel,” according to the State’s largest newspapers, that Tennessee’s State government “faces a grim situation”—“\$750 million in cuts.” Then things got worse because the money coming in this year is less than was expected. The Governor “has told his department heads to present him with suggestions for budget cuts of 6 percent and to include contingency plans for adding another 3 percent.”

Those are real cuts. We talk about cuts in Washington. We talk about reducing the rate of growth. Those are not real cuts. In Tennessee and in California and in Illinois, and all across this country, cuts are cuts. You spend less this year than you did the year before.

“Layoffs . . . are likely, the Governor says.” “This will be my toughest budget year.”

Charles Sisk, writing in the Tennessean of November 16, says:

Tennessee might release as many as 4,000 non-violent felons, possibly even including people convicted of drug dealing and robbery, under a plan outlined Monday by the Department of Correction to deal with the state’s budget crisis.

The National Governors Association, in an analysis last week, points out a combination of the economic downturn—the deepest since the Great Depression—and the increase in State Medicaid—now, this is not Medicare for seniors we are talking about; this is the largest program for low-income Americans, 60 million Americans for which States pay about one-third of that cost, which the health care plans we have seen intend to dump about 14 million more Americans into—spending for those programs average 8 per-

cent growth this year, while Governors such as Governor Bredesen are making actual cuts. Well, you can imagine what that is doing to other important State programs and tuition.

The Washington Post reported what the Office of the Actuary at the Centers for Medicare and Medicaid Services said over the weekend; which is, generally speaking, when we add more people to the Medicaid Program the doctors and the hospitals who are expected to serve them will not be willing to serve them. I will say more about that in a minute.

So how in the world, in the light of these conditions, could we even be thinking about a provision in this health care bill that would add tens of billions of new costs to the States? We decide in Washington that it is a great idea to expand health care, but we send the bill to the Governors and the legislators who are in their worst fiscal condition since the Great Depression.

That is called an unfunded mandate. If we think it is such a great idea to dump 14 million more Americans into a low-income program called Medicaid—for which 50 percent of doctors will not see new patients because they are so under-reimbursed—then we should pay for it somehow in the Federal budget instead of dumping the bill onto the States.

For Tennessee, the costs will be, according to Governor Bredesen, who is a Democrat and the cochairman of the National Governors Association health care caucus—he says this will cost our State \$1.4 billion over the next 5 years.

This is real money. How much money? Well, based on my experience as Governor, I do not see how the State of Tennessee could afford to pay that without instituting a new State income tax or without doing serious damage to higher education in Tennessee or both. And I believe it is true of every State in America. The majority leader thought it was true of his State, so he fixed it for his State and three others, but for just 5 years. Then what happens after the 5 years? Well, you put the bridge out on the chasm a little further and you fall off as far or maybe farther than you already would.

Forty percent of physicians, according to a 2002 Medicare Payment Advisory Committee survey, restrict access for Medicaid patients. So we are saying here we have a great health care reform bill and not only is it going to bankrupt States but it doesn’t do any favors for a great many low-income Americans, because we are putting them in a system where 40 percent of doctors won’t see them freely, and 50 percent of doctors won’t see new Medicaid patients at all. In some States, the number of doctors who will see babies, who will see children, is as low as 20 or 30 or 40 percent. So as a way of partially dealing with that, the House bill says, OK, States are going to be required to pay primary care doctors who see Medicaid patients as much as Medicare doctors are paid. That adds another big new bill to the State, runs up

the State taxes, runs up the college tuition payments when the States are unable to properly fund the colleges and the universities and the community colleges. So my colleagues can see why this is so much trouble: billions more for the Federal Government; billions more for the States. Then it is like giving the low-income Americans who end up in this government program, which is expanding, a ticket to a bus line that doesn't operate half the time, because half the doctors won't see new Medicaid patients.

The ACTING PRESIDENT pro tempore. The Senator has 1 minute remaining.

Mr. ALEXANDER. Thank you very much, Mr. President.

Add to all of that the idea of dumping 14 million more low-income Americans into the Medicaid Program not only ruins States fiscally, hurts public higher education in the States, puts these patients in programs that doctors won't see; it is a program where \$1 out of \$10 is wasted by fraud and abuse, according to the Government Accountability Office.

Republicans suggest that instead of these comprehensive, sweeping, 2,000-page bills that raise taxes, raise premiums, raise the debt, add to State taxes, hurt higher education because of what I described, and put low-income Americans into a program that half the doctors won't see, we should move step by step to reduce costs. We should start with small business health plans that allow businesses to pool their resources and insure more people at a lower cost; allow purchasing of health insurance across State lines; reduce the number of junk lawsuits against doctors; create health insurance exchanges so more Americans can shop for cheaper health insurance; and do something about waste, fraud, and abuse. If we were to take those steps, that would be real health care reform because it would be reducing costs to the American people and to our government.

Mr. President, I ask unanimous consent that the articles I referred to earlier be printed in the RECORD.

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

[From *knoxnews.com*, Nov. 15, 2009]

NEWS ON STATE BUDGET GRIM

(By Tom Humphrey)

NASHVILLE—Phil Bredesen, preparing the last state budget he will present as Tennessee's governor, will begin on Monday hearing recommendations from his most trusted advisers on how to cut spending plans to account for relentless bad news.

Tennessee, according to a nationwide study released last week, is fiscally better off, than many states. Further, according to a legislative committee's staff calculations, the current state revenue shortfall is less severe than the Bredesen administration estimates.

But there is no quarrel with the general proposition that Tennessee state government faces a grim situation.

The budget plan adopted in June and now in place for the present fiscal year, which

began July 1, includes the anticipation that about \$750 million in cuts will be needed for the fiscal year beginning July 1, 2010—most of that amount in reductions avoided this year by using federal stimulus money.

And that was before things got worse. According to the state Department of Finance and Administration, which is part of Bredesen's administration, state tax collections are already \$101.3 million less than assumed when this year's budget was enacted.

"The stimulus has kind of concealed what's been going on in terms of revenues," Bredesen said.

Overall, federal funding provides about \$12.1 billion of the \$29.6 billion state budget this year. General state taxes provide about \$12.6 billion—the shrinking portion that funds general state government—with the rest coming from earmarked revenues such as college tuition and license fees.

The Legislature's Fiscal Review Committee staff has calculated that the state revenue shortfall currently is just \$7.2 million below what it was projected back when the current budget was presented to lawmakers. An explanation of the differences gets pretty complex, including a committee estimate that the state's tax take will decline more dramatically in the next few months than does the Bredesen administration's projection of a rebound.

#### A VERY DEEP HOLE

But there is uniform agreement that the state's budget picture is grim.

"The state remains in a very deep hole that it is not going to climb out of in this budget year," said Jim White, executive director of the Fiscal Review Committee. "That hole is going to require very painful and drastic budget reductions across much of state government. The only question is how bad it will be."

White says \$290 million in cuts will be needed in addition to the programmed \$750 million in cuts.

Bredesen, accepting his staff calculations, has told his department heads to present him with suggestions for budget cuts of 6 percent and to include contingency plans for adding another 3 percent in cuts if things go even worse than expected. That process begins Monday with the Department of Education.

The state funds public schools statewide through the Basic Education Program. The governor and the Legislature avoided cuts to the BEP for the current year.

Avoiding them again, Bredesen said, will be a priority. But any increase in education funding, such as needed for making more children eligible for pre-kindergarten programs, is forgotten.

Another priority is honoring commitments to economic development projects, Bredesen has said.

Keeping education and economic development commitments whole, of course, requires deep cutting in other areas, such as the Department of Children's Services or the Department of Mental Health, which were aided by federal stimulus money this year.

#### EMPLOYEE FURLONGHS AN OPTION

Layoffs of state employees are likely, the governor says, though he will look at alternatives such as furloughs.

"This will be my toughest budget year," said Bredesen, who will leave office in January 2011, after his successor is elected next year. "I hate to go out that way, but that's the way it is."

Bredesen has taken some partisan criticism for the budget situation. Senate Republican leader Mark Norris, for example, recently declared Bredesen should have made deeper cuts in the current budget in accord with a GOP proposal that the Democratic governor branded "stupid" during the legislative session.

But Senate Speaker Ron Ramsey, a Republican who is seeking his party's nomination for election as governor next year, said he generally agrees with the Bredesen approach.

"The governor is doing exactly as I'll do when I'm governor," he told reporters last week.

"It's going to be a tough budget year. The only upside is that people realize we're in tough times and it's not going to be easy."

Tennessee is apparently in better shape, fiscally speaking, than many other states.

In a rating of all 50 states' fiscal status last week, the Pew Center for the States declared that there are 10 states threatened with "economic disaster," with California leading the list. The rating assigned a score for each state, with the higher scores indicating a more dangerous financial situation.

California had a 30, and all the others in the top 10 problem states had a score of 22 or greater.

Tennessee's score was 15, the same as North Carolina. Other border states have lower scores, including Arkansas at 14 and Virginia at 13, while others had higher scores, including Kentucky at 21 and Mississippi at 20.

[From the Washington Post, Nov. 15, 2009]

REPORT: BILL WOULD REDUCE SENIOR CARE

(By Lori Montgomery)

A plan to slash more than \$500 billion from future Medicare spending—one of the biggest sources of funding for President Obama's proposed overhaul of the nation's health-care system—would sharply reduce benefits for some senior citizens and could jeopardize access to care for millions of others, according to a government evaluation released Saturday.

The report, requested by House Republicans, found that Medicare cuts contained in the health package approved by the House on Nov. 7 are likely to prove so costly to hospitals and nursing homes that they could stop taking Medicare altogether.

Congress could intervene to avoid such an outcome, but "so doing would likely result in significantly smaller actual savings" than is currently projected, according to the analysis by the chief actuary for the agency that administers Medicare and Medicaid. That would wipe out a big chunk of the financing for the health-care reform package, which is projected to cost \$1.05 trillion over the next decade.

More generally, the report questions whether the country's network of doctors and hospitals would be able to cope with the effects of a reform package expected to add more than 30 million people to the ranks of the insured, many of them through Medicaid, the public health program for the poor.

In the face of greatly increased demand for services, providers are likely to charge higher fees or take patients with better-paying private insurance over Medicaid recipients, "exacerbating existing access problems" in that program, according to the report from Richard S. Foster of the Centers for Medicare and Medicaid Services.

Though the report does not attempt to quantify that impact, Foster writes: "It is reasonable to expect that a significant portion of the increased demand for Medicaid would not be realized."

The report offers the clearest and most authoritative assessment to date of the effect that Democratic health reform proposals would have on Medicare and Medicaid, the nation's largest public health programs. It analyzes the House bill, but the Senate is also expected to rely on hundreds of billions of dollars in Medicare cuts to finance the package that Majority Leader Harry M. Reid (D-Nev.) hopes to take to the floor this

week. Like the House, the Senate is expected to propose adding millions of people to Medicaid.

The Centers for Medicare and Medicaid Services administers the two health-care programs. Foster's office acts as an independent technical adviser, serving both the administration and Congress. In that sense, it is similar to the nonpartisan Congressional Budget Office, which also has questioned the sustainability of proposed Medicare cuts.

In its most recent analysis of the House bill, the CBO noted that Medicare spending per beneficiary would have to grow at roughly half the rate it has over the past two decades to meet the measure's savings targets, a dramatic reduction that many budget and health policy experts consider unrealistic.

"This report confirms what virtually every independent expert has been saying: [House] Speaker [Nancy] Pelosi's health-care bill will increase costs, not decrease them," said Rep. Dave Camp (Mich.), the senior Republican on the House Ways and Means Committee. "This is a stark warning to every Republican, Democrat and independent worried about the financial future of this nation."

Democrats focused Saturday on the positive aspects of the report, noting that Foster concludes that overall national spending on health care would increase by a little more than 1 percent over the next decade, even though millions of additional people would gain insurance. Out-of-pocket spending would decline more than \$200 billion by 2019, with the government picking up much of that. The Medicare savings, if they materialized, would extend the life of that program by five years, meaning it would not begin to require cash infusions until 2022.

"The president has made it clear that health insurance reform will protect and strengthen Medicare," said White House spokeswoman Linda Douglass. "And he has also made clear that no guaranteed Medicare benefits will be cut."

Republicans argued that the report forecasts an increase in total health-care spending of more than \$289 billion.

[From the Knoxville News Sentinel, Nov. 15, 2009]

#### BREDESEN FACES PAINFUL CHOICES AS TN BEGINS BUDGET TRIAGE

(By Tom Humphrey)

Phil Bredesen, preparing his last state budget as Tennessee's governor, will begin on Monday hearing recommendations from his most trusted advisers on how to cut spending to account for relentless bad news.

Tennessee, according to a nationwide study released last week, is fiscally better off than many states. Further, according to a legislative committee's staff calculations, the current state revenue shortfall is less severe than the Bredesen administration estimates.

But there is no quarrel with the general proposition that Tennessee state government faces a grim situation.

The budget plan adopted in June and now in place for the present fiscal year, which began July 1, includes the anticipation that about \$750 million in cuts will be needed for the fiscal year beginning July 1, 2010—most of that amount in reductions avoided this year by using federal stimulus money.

And that was before things got worse. According to the state Department of Finance and Administration, which is part of Bredesen's administration, state tax collections are already \$101.3 million less than assumed when this year's budget was enacted.

[From the Tennessean, Nov. 16, 2009]  
STATE MAY RELEASE PRISONERS TO CUT COSTS

(By Chas Sisk)

Tennessee might release as many as 4,000 non-violent felons, possibly even including people convicted of drug dealing or robbery, under a plan outlined Monday by the Department of Correction to deal with the state's budget crisis.

Correction Commissioner George Little said the department would have no choice but to recommend early release of inmates if it were to implement the budget cuts called for by Gov. Phil Bredesen. The department has already squeezed out savings and left more than 300 positions unfilled, and it is relying heavily on federal stimulus funding in its current budget, he said.

"This isn't scare tactics," he said. "We've got to make ends meet. . . . We would not propose these sorts of very serious and weighty options if we were not in such dire circumstances."

Bredesen, who does not have to submit his budget plan until Feb. 1, did not commit to the plan.

"If you were going to take that dramatic step, I would only want to do it with the assurance that I got the budget savings I would expect," Bredesen said.

The plan, which Little described on the first day of state budget hearings, would involve releasing prisoners from local jails, saving the department in per diem expenses.

To meet Bredesen's goal of cutting 6 percent, or \$35 million, from the Department of Correction's budget, as many as 2,155 inmates held in local jails would need to be released, Little said. Another 1,078 prisoners would need to be released from the state's jails if Bredesen were to call for an additional cut of 3 percent, as the governor has indicated he might do.

Alternatively, the department could close one or two of the state's 14 prisons, a move that would result in the release of about 4,000 felons. Such a move would likely result in the release of more dangerous criminals, but it would prevent local sheriffs, judges and district attorneys from replacing inmates who were released with other criminals.

In either scenario, the department would aim to release inmates who had committed Class C, D or E property crimes. Class C felonies include crimes such as drug dealing, bribery and simple robbery and carry a sentence of three to 15 years. Class D and Class E felonies are less serious crimes.

The state currently has about 19,700 in its prisons, but the department already had plans to reduce that population to 18,500 inmates with the closure of the state prison in Whiteville at the end of next year. Most of the budget for that facility had come from the \$48 million in federal funding that the department is getting during the current fiscal year—money that will largely disappear once the stimulus program has run its course.

"We've, frankly, exhausted all of our options other than, frankly, prison population management," Little said.

#### THE STATE FISCAL SITUATION: THE LOST DECADE

The fiscal condition of states deteriorated dramatically over the last two years because of the depth and length of the economic downturn, and state officials do not expect this situation to improve any time soon. Previous downturns have proven that the worst budget years for a state are the two years after the national recession is declared over. States' recoveries from the current recession, however, may be prolonged with

most economists projecting a slow and potentially jobless national recovery. Moreover, even when recovery begins, states will continue to struggle because they will need to replenish retiree pension and health care trust funds and finance maintenance, technology and infrastructure investments that were deferred during the crisis. They will also need to rebuild contingency or rainy day funds. The bottom line is that states will not fully recover from this recession until late in the next decade.

The Current Situation—The recent economic downturn started in December 2007 and likely ended in August or September 2009, making it one of the deepest and longest since the Great Depression. State revenues were down 4.0 percent in the last quarter of calendar year 2008, and 11.7 and 16.6 percent in the first two quarters of 2009, respectively. These findings are consistent with the Fiscal Survey of States estimate that state revenues declined 7.5 percent in fiscal year (FY) 2009, which for most states ended June 30, 2009.

Revenues will likely continue down for another one or two quarters before turning up slowly. This precipitous drop in state revenues is consistent with past recessions in which the trough in state revenue generally coincides with the peak in unemployment. Most economists forecast that unemployment will continue to increase for several months and possibly into the first quarter of 2010.

Similarly, Medicaid spending, which is about 22 percent of state budgets, averaged 7.9 percent growth in FY 2009, its highest rate since the end of the last downturn six years ago. Medicaid enrollment is also spiking, with projected growth of 6.6 percent in FY 2010 compared with 5.4 percent in 2009. The combination of falling revenues, which accompany high unemployment, and an explosion in Medicaid enrollment, which occurs very late in an economic downturn, explain why a recession's greatest impact on state budgets occurs one to two years after the downturn is over. States' budget problems are reflected in the latest Fiscal Survey of States, which shows states closed budget gaps of \$72.7 billion in FY 2009 and \$113.1 billion in FY 2010. This includes tax and fee increases of \$23.8 billion in 2010. Even with cuts and tax increases, states are experiencing new budget shortfalls totaling \$14.5 billion for 2010 and \$21.9 billion for 2011. Given projected revenue shortfalls, however, these shortfalls will increase dramatically over the next several months.

The American Recovery and Reinvestment Act (ARRA)—Of the \$878 billion in ARRA funds, about \$246 billion came to or through states in more than 40 programs. Most importantly, the \$87 billion in Medicaid funds and the \$48 billion in state stabilization funds were flexible and allowed states to offset planned budget cuts and tax increases. The Medicaid funds allowed states to reprogram state funds that were originally to fund Medicaid expansions, while the education money was targeted for elementary, secondary and higher education, which represents about one-third of state spending. If Congress had not made these funds available, state budget cuts and tax increases would have been much more draconian and devastating to state governments, their employees and citizens. Both the ARRA Medicaid and education funds expire at the end of December 2010. States must plan for the serious cliff in revenues they will face at that time.

The Recovery Period—While there is still uncertainty regarding the shape of the recovery, there seems to be a growing consensus that it will be slow. Numerous studies project that state revenues will likely not recover until 2014 or 2015. A recent forecast

by Mark Zandi at Economy.com showed that the national unemployment rate, which straddled 5.5 percent during the 2001–2007 period, will not attain that level again until 2014. Similarly Zandi's latest forecast indicated that state revenues will not return to the 2008 level in real terms until FY 2013. As mentioned above, until employment improves, state revenues will continue to struggle. Work by the Nelson A. Rockefeller Institute of Government similarly indicates that per capita real revenues will not reach the 2007 level until 2014. Making matters worse, economist Robert Kuttner has indicated that the states' fiscal shortfalls will be about \$350 billion over the next several years.

Deferred Investments—Even when recovery begins in the 2014–2015 period, states will be faced with a huge “over hang” in needs and will have to accelerate payments into their retiree pension and health care trust funds, as well as fund deferred maintenance and technology and infrastructure investments. They will also have to rebuild contingency or rainy day funds. All of these needs were postponed or deferred during the 2009–2011 period and will have to be made up toward the end of the decade. According to a 2007 Pew Center on the States report, states have an outstanding liability of about \$2.73 trillion in employee retirement, health and other benefits coming due over the next several decades, of which more than \$731 billion is unfunded.

The bottom line is that states will continue to struggle over the next decade because of the combination of the length and depth of this economic downturn and the projected slow recovery. Even after states begin to see the light, they will face the “over-hang” of unmet needs accumulated during the downturn. The fact is that the biggest impact on states is the one to two years after the recession is over. With states having entered the recession in 2008, revenue shortfalls persisting into 2014 and a need to backfill deferred investments into core state functions, it will take states nearly a decade to fully emerge from the current recession.

Mr. ALEXANDER. I thank the Chair and yield the floor.

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

Mr. JOHANNIS. Mr. President, thank you. I rise today to also speak about health care. I will tell my colleagues when the Senator from Tennessee was talking about Medicaid, we former Governors can relate to what he was saying. I had the opportunity, as the Presiding Officer knows, to be Governor of Nebraska for 6 years, and Medicaid was an enormous challenge. It is eating up State budgets. States are struggling. My own State, which has done better than just about every other State in the country, is in special session today trying to figure out how to find cuts of about \$330 billion, which is a lot of money in our State. Plus, there are these tremendous access problems, how to get people into Medicaid. So I wish to associate myself with his comments.

I wish to speak today, if I could, about some townhall meetings I had back home in Nebraska this last week. As soon as we recessed, I headed home. In about 48 hours we had four townhall meetings. Boy, if I were to give some advice, I would say whenever this bill comes out we should call a recess for a

week. We should all agree upon it in a bipartisan way, and we should go home, and we should listen to the people. I got so much good prairie wisdom, as I call it, from the folks back home. I wish to talk about that today.

One of the things I talked about as I was making my presentation is the proposed Medicare cuts and the impact it has on Nebraskans, real people. The impact on the current Nebraska health care delivery system cannot be denied. DISH hospitals we estimate today—and again we will see the final bill and we will figure out what the exact numbers are—but the estimate is there will be \$142 million in cuts to those hospitals. Our nursing homes across the State that do such a great job with our senior population estimate cuts of about \$93.2 million. Home health is a program I have always respected and what they do. The idea is, if we can keep people in their home longer versus a nursing home, that saves money. So I promoted it as a Governor and I promote it now. They are projecting \$126 million in cuts. By 2016, it is estimated that 66 percent of Nebraska home health agencies will be operating in the red. Then, hospice estimates they will have a 12-percent payment reduction. That is a real impact on services because in our hospice systems, oftentimes people are driving long distances to provide that service. Then Medicare Advantage, which is a popular program back home, especially with poor citizens in rural areas—about 35,000 Nebraskans currently have plans, and as my colleagues know, that has a big bull's-eye on it for cuts. Some say that wasn't a very good program, but I will tell my colleagues the people who have that program like it.

Citizens came to me and they shared concerns about access to care. They shared concerns such as: Is this going to bring down the cost of health care? Those are promises that have been made as this health care debate has unfolded. Our President has made those promises. Questions were raised such as: How about Medicare? What impact will it have? Are there going to be negative impacts? Today, as I did during the townhalls, I wish to try to address these questions.

In fact, I wrapped up my townhalls on Friday in Lincoln, NE, and then the experts over at the Center for Medicare and Medicaid Services actually answered these questions for us. On Saturday, the following day, the chief actuary of the Obama administration's CMS released a report that analyzed the recently passed House legislation. Why is that important? It is important because the House has finished its work for now and, ultimately, if the Senate were to pass a bill, it is the House bill and the Senate bill that will be conferenced. It concluded this: There are decreases in access to health care services. Medicare payments to hospitals and nursing homes are reduced over time based on certain productivity targets.

The idea is that by paying institutions less money, they will be forced to become more productive. I will tell my colleagues that in Nebraska, if you have a critical access hospital in a rural area and it is serving 25 patients, today they are as productive as they can possibly get. If you have a nursing home in a small community and your idea as the Governor or as the family is that a loved one can stay close to home, they are about as productive as they can get.

Congress could intervene and say, well, we are not going to make those cuts in the years to come, but the actuary said, and I am quoting: “So doing would likely result in significantly smaller actual savings.”

So there we have it. We have experience in this area where every year Congress doesn't take the action, and it doesn't bend the cost curve, according to this expert.

Earlier this year the President said—and I am quoting—that this “will slow the growth of health care costs for our families, our businesses, and our government.”

Yet CMS forecasts an actual increase in total health care spending of more than \$289 billion over the next 10 years. I am quoting here again from that report:

With the exception of the proposed reductions in Medicare payment updates for institutional providers, the provisions of H.R. 3962 would not have a significant impact on future health care cost growth rates. In addition, the longer-term viability of the Medicare update reductions is doubtful.

In other words, Health and Human Service experts don't believe it is even viable to make the kinds of cuts that are proposed long term. Even if Congress has the will to make the cuts, health care costs are going up, not down. Let me repeat this. This bill drives up the cost of health care, not down. Astounding, absolutely astounding.

It doesn't allow you to keep the plan if you like it. How many times was that promise made? By 2014, Medicare Advantage enrollment would drop 64 percent from 13.2 million to 4.7 million because benefits would be cut. Every single advocacy group for senior citizens should be on the phone today calling Senators to say, Don't go there. This hurts seniors. Also, insurance plans will have to be government approved. In our State, I saw an estimate that said 61 percent of our plans are not going to be in compliance and would have to be changed.

When it comes to health care, it is often suggested to get a second opinion. Well, I think here in the Senate we should follow this advice. Before we perform major surgery, very high-risk surgery on the Nation's health care system—16 percent of our economy—we should get a second opinion. That is why I sent a letter to the majority leader last Thursday and I asked for a CMS actuary to analyze the Senate bill before it is voted on so we can determine if the legislation bends the cost

curve, and I am proud to report today that already I have 24 colleagues joining me in signing that letter. All we are doing is asking the majority leader: Please get a second opinion before you perform this high-risk surgery on our health care system.

I will tell one last story from a town-hall meeting that occurred in Grand Island, NE. This will be my last thought. A young man gets up and he says this, and I am quoting:

What will you do to me and my generation, to me and my child? Will you ransom my future for your own?

Our best intentions might end up destroying his American dream and the dream of his child. This is high risk, what we are doing here. Let's get the best opinions we can before we act.

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

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

Mr. THUNE. Mr. President, how much time remains on our side?

The ACTING PRESIDENT pro tempore. There is 9 minutes 15 seconds remaining.

Mr. THUNE. Mr. President, I wish to say to my colleague from Nebraska, former Governor and now Senator from that State, that I am one of the signatories on the letter he has sent requesting we get cost data before we move forward with this and what the impact is going to be, because that is the issue.

I have listened to some of the discussion that has occurred on the floor this morning. The Senator from Illinois was down here earlier, Mr. DURBIN, saying that the Republicans are attacking the House bill. Why are they attacking the House bill? Why aren't they talking about the Senate bill? Well, it is very simple. There is no Senate bill. It is being written behind closed doors. We have not been included in any of that. We have not been privy to any of the discussions that are occurring behind closed doors. So when we come down here and talk about health care reform, we are confined to talking about the House-passed bill because there isn't a Senate bill.

There are two Senate versions that have passed Senate committees. The Finance Committee has passed a bill. The Health, Education, Labor and Pensions Committee has passed a bill. But the merger of those bills is occurring behind closed doors in direct contradiction of what was promised earlier about health care reform. President Obama said when we do health care reform, it is going to be an open, transparent process. The American people are going to be able to observe this. In fact, it is going to be done on C-SPAN. Well, nothing could be further from the truth, because it is all happening behind closed doors.

So when we come out here and talk about health care reform, we are left with talking about a House bill because there is no Senate bill. We are told

that this week we are going to see it, and I hope that is the case, because we would love to be able to react to the Senate bill and we would love to know what it is going to cost, and the American people would love to know what it is going to cost. We would also love to have some time to look at it before we start voting on it in the Senate.

My understanding is this is going to be a compressed schedule. They are going to try to get a vote this week on a motion to proceed to this bill, and come back after Thanksgiving and try to rush this through the Senate before the Christmas holiday, a bill that represents one-sixth of the American economy. The House bill was 2,200 pages long and the Republicans were allowed 1 amendment, 1 amendment in the House. I think we are going to have to make sure, in the Senate, this gets done right. That will take some time.

When the No Child Left Behind legislation was debated in the Senate, it took 7 weeks on the floor. We had a comprehensive energy bill a few years ago that took 8 weeks on the floor of the Senate. The farm bill that passed in the last session took 4 weeks on the floor of the Senate. We need to make sure this gets done in the right way for the American people. We don't even have a bill yet. That is why we are down here talking about the bills that were so far out there.

The Senator from Illinois also said the main concern the American people have is cost—costs keep going up. I had a roundtable in my State, in Sioux Falls, last week. The Governor, Governor Rounds, participated, as did several small business owners, including a restaurant owner, a retail pharmacy, a chain drugstore manager, and a small business owner who manufactures wood products.

They were all concerned about the same thing—costs. They said: How are we going to provide good coverage to our employees? What are we going to do if this massive expansion of the Federal Government—\$3 trillion, when it is fully implemented—passes and when all the costs are going to be passed on to business? How are we going to be able to continue to cover our employees? What will that mean for people in terms of coverage?

I agree with the Senator from Illinois, who said cost is the issue. That is what I care about, and that is what the people in South Dakota care about. How do we get the cost for health care and health care coverage down?

The ironic thing we have seen about all these bills so far is none of them does anything to get costs down. All of them increase costs. So the so-called curve we talk about—bending the cost curve down—isn't happening under any of these bills. We have not seen the Senate bill because it is still being written behind closed doors. The House-passed bill—the 2,200-page monstrosity that passed the House of Representatives earlier—and the Senate bills we have seen so far that have been

produced by committees all have the same basic characteristics about them. The first one is, they raise taxes substantially. They raise taxes—in a contradiction of promises made by the President—on people making less than \$200,000 and those making less than \$100,000. In fact, because of the individual mandate in the House-passed bill, people making \$22,800 a year and up to \$68,400 a year will see a huge tax increase that will hit them. Small businesses, because of the pay-or-play mandate, which under the House bill supposedly raises \$135 billion, are going to see their taxes go up. The high-income earners making \$500,000 and above will see their taxes go up because there will be a surtax applied to the high-income earners.

The problem with that is, this doesn't just hit high-income earners, it hits small businesses because of the way they are organized, as subchapter S corporations or LLCs, to file on their individual tax returns. CBO has said one-third of the tax increases targeted at the so-called rich will hit small businesses, which are the job creators in our economy, the engine of economic recovery in America. They say three-quarters to two-thirds of our jobs are created by small businesses. We are going to raise taxes on them. In fact, the highest marginal income tax rate, if this passes, next year, with the expiration of tax cuts that were enacted in 2001 and 2003, will go from 35 percent to 46.4 percent. That is the highest marginal income tax rate we have seen in 25 years. It is going to hit squarely small businesses that we are relying on to try to get us out of this recession and create jobs. This health care reform is all financed with higher taxes, with Medicare cuts.

I talked about the characteristics consistent with regard to all these proposals: You have higher taxes, and you have Medicare cuts to the tune of one-half trillion dollars a year, which, as my colleagues already pointed out this morning, are going to hit not only providers but also seniors. Medicare Advantage Program seniors will see benefits cut. So you have the individuals impacted, the providers impacted, and, of course, you have most Americans impacted in one way or another by the tax increases.

The final point is the most important; that is, the other characteristics these plans have in common, in addition to higher taxes and Medicare cuts, are higher health care costs and higher premiums. The CMS actuary came out last week with a report describing the House-passed bill, and it says it is going to increase the cost of health care in this country by \$289 billion. We spend 17 percent of our GDP on health care today. Under that bill, it would go up to 21.1 percent, if we did nothing. We would be better off in terms of the costs that will be passed on to people in the form of higher health care expenses. It said we are going to see increased costs and that we are going to

see, the chief actuary concluded, 12 million people lose their employer-sponsored coverage because small employers would be inclined to terminate coverage so workers would qualify for heavy subsidies through the exchange.

The biggest number of people who will be covered will be those who are pushed into Medicaid, which, under this proposal, does expand significantly. The problem with that is, it passes on enormous costs to the States. You heard the former Governor of Nebraska and the former Governor of Tennessee talk about that. My Governor, Governor Rounds, in South Dakota, said we are going to be faced with \$134 million in increased costs to the States to pay for this because Medicare is a partnership between the States and the Federal Government. So any benefit we get—about 60 percent of the people who will get coverage because of the bill will get it through Medicaid at an enormous additional cost to the States, which will be passed on to the taxpayers in the individual States.

So you will have higher taxes on small businesses, higher taxes on individuals, and you will have Medicare cuts that will impact seniors and providers. The amazing thing about all this is you are going to have higher health care costs when it is all said and done. It is remarkable that anything could be called health care reform that raises costs the way these proposals would do.

Finally, in response to what the other side has said, which is that Republicans don't have alternatives, that is wrong again. Republicans have proposed step-by-step solutions that would do this right, so it would drive down the costs, such as interstate competition, allowing people to buy insurance across State lines; small business group health plans, which would give businesses the advantage of group purchasing power, tort reform. We have a range of things we hope we have an opportunity to get to. We have to defeat this \$3 trillion monstrosity.

I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, during the course of the day today—and I feel I can do this since it is my birthday—I had five different subjects I wish to cover. I will make one comment about the talk just given—the eloquent speech just given by the Senator from South Dakota.

I think the thing that surprises most people is, we will have meetings and people will say: Wait a minute, you don't even know what is in the Senate bill being written up behind closed doors. The comments we are making—most of them—refer to the bill passed in the House. The reason for that is, that is the only thing we have to talk about.

I ask unanimous consent that I be recognized until such time as we move on, and I understand that is 11:20.

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

#### GUANTANAMO BAY

Mr. INHOFE. First of all, right after the conference luncheon, we are going to have my amendment having to do with Gitmo. This is a very simple one-page amendment that states that none of the funds appropriated, or otherwise made available by this act—on MILCON—or any prior act may be used to construct or modify a facility or facilities in the United States or its territories, to permanently or temporarily hold any individual who is detained as of October 1 of 2009 at Gitmo.

You might wonder, we have been talking about this, and I have actually had pass two amendments that do almost the same thing. We passed an amendment to the 2007 resolution 94 to 3—a bipartisan amendment to the war supplemental offered by me and Senator INOUE from Hawaii. It passed 90 to 6 in the current Senate Defense appropriations bill. It is in conference. My concern is, in conference, it may be removed. Keep in mind, we sent this language to conference once before, and it came back and merely said that if the President announces a plan of what to do with those individuals who are incarcerated at Gitmo, we would have 45 days to discuss that. It doesn't say we have to agree with the plan he gives.

Consequently, there are no teeth in that. This may be our only chance. This is an issue that has always passed by over 90 votes. So I will have that amendment. I hope people will understand the whole country was upset when they found out on Friday the 13th—and that was kind of an interesting day for this—when Khalid Shaikh Mohammed, as announced by the President, was going to be tried in New York City, and they were going to move five terrorists into the New York City area. I will not debate this thing. It has been worn out in the press.

People realize that if we are going to bring these terrorists to the United States, they will become targets for terrorist activities. Besides that, you cannot try someone under our court system who should be tried under a tribunal. The rules of evidence are different, and we have a perfect place for that down in Gitmo. Again, I will be offering that amendment.

#### PRESIDENTIAL TRIP TO CHINA

Mr. INHOFE. Mr. President, I wish to talk about the President's trip to China. It appears evident—which we have known all along—that we are not going to be passing anything in this country on cap and trade. We have the bill that is up right now by Senators KERRY and BOXER, who have talked about this now for 8 years. Every time they talk about it, there is more and more opposition to it. Right now, the interesting thing is that the most re-

cent polling shows that only 4 percent of the American people think this is a problem. Four percent are wrong and the 96 percent are right.

Nonetheless, in China, keep in mind, their output of CO<sub>2</sub> emissions could amount to twice the combined emissions of the world's richest nations, including the United States, the European Union, and Japan. Consequently, the problem there is China, India, Mexico, and the developing countries. We all know nothing will pass this body that doesn't treat the developing countries as developed nations.

I will not dwell on this. At a later time, I will. I plan to make a very long—well over an hour—talk. I am trying to get some time now to do that. This will be the fifth time I have done this in the last 6 years concerning this particular subject, which is the alleged global warming attached to the CO<sub>2</sub> emissions.

I will say this: As far as what is going on right now in China, the Chinese are not going to line up and agree, in Copenhagen or anyplace, to start reducing their own emissions. Frankly, they are the ones who are the big beneficiaries. This is kind of interesting, because even if we did it and the developed nations did it, it still wouldn't have any material reduction in CO<sub>2</sub>. Even if you believed CO<sub>2</sub> or anthropogenic gases caused global warming or climate change, it is still not going to work, as Tom Quigley said it would back when Senator Gore—Vice President Gore at that time—tried to do a study to determine what wonderful things would happen if we joined the Kyoto treaty. The question was, to his own scientists: If all nations, all developed nations, including the United States, the European Union, and all of them, were to sign the Kyoto treaty and live by its emission requirements, how much would it reduce the temperature? Tom Quigley, a renowned scientist, came out with this report and said it would reduce it by less than seven one-hundredths of 1 degree Celsius by 2050. So all of the pain, all of the taxes, the largest tax increase in the history of America, and it does not reduce anything. Consequently, I don't think it is necessary to belabor that. China is not going to do it, no matter what the President does on his trip to China.

#### HAMILTON NOMINATION

Mr. INHOFE. As I am rounding third and heading home, I am concerned that we are going to be voting this afternoon on the nomination of David Hamilton to be a judge on the Seventh Circuit Court of Appeals. I think Hamilton is, without question, a liberal activist judge. He believes judges do not simply interpret the Constitution of the United States but that judges have the power to actually change the Constitution when deciding cases, stating that—this is his quote, Mr. President—“part of our job here as judges is to

write a series of footnotes to the Constitution." This is exactly what our Founding Fathers did not want us to do. Judges are supposed to interpret what we do in this Chamber.

When he was nominated to the district court in 1994, the American Bar Association rated him as not qualified. I voted against him for a number of reasons back in 1994. I don't very often agree with Vice President BIDEN, but I have to say this. Vice President BIDEN made a statement some time ago with which I do agree. That is, if you are in the Senate and you have a judge who is coming up for confirmation by the Senate, and if you oppose that judge when he comes up to be a Federal judge, then later on when he wants to become a circuit judge or even a Justice of the U.S. Supreme Court, if you opposed him at a lower position, you have to oppose him at the next position because the bar necessarily goes up. For that reason and many other reasons, I will be opposing him.

I think it is important that in 2003, in *A Woman's Choice v. Newman*, Hamilton issued an injunction against an Indiana law that required abortion clinics to give women information about alternatives to abortions in the presence of a physician, nurse, or somebody else—just to have that information. This is inconceivable to me this could happen.

Let's keep in mind also this is the same judge who had a ruling—perhaps the most infamous because of his 2005 decision while presiding over the case of *Hinrichs v. Bosma* in which he enjoined the Speaker of Indiana's House of Representatives from permitting sectarian prayers to be offered as a part of that body's official proceedings, meaning that the chaplain or whoever opened the proceedings with a prayer could not invoke the name of Jesus Christ in his prayer.

In his conclusion, Hamilton wrote:

If the Speaker chooses to continue any form of legislative prayer, he should advise persons offering such a prayer (a) that it must be nonsectarian and must not be used to proselytize or advance any one faith over another. This is the first time and only time I believe this has happened in a nomination. This will be coming up for confirmation. I hope all of America will be aware of the fact this is happening.

#### UGANDA

Mr. INHOFE. Mr. President, I understand my colleagues are getting very close. I want a couple more minutes and that is to mention something that is happening today in the Foreign Relations Committee. Senator FEINGOLD has an amendment with which I wholeheartedly agree. It is actually not an amendment. It is a bill having to do with the LRA. Let me explain quickly what that is.

The LRA, the Lord's Resistance Army, has for about 25 years, led by a guy named Joseph Kony in the northern part of Uganda, been mutilating kids. We have heard of the Child's

Army. They go into the villages and kidnap these kids, take them out, teach them how to be warriors, and once they join up, they send them back to the village to murder their own parents, their own family.

This has been going on for a long period of time. This bill is something about which I am very excited. Finally, we have the attention of the people in the United States, and that is to join in and go after this animal named Joseph Kony.

In the last 18 years, the LRA has captured over 20,000 kids. I have been to northern Uganda. I have been up Guru. I have watched these kids after they have been dismembered, after they cut their lips off, cut their ears off, and all of this.

When this bill first came out, I was opposed to it because Senator FEINGOLD had to pay for this bill with a reduction in some of the funds that would otherwise go to the U.S. Air Force. That has been taken out. So I join him now in saying this is something that has to take place. This is the first time we have actually had the opportunity to bring up this issue, to let it surface.

I personally talked with President Museveni in Uganda, President Kagame of Rwanda, and President of the eastern part of Congo. I have been to Goma where Joseph Kony has kidnaped these kids, murdered these kids, mutilated these kids. I can tell from personal experience this is something we need to get involved in, and we are doing it by virtue of this bill.

I have gone 1 minute past. I apologize to the managers of the bill. I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### MILITARY CONSTRUCTION, VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3082, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3082) making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

#### Pending:

Johnson/Hutchison amendment No. 2730, in the nature of a substitute.

Johnson amendment No. 2733 (to amendment No. 2730), to increase by \$50,000,000 the amount available for the Department of Veterans Affairs for minor construction projects for the purpose of converting unused Department of Veterans Affairs structures into housing with supportive services for homeless veterans, and to provide an offset.

Inouye amendment No. 2754 (to amendment No. 2730), to permit \$68,500,000, as requested

by the Missile Defense Agency of the Department of Defense, to be used for the construction of a test facility to support the Phased Adaptive Approach for missile defense in Europe, with an offset.

DeMint (for Inhofe) amendment No. 2774 (to amendment No. 2730), to prohibit the use of funds appropriated or otherwise made available by this Act to construct or modify a facility in the United States or its territories to permanently or temporarily hold any individual held at Guantanamo Bay, Cuba.

Feingold/Sanders amendment No. 2748 (to amendment 2730), to make available \$5,000,000 for grants to community-based organizations and State and local government entities to conduct outreach to veterans in underserved areas.

Mrs. HUTCHISON. 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. JOHNSON. 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. JOHNSON. Mr. President, I am pleased to report that we are getting into the home stretch for the MILCON-VA appropriations bill. We have been on this bill 6 days now—I believe a record for the MILCON/VA bill. I thank my ranking member, Senator HUTCHISON, for her help in clearing amendments last evening which has put us within striking distance of completing this bill today.

The first amendment we are scheduled to vote on today is an amendment I have offered that will provide \$50 million for the VA to renovate and use empty buildings sitting on VA medical campuses to provide housing with supportive services for our homeless vets.

The VA Secretary and the President have made eliminating homelessness among vets a top priority. The amendment is fully offset by redirecting \$50 million over the President's budget request provided in this bill for DOD's Homeowners Assistance Program which the Pentagon has determined is not currently required.

This amendment is supported by 16 vets and homeless service organizations, including the VFW, the Vietnam Veterans of America, and Iraq and Afghanistan Veterans of America.

I ask unanimous consent to have letters in support of my amendment printed in the RECORD.

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

NOVEMBER 13, 2009.

Senator TIM JOHNSON,  
*Chairman, Senate Appropriations Subcommittee on Military Construction, Veterans Affairs and Related Agencies, Washington, DC.*

SENATOR JOHNSON: As organizations working to end homelessness among veterans in America, we are writing to express our strong support and gratitude for your Amendment (SA 2733) to the Fiscal Year 2010 Military Construction, Veterans Affairs and Related Agencies Appropriations Act. The amendment would shift \$50 million to renovate and convert Department of Veterans

Affairs' buildings into housing with supportive services for homeless veterans. We believe this proposed allocation is greatly needed, will be well spent, and ultimately will help save the lives of many brave veterans who have fallen upon hard times.

Far too many veterans are homeless in America: approximately 131,000 on any given night, which represents between one-fourth and one-fifth of all homeless people. Convergent sources estimate that between 23 and 40 percent of homeless adults are veterans. The U.S. Department of Veterans Affairs estimates that over the course of the year, 336,627 veterans experience homelessness.

Community organizations around the country are eager to assist homeless veterans achieve stability, but a shortage of capital, operating and supportive services funding restricts the amount of good work they can do. The allocation provided in your amendment will help provide critical capital funding for housing homeless veterans on VA campuses. We also commend the Committee's proposed funding for the HUD-VASH program, the Grant and Per Diem program and for homeless prevention. Combined, these investments will allow the Department to increase its efforts to ensure every veteran has a safe place to sleep and call home.

We are heartened by the Administration's stated commitment to zero tolerance for veterans' homelessness and strong Congressional support for programs that will help accomplish this goal. While the funding allocated by your amendment is an important contribution to fight against homelessness, we encourage your leadership in doing even more to provide safe and affordable housing for all the men and women who wore the uniform.

Sincerely,

Corporation for Supportive Housing.  
AMVETS.  
Common Ground.  
Disabled American Veterans.  
Iraq and Afghanistan Veterans of America.  
Jewish War Veterans of the USA.  
National Alliance to End Homelessness.  
National Association of Black Veterans.  
National Coalition for Homeless Veterans.  
National Health Care for the Homeless  
Council.  
National Law Center on Homelessness and  
Poverty.  
National Leased Housing Association.  
National Policy and Advocacy Council on  
Homelessness.  
Paralyzed Veterans of America.  
Vietnam Veterans of America.

VETERANS OF FOREIGN WARS  
OF THE UNITED STATES,

Washington, DC, November 13, 2009.

Hon. TIM JOHNSON,  
U.S. Senate,  
Washington, DC.

DEAR CONGRESSMAN JOHNSON: On behalf of the 2.2 million members of the Veterans of Foreign Wars of the United States and our Auxiliaries, I would like to offer our support for SA 2733, the Military Construction, Veterans Affairs and Related Appropriations Act.

Your important amendment would provide \$50,000,000 to VA for the construction of housing with supportive services for homeless veterans. This construction would take unused VA buildings and convert them into housing for our homeless veterans.

Your important amendment provides housing and supportive services, two crucial things that our homeless veterans desperately need. A man or woman who has selflessly served in the armed forces should never have to sleep on the streets of the country they fought for. Your legislation looks to address this tragedy in our country and we applaud your efforts.

We thank you for introducing this valuable legislation that would greatly assist our nation's heroes. We look forward to working with you to help pass this legislation into law.

Sincerely,

ERIC A. HILLEMANN,  
Director, National Legislative Service.

Mr. JOHNSON. Mr. President, according to the VA, there are 131,000 homeless vets on any given night. This is shameful. This amendment will allow the VA to put to good use buildings on VHA campuses currently sitting empty. It would allow private and nonprivate groups to operate homeless vet shelters in close proximity to the medical and mental health services these vets need in order to rebuild their lives.

I urge my colleagues to support this amendment.

Mr. President, I yield to Senator HUTCHISON for any remarks she has.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank Senator JOHNSON.

We have worked very well to accommodate the requests of our colleagues to the extent we could. We will have the first vote on his amendment. I am going to support Senator JOHNSON's amendment on homeless veterans. Secretary Gates and Secretary Shinseki are at this very moment practically working on a way to better accommodate veterans who are homeless. It is not right for there ever to be a homeless veteran in our country because every one of them has done so much to protect our freedom.

We do have \$500 million in the bill. This would take \$50 million that the Department says they do not need for other housing assistance for veterans and put it into the homeless sector so there can be a concerted effort to build facilities that would give care, as well as shelter, to these veterans. I support that.

I hope in conference we will be able to consolidate all of this into a program that will meet the needs of our veterans.

It has been great working on this bill. I am very pleased we could do it today rather than last week when so many of us in the Senate were at Fort Hood trying to show the great respect and sympathy for the community at Fort Hood and for all of our armed services, which meant we had to delay the bill from last Tuesday to this Tuesday. I think that was the right thing to do. I thank my colleague.

I thank our great staffs who worked all this week to clear amendments. To the extent we could, I think we have certainly accommodated our other colleagues in the Senate for their priorities.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I ask unanimous consent that the vote sequence prior to the caucus recess period, with respect to amendments re-

maining in order to H.R. 3082, be as follows: Johnson amendment No. 2733; Feingold amendment No. 2748; Cochran amendment No. 2763; that the Inouye amendment No. 2754 be modified with changes at the desk, and once modified, the McCain amendment No. 2776 be withdrawn, the Inouye amendment, as modified, be agreed to, and the motion to reconsider be laid upon the table; further, that an Inouye-Levin colloquy be inserted in the RECORD upon the adoption of the amendment; that after the first vote in any sequence of votes today, the remaining votes be 10 minutes in duration; and that prior to the vote on passage of H.R. 3082, each manager control 2 minutes; provided further, that the other provisions of the November 16 order remain in effect.

The PRESIDING OFFICER. Is there objection?

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I wish to ask the Senator if we could voice vote Senator COCHRAN before we take up the record vote we will take on Senator JOHNSON's amendment.

Mr. JOHNSON. That would be very good.

Mrs. HUTCHISON. I have no objection.

The PRESIDING OFFICER. With that qualification, without objection, it is so ordered.

The amendment (No. 2754), as modified, is as follows:

AMENDMENT NO. 2754, AS MODIFIED

On page 27, between lines 3 and 4, insert the following:

SEC. 128. (a)(1) The amount appropriated or otherwise made available by this title under the heading "MILITARY CONSTRUCTION, DEFENSE-WIDE" is hereby increased by \$68,500,000, with the amount of such increase to remain available until September 30, 2014.

(2) Of the amount appropriated or otherwise made available by this title under the heading "MILITARY CONSTRUCTION, DEFENSE-WIDE", as increased by paragraph (1), \$68,500,000 shall be available for the construction of an Aegis Ashore Test Facility at the Pacific Missile Range Facility, Hawaii.

(b) Of the amount appropriated or otherwise made available by title I of the Military Construction and Veterans Affairs Appropriations Act, 2009 (division E of Public Law 110-329; 122 Stat. 3692) under the heading "MILITARY CONSTRUCTION, DEFENSE-WIDE" and available for the purpose of European Ballistic Missile Defense program construction, \$69,500,000 is hereby rescinded.

The amendment (No. 2754), as modified, was agreed to.

EUROPEAN MISSILE DEFENSE

Mr. INOUE. Mr. President, I rise to engage in a colloquy with Senator LEVIN, chairman of the Armed Services Committee to discuss amendment No. 2754, which has been cosponsored by Senators JOHNSON and COCHRAN, to re-allocate unobligated fiscal year 2009 military construction funding to support President Obama's new European missile defense plan.

Mr. LEVIN. I would be pleased to enter into a colloquy with the distinguished chairman of the Appropriations Committee.

Mr. INOUE. I thank the chairman. Funding was appropriated in last year's MILCON/VA appropriations bill for the European missile defense sites but now can no longer be spent. This amendment will enable the Missile Defense Agency to meet the President's timelines for defending Europe and the United States sooner against Iranian missiles. In order to meet the timelines set out by the President to deploy a capability in Europe in the 2015 time-frame, General O'Reilly, Director of the Missile Defense Agency, MDA, has requested the Congress support the use of \$68.5 million to construct an AEGIS Ashore Test Facility at the Pacific Missile Range Facility in Hawaii. The funding would come from the now unneeded funds for the two sites in Europe.

Mr. LEVIN. I want the chairman to know that I am also fully supportive of the administration's new approach to defending Europe from the threat of shorter range Iranian missiles based on the standard missile-3 both on ships and ashore, as well as the use of fiscal year 2009 funding that is no longer required for this purpose.

Mr. INOUE. This amendment responds to that request from MDA, but was originally offered with some reservation because it would circumvent the normal order of business in the Senate. Under ordinary circumstances this project should have been authorized in the fiscal year 2010 National Defense Authorization Act and then appropriated in the Military Construction bill. But, President Obama only publicly announced his European missile defense strategy on September 17 of this year. This announcement came well after the House and Senate Armed Services Committees began the conference negotiation process. In order to implement the President's new plan, General O'Reilly made the request to Congress for an AEGIS Ashore Test Facility on October 7, the same day that the House and Senate completed the conference agreement on the Defense authorization bill. The conferees were not able to consider this late request from the administration. Thus, an amendment on the fiscal year 2010 Military Construction appropriations bill was the best path to get the facility started in order to meet the administration's timelines.

Mr. LEVIN. While I agree that the funding previously authorized and appropriated for the European sites in fiscal year 2009 should be the source of funding for this project, I also feel that the project should be vetted in a manner similar to any other MILCON request. I believe we also have the time to authorize the project. As I understand the current timeline the Missile Defense Agency has sufficient planning and design funding to initiate design of the project and also has sufficient funding to begin the required environmental work. It is also my understanding that construction won't actually begin until late summer of 2010. I

would expect that the preliminary nature of the current funding request would mature in time to support a timely authorization.

Mr. INOUE. I understand that the chairman intends to introduce a separate authorization bill for this project that will precede the normal fiscal year 2011 national Defense authorization bill process.

Mr. LEVIN. That is correct. I will introduce a separate bill today along with Senator MCCAIN. The committee will expedite consideration of this bill provided that we can get the normal assurances that the project is supported by the Secretary of Defense and that the proposed construction costs and timelines are accurate and up to the standards we would normally expect in a similar MILCON project request.

AMENDMENT NO. 2763 TO AMENDMENT NO. 2730

Mr. JOHNSON. Mr. President, I understand there is no objection to the Cochran amendment No. 2763. Therefore, on behalf of Senator COCHRAN, I call up his amendment and ask that the amendment be considered and agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. JOHNSON], for Mr. COCHRAN, proposes an amendment numbered 2763 to amendment No. 2730.

The amendment is as follows:

AMENDMENT NO. 2763

(Purpose: To provide for the modification of a restriction of alienation of certain real property in Gulfport, Mississippi)

At the end of title II, add the following:

SEC. 229. (a) MODIFICATION ON RESTRICTION OF ALIENATION OF CERTAIN REAL PROPERTY IN GULFPORT, MISSISSIPPI.—Section 2703(b) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234; 120 Stat. 469), as amended by section 231 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2009 (division E of Public Law 110-329; 122 Stat. 3713), is further amended by inserting after "the City of Gulfport" the following: ", or its urban renewal agency."

(b) MEMORIALIZATION OF MODIFICATION.—The Secretary of Veterans Affairs shall take appropriate actions to modify the quitclaim deeds executed to effectuate the conveyance authorized by section 2703 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 in order to accurately reflect and memorialize the amendment made by subsection (a).

The PRESIDING OFFICER. Without objection, the amendment is agreed to and the motion to reconsider is laid upon the table.

The amendment (No. 2763) was agreed to.

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

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

AMENDMENT NO. 2733

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

If all time is yielded back, the question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 346 Leg.]

YEAS—98

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

NAYS—1

Coburn

NOT VOTING—1

Byrd

The amendment (No. 2733) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2748, AS MODIFIED

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I ask unanimous consent that my amendment be modified with the modifications I send to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 52, after line 21, add the following:  
 SEC. 229. Of the amounts appropriated or otherwise made available by this title, the Secretary shall award \$5,000,000 in competitively-awarded grants to State and local government entities or their designees with a demonstrated record of serving veterans to conduct outreach to ensure that veterans in under-served areas receive the care and benefits for which they are eligible.

Mr. FEINGOLD. Mr. President, I understand the amendment will now be accepted.

Mr. JOHNSON. It is accepted.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2748), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 2763

Mrs. HUTCHISON. Mr. President, to comply with rule XLIV, I ask unanimous consent to have printed in the RECORD a letter from Senator COCHRAN in relation to his amendment.

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

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

U.S. SENATE,

Washington, DC, November 5, 2009.

Hon. DANIEL INOUE,  
 Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR DAN: In my letter to Senators Johnson and Hutchison dated May 21, 2009, regarding the Fiscal Year 2010 Military Construction, Veterans Administration, and Related Agencies Appropriations Bill, it was my intent that the item titled "Aircraft Maintenance Administration Facility" read as follows:

Name: Aircraft Fuel Systems Maintenance Facility

Location: Columbus Air Force Base, MS

Purpose: To provide adequate facilities for aircraft fuel systems maintenance, conforming with applicable safety and environmental standards. (\$10,000,000)

I certify that neither I nor my immediate family has pecuniary interest in the congressionally directed spending item that I have requested, consistent with the requirements of paragraph 9 of Rule XLIV of the Standing Rules of the Senate. I also certify that I have posted this request on my website.

Please feel free to call on me if you have any questions about this request. Adam Telle, a member of my staff, is also available as the committee staff considers this issue.

Thank you for your consideration.

Sincerely,

THAD COCHRAN,  
 U.S. Senator.

Mrs. HUTCHISON. I thank the Chair 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. JOHNSON. 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. JOHNSON. Mr. President, I note that the second vote has been voiced, and so Members are free to leave.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, we are working on the managers' package, and probably in the next 15 minutes we will clear what has been cleared for the managers' package. There are a couple of people working with objections. But by 12:15, we will clear the managers' package so that following that, in accordance with the previous unanimous consent agreement, at 2:15 we will vote on the Inhofe amendment, after which we will then vote on final passage. So we will have two votes starting at 2:15, and the second vote will be the final vote on Veterans Affairs-Military Construction.

I yield the floor.

The PRESIDING OFFICER (Mrs. GILLIBRAND). The Senator from Maryland.

Ms. MIKULSKI. Madam President, I ask unanimous consent to speak as in morning business for the purposes of introducing a very poignant bill.

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

(The remarks of Ms. MIKULSKI pertaining to the introduction of S. 2781 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

AMENDMENTS NOS. 2775, AS MODIFIED; 2777; AND 2783, AS MODIFIED

Mr. JOHNSON. Madam President, we have agreed to a final group of amendments in a managers' package.

I ask unanimous consent that the following amendments be called up en bloc and that the amendments be considered and agreed to and, if modified, that the amendment as modified be agreed to and the motions to reconsider be laid upon the table en bloc:

Amendment No. 2775, to be modified; amendment No. 2777; and amendment No. 2783, to be modified.

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

Mrs. HUTCHISON. Madam President, I have no objections to those amendments. I want to clarify that for amendment No. 2775, the modifications are at the desk. The same goes for amendment No. 2783; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mrs. HUTCHISON. Again, I have no objection.

The amendments (No. 2775, as modified; No. 2777; and No. 2783, as modified) were agreed to, as follows:

AMENDMENT NO. 2775, AS MODIFIED

(Purpose: To require a study on the capacity of the Department of Veterans Affairs to address combat stress in women veterans)

At the end of title II, add the following:

SEC. 229. (a) STUDY ON CAPACITY OF DEPARTMENT OF VETERANS AFFAIRS TO ADDRESS COMBAT STRESS IN WOMEN VETERANS.—The Inspector General of the Department of Veterans Affairs shall carry out a study to assess the capacity of the Department of Veterans Affairs to address combat stress in women veterans.

(b) ELEMENTS.—In carrying out the study required by subsection (a), the Inspector General shall consider the following:

(1) Whether women veterans are properly evaluated by the Department for post-traumatic stress disorder (PTSD), military-related sexual trauma, traumatic brain injury (TBI), and other combat-related conditions.

(2) Whether women veterans with combat stress are being properly adjudicated as service-connected disabled by the Department for purposes of veterans disability benefits for combat stress.

(3) Whether the Veterans Benefits Administration has developed and disseminated to personnel who adjudicate disability claims reference materials that thoroughly and effectively address the management of claims of women veterans involving military-related sexual trauma.

(4) The feasibility and advisability of requiring training and testing on military-related sexual trauma matters as part of a certification of Veterans Benefits Administration personnel who adjudicate disability claims involving post-traumatic stress disorder.

(5) Such other matters as the Inspector General considers appropriate.

(c) REPORTS.—

(1) INTERIM REPORT.—Not later than 180 days after the date of the enactment of this Act, the Inspector General shall submit to the Secretary of Veterans Affairs, and to the appropriate committees of Congress, a report setting forth the plan of the Inspector General for the study required by subsection (a), together with such interim findings as the Inspector General has made as of the date of the report as a result of the study.

(2) FINAL REPORT.—Not later than one year after the date of the enactment of this Act, the Inspector General shall submit to the Secretary, and Congress, then the Secretary shall make recommendations for legislative or administrative action.

(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term "appropriate committees of Congress" means—

(A) the Committees on Appropriations and Veterans' Affairs of the Senate; and

(B) the Committees on Appropriations and Veterans' Affairs of the House of Representatives.

AMENDMENT NO. 2777

(Purpose: To require a study to identify the improvements to the information technology infrastructure of the Department of Veterans Affairs that are required to furnish health care services to veterans using telehealth platforms)

On page 52, after line 21, add the following:  
 SEC. 229. (a) STUDY ON IMPROVEMENTS TO INFORMATION TECHNOLOGY INFRASTRUCTURE NEEDED TO FURNISH HEALTH CARE SERVICES TO VETERANS USING TELEHEALTH PLATFORMS.—The Secretary of Veterans Affairs shall carry out a study to identify the improvements to the infrastructure of the Department of Veterans Affairs that are required to furnish health care services to veterans using telehealth platforms.

(b) AVAILABILITY OF FUNDS.—The amounts appropriated or otherwise made available by

this title under the headings "DEPARTMENTAL ADMINISTRATION" and "INFORMATION TECHNOLOGY SYSTEMS" shall be available to the Secretary of Veterans Affairs to carry out the study required by subsection (a).

AMENDMENT NO. 2783, AS MODIFIED

(Purpose: To make available from Medical Services, \$1,000,000 for education debt reduction for mental health care professionals who agree to employment at the Department of Veterans Affairs)

On page 52, after line 21, add the following: SEC. 229. Of the amounts appropriated or otherwise made available by this title under the headings "VETERANS HEALTH ADMINISTRATION" and "MEDICAL SERVICES", \$1,000,000 may be available for education debt reduction under subchapter VII of chapter 76 of title 38, United States Code, for mental health care professionals who agree to employment at the Department of Veterans Affairs.

RECESS

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

Thereupon, the Senate, at 12:34 p.m., recessed and reassembled at 2:15 p.m. when called to order by the Presiding Officer (Mr. CARPER).

MILITARY CONSTRUCTION, VETERANS AFFAIRS, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—Continued

AMENDMENT NO. 2774

The PRESIDING OFFICER. Under the previous order, there will now be 5 minutes of debate, equally divided, on amendment No. 2774, offered by the Senator from Oklahoma, Mr. INHOFE.

Who seeks recognition? The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I yield myself 1 minute.

The Inhofe amendment would actually make us less secure by restricting our ability to improve security at facilities that house detainees who have been transferred from Guantanamo to the United States for their trials. Our communities will be less safe because money cannot be spent to make more secure the places where these detainees are being kept. It seems to me this is kind of a "cutting off your nose to spite your face" approach. Regardless of how people voted on whether we should have trials in the United States, the decision has been made that there are going to be trials in the United States. There already have been trials in the United States. There are detainees who are awaiting trial in the United States. It would seem to me it is in everybody's interest that the places where these detainees are being kept should be as secure as possible. It makes no sense, regardless of what one's position is on the question of where the trial should be held, not to have them kept in the most secure possible facilities.

I hope the Inhofe amendment is defeated. It is counterproductive, no matter what position one takes on the location of trials.

Mr. LEAHY. Mr. President, the amendment sponsored by Senator INHOFE is one of a series of amendments that have recently been offered in the Senate that would put political interests ahead of our national interests. This amendment would prohibit any funds from being used to construct or modify any facility in the United States to hold any individual who is currently being held at the Guantanamo Bay detention facility.

This goal of this amendment is to ensure that the detainees being held at Guantanamo Bay, some for years without charge, cannot be tried in our Federal courts and that the detention facility at Guantanamo Bay cannot close. This is harmful to our national security and devastating to our reputation as a model justice system throughout the world. As a former prosecutor, I find it deeply troubling that the Senate would be asked to prohibit the administration from trying even dangerous terrorists in our Federal courts. As a Senator, I find it shameful that Congress is being asked to help keep open a facility that has been a stain on our reputation throughout the world and has given ammunition to our enemies. GEN Colin Powell was correct when he said, "Guantanamo has become a major problem for America's perception as it's seen; the way the world perceives America."

President Obama addressed that problem in the first days of his Presidency by announcing that he would close Guantanamo Bay, and he has affirmed that commitment by announcing that the administration will have a preference for trying detainees in our proven Federal courts. Just last week, the Attorney General announced that, in consultation with the Secretary of Defense, the U.S. Government will begin to move toward federal criminal trials against five of these detainees, including Khalid Sheikh Mohammed. I have supported President Obama and the Attorney General in these steps, and I will continue to do so. That is why I have voted against amendments that would withhold funding to close the Guantanamo detention facility and prohibit any Guantanamo detainees from being brought to the United States. These amendments undermine the good work the President is doing, and they make us less safe, not safer.

Two weeks ago, the Senate defeated another amendment that would have restricted the authority and the options of our military and law enforcement. Secretary Gates and Attorney General Holder sent us a joint letter opposing that amendment. They reminded us that we should not prohibit the Government from being able to "use every lawful instrument of national power . . . to ensure that terrorists are brought to justice and can no longer threaten American lives." That is exactly what this amendment would do by tying the administration's hands in the event that they need to upgrade

any facility in order to securely house these detainees. I will ask that a copy of the administration's letter be printed in the RECORD.

Again, this week, joined by Secretary Napolitano, Attorney General Holder and Secretary Gates wrote to the Senate in opposition, this time to the Inhofe amendment we consider today. I will ask that the administration's letter be printed in the RECORD.

Instead of closing Guantanamo and moving toward a lawful and effective national security policy, this amendment would say to the world that we refuse to face what we did at Guantanamo and instead would continue the legacy of a place that was created in an effort to lock people up for years without charge and not face the consequences. This amendment would say to the world that we are not strong enough, that our over 200-year-old superior legal tradition is not flexible enough, to allow us to deal with those who attack us. Refusing to close Guantanamo also means we lose our ability to respond with moral authority if other countries should mistreat American soldiers or civilians.

Much debate has focused on keeping Guantanamo detainees out of the United States. In this debate, political rhetoric has entirely drowned out reason and reality. Our criminal justice system handles extremely dangerous criminals, and more than a few terrorists, and it does so safely and effectively. We try very dangerous people in our courts and hold very dangerous people in our jails throughout the country. I know; I put some of them there. We do it every day in ways that keep the American people safe and secure, and I have absolute confidence that we can do it for even the most dangerous terrorism suspects.

The facts speak for themselves. The Judiciary Committee has held several hearings on the issue of how to best handle detainees, and experts and judges from across the political spectrum have agreed that our courts and our criminal justice system can handle this challenge and indeed has handled it many times already. Since January of this year alone over 30 terrorism cases have been either successfully tried or sentenced using our Federal courts. No one has ever escaped from a Supermax facility. In fact terrorists are routinely and securely held at our prisons, including Zacharias Moussaoui, one of the plotters behind the September 11 attacks and Ramzi Yousef, the World Trade Center bomber.

Why would the Senate pass an amendment that suggests that our country and the brave men and women who staff these prisons cannot handle these prisoners, or that they are not up to the task? And why would we pass an amendment that simultaneously makes it harder for the government to securely detain terrorism suspects in our prisons by making any necessary adjustments to hold them? This amendment would ironically

make us less safe by making our prisons less secure. This is playing games with national security.

It is not only President Obama who believes that closing Guantanamo will make us a more secure and honorable nation. I agree with the conviction expressed by Senator GRAHAM and Senator MCCAIN who said, “[w]e support President Obama’s decision to close the prison at Guantanamo, reaffirm America’s adherence to the Geneva Conventions, and begin a process that will, we hope, lead to the resolution of all cases of Guantanamo detainees.”

It is time to act on our principles and our constitutional system. It is time to close Guantanamo and try and convict those who seek to do us harm. Where the administration decides to try them in Federal courts, our courts and our prisons are more than up to the task.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the administration’s letter to which I referred.

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

OCTOBER 30, 2009.

Hon. HARRY REID,  
Majority Leader, U.S. Senate,  
Washington, DC.

Hon. MITCH MCCONNELL,  
Minority Leader, U.S. Senate,  
Washington, DC.

DEAR SENATORS REID AND MCCONNELL: We write to oppose the amendment proposed by Senator Graham (on behalf of himself and Senators McCain and Lieberman) to H.R. 2847, the Commerce, Justice, Science, and Related Agencies Appropriations Act of 2010. This amendment would prohibit the use of Department of Justice funds “to commence or continue the prosecution in an Article III court of the United States of an individual suspected of planning, authorizing, organizing, committing, or aiding the attacks on the United States and its citizens that occurred on September 11, 2001.”

As you know, both the Department of Justice (in Article III courts) and the Department of Defense (in military commissions, reformed under the 2010 National Defense Authorization Act) have responsibility for prosecuting alleged terrorists. Pursuant to a joint prosecution protocol, our departments are currently engaged in a careful case-by-case evaluation of the cases of Guantanamo detainees who have been referred for possible prosecution, to determine whether they should be prosecuted in an Article III court or by military commission. We are confident that the forum selection decisions that are made pursuant to this process will best serve our national security interests.

We believe that it would be unwise, and would set a dangerous precedent, for Congress to restrict the discretion of either department to fund particular prosecutions. The exercise of prosecutorial discretion has always been and should remain an Executive Branch function. We must be in a position to use every lawful instrument of national power—including both courts and military commissions—to ensure that terrorists are brought to justice and can no longer threaten American lives.

For these reasons, we respectfully request that you oppose this amendment.

ROBERT M. GATES,  
Secretary of Defense.  
ERIC H. HOLDER, JR.,  
Attorney General.

NOVEMBER 17, 2009.

Hon. HARRY REID,  
Majority Leader, U.S. Senate,  
Washington, DC.

Hon. MITCH MCCONNELL,  
Minority Leader, U.S. Senate,  
Washington, DC.

DEAR SENATORS REID AND MCCONNELL: We write to oppose Senator Inhofe’s amendment (No. 2774) to H.R. 3082, the Military Construction, Department of Veterans Affairs, and Related Agencies Appropriations Act for Fiscal Year 2010. This amendment would prohibit the use of funds appropriated or otherwise made available in H.R. 3082 to “construct or modify a facility or facilities in the United States or its territories to permanently or temporarily hold any individual who was detained as of October 1, 2009, at Naval Station, Guantanamo Bay, Cuba.”

Like the President and numerous others, both Republicans and Democrats, we are convinced that closing the Guantanamo Bay detention center is in the national security interests of the United States. Al Qaeda has repeatedly used the existence of the facility as a recruitment tool. We are convinced that as long as the Guantanamo Bay detention center remains open, our enemies will continue to exploit its existence for this purpose.

We acknowledge that closing Guantanamo has proven difficult, but that is not a reason for the Congress to preclude this important national security objective. At present, we are making progress toward this goal. An interagency team is assessing the suitability of a maximum security prison in Thomson, Illinois, to serve as a detention center for certain Guantanamo Bay detainees who may be transferred to the United States. On Friday, the Department of Justice announced that it will prosecute the alleged 9/11 conspirators in federal court, while the Department of Defense will resume other cases against those allegedly responsible for the USS Cole bombing and other acts of terrorism in military commissions, which have been reformed as a result of the bipartisan passage of the Military Commissions Act of 2009.

We need to get on with the work of enhancing our national security by finally closing the Guantanamo Bay detention center. The Inhofe amendment would have the opposite effect and would likely prevent further progress on this important issue. We ask that you join us in opposing the Inhofe amendment.

ERIC H. HOLDER, JR.  
ROBERT M. GATES.  
JANET NAPOLITANO.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, inquiry. Is this the final argument before the vote on the Inhofe amendment?

The PRESIDING OFFICER. Yes; the Senator has 2½ minutes remaining.

Mr. INHOFE. Mr. President, this amendment has been here three times before. In fact, this amendment has been supported with over 90 votes each time it came through. Unfortunately, once one of the bills went into conference, it was taken out. They replaced it with a 45-day provision.

What this does—it is a one-sentence amendment, very easy to understand. It says:

None of the funds appropriated or otherwise made available by this Act may be used to construct or modify a facility or facilities in the United States [to house terrorists].

If you want terrorists here, then vote against this amendment. This may be

the last shot you have at it. We have the Inouye-Inhofe amendment already passed in the Defense authorization bill, but it is in conference. We do not know whether it will come out. This is the second shot we have to try to keep terrorists from coming into the United States.

I retain the remainder of my time.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Virginia is recognized.

Mr. WEBB. Mr. President, I would like to speak quickly in opposition to this amendment.

It has been my strong belief—

Mrs. HUTCHISON. Is the Senator from Virginia speaking on the 2½ minutes of the majority?

Mr. WEBB. That is correct. It has been my strong belief that individuals who were charged with international terrorism should be classified as enemy combatants, and I stated many times I do not believe they belong in our country. They don’t belong in our courts. They don’t belong in our prisons. At the same time, I recognize that the President retains the constitutional authority to bring charges against these individuals in article III courts. The Graham amendment did resolve that issue in terms of their transfer to U.S. soil.

This amendment, unfortunately, would not address that issue. It prohibits appropriation of funds to modify facilities in the United States in order to hold such individuals. I believe that would prevent law enforcement officials from taking the steps that are necessary to improve security in our local communities and that it would put our security at risk. It is for this reason I oppose the amendment and I yield the floor.

The PRESIDING OFFICER. The minority has 9 minutes 30 seconds remaining, the majority has about 25 seconds remaining.

Mr. INHOFE. Let me repeat. We have voted on this amendment before. We voted three different times. This was actually structured as the Inouye-Inhofe amendment once and the Inhofe-Inouye amendment once. It has passed overwhelmingly. This is the only way we can see that we can assure we are not going to have those individuals who are now at Gitmo in the United States. I think we have discussed this several times. I strongly support this amendment.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, how much time is remaining?

The PRESIDING OFFICER. There remains 56 seconds.

Mrs. HUTCHISON. Mr. President, I wish to speak in favor of the amendment. I do not think these prisoners from Guantanamo Bay should be in our country. I think we should stand firm, we should stand clear that this Senate, as we have voted before, does not want prisoners from Guantanamo Bay transferred to American soil. It will be a security risk to America. We do not need

to do it. This would be a way to stop this and do what is right for our country; that is, keep these prisoners where they are secure, away from any ability to harm America. I urge a vote for the Inhofe amendment.

The PRESIDING OFFICER. The majority has 23 seconds.

Mr. DURBIN. Neither the Senator from Oklahoma nor the Senator from Texas has addressed the amendment before us. This is not an amendment about transferring from Guantanamo to the United States. It is about whether we will spend the money to make sure, when these detainees are under trial in the United States, which they can be legally, they will be held safely. The Inhofe amendment precludes the expenditure of funds to improve the security of law enforcement facilities to contain these Guantanamo detainees.

Mrs. HUTCHISON. Mr. President, if we don't want to house those prisoners here, we should not try them here. That is the answer for this. Vote for the Inhofe amendment.

The PRESIDING OFFICER. All time has expired.

Mr. JOHNSON. I move to table the amendment. I ask for the yeas and nays.

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

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 347 Leg.]

YEAS—57

Akaka	Feinstein	Mikulski
Baucus	Franken	Murray
Bayh	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Reed
Bingaman	Inouye	Reid
Boxer	Johnson	Rockefeller
Brown	Kaufman	Sanders
Burr	Kerry	Schumer
Byrd	Kirk	Shaheen
Cantwell	Klobuchar	Specter
Cardin	Kohl	Stabenow
Carper	Landrieu	Tester
Casey	Lautenberg	Udall (CO)
Conrad	Leahy	Udall (NM)
Dodd	Levin	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden

NAYS—43

Alexander	Ensign	McCain
Barrasso	Enzi	McConnell
Bennett	Graham	Murkowski
Bond	Grassley	Pryor
Brownback	Gregg	Risch
Bunning	Hatch	Roberts
Burr	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Johanns	Thune
Collins	Kyl	Vitter
Corker	LeMieux	Voivovich
Cornyn	Lieberman	Wicker
Crapo	Lincoln	
DeMint	Lugar	

The motion was agreed to.

Mr. DURBIN. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FEINGOLD. Mr. President, I voted against the amendment offered by Senator INHOFE, No. 2774. It is time for Congress to allow the administration to work toward the goal that so many of us support: closing the detention facility at Guantanamo Bay once and for all. The administration has provided its plan to Congress, and has provided individualized reports on each detainee before any transfer occurs. While closing Guantanamo may not be easy, it is vital to our national security that we close this prison, which is a recruiting tool for our enemies. In particular, I oppose this amendment because it would prohibit the executive branch from spending money to upgrade security at U.S. detention facilities where Guantanamo detainees might be held, thereby making the American people less safe.

AMENDMENT NO. 2743

Mr. BURR. Mr. President, I wish to speak to amendment No. 2743 which would reallocate \$750,000 from the general operating expense account to fund programs to end veterans' homelessness, including the Department of Veterans Affairs' Homeless Provider Grant and Per Diem Program, and VA's Supportive Services Grants Program.

This money will help more than 131,000 veterans who are homeless on any given night including the estimated 1,659 homeless veterans in my home state. Many veterans are considered homeless or at risk due to their poverty, lack of support systems, and poor living conditions.

Homeless veterans are comprised of middle-age and elderly veterans, as well as younger veterans returning from Iraq and Afghanistan. The VA has identified 1,500 homeless veterans who fought during the current wars and of those, only 400 have participated in programs specifically targeting homelessness.

Sadly, homelessness among the ranks of recently separated combat veterans is not a new phenomenon, and their plight for the Nation's compassionate assistance is just as strong today as it was centuries ago. According to Todd DePastino, a historian at Penn State, homeless veterans of the post-Civil War era sang old Army songs to dramatize their need for work.

After World War I, thousands of veterans marched and camped in the Nation's Capital to express their frustration over bonus money. Many of these veterans were either homeless or at risk of becoming homeless.

After the Vietnam war, returning veterans were faced with serious physical, mental, and socio-economic problems that put them at serious risk of becoming homeless. According to VA the number of homeless male and female Vietnam era veterans is greater than the number of servicemembers who died during the Vietnam war.

It is important that Congress and VA remember the lessons learned from previous wars. We must work together to prevent homelessness before it begins

with the goal of eliminating homelessness. Much progress has been made, but we can do better.

My amendment targets two specific areas within VA's medical care budget for more funding. The Homeless Provider Grant and Per Diem Program offers funding to community agencies that provide services to homeless veterans. The purpose of the program is to promote the development and provision of supportive housing and/or supportive services with the goal of helping veterans achieve and maintain residential stability.

The supportive services programs allow veterans who are at risk or who are reentering the workforce to receive services that will reduce their likelihood of becoming homeless. Supportive services include health care services; daily living services, personal financial planning; transportation services; income support services; fiduciary and representative payee services; legal services; child care; housing counseling; and other services necessary for maintaining independent living.

In short, these programs are comprehensive and they work.

My original intention was to offer an amendment that would reallocate \$43,387,240, on top of the money in this amendment, for homeless programs. Ten years ago that money was originally appropriated for the Multifamily Transitional Housing Loan Guarantee Program. Since that program has been suspended, I believe this money could be put to a better use. However, the Congressional Budget Office tells me that rescinding the \$43 million and spending it on this bill would run afoul of our budget rules. I will therefore look for another opportunity to put this unused money to a better use in the near future. In the meantime, CBO has informed me that the amendment is compliant. I thank my colleagues for their support of my amendment.

Mrs. BOXER. Mr. President, I am so pleased that today the Senate will pass the fiscal year 2010 Military Construction and Veterans Affairs and Related Agencies Appropriations Act. This legislation provides \$133.9 billion in critical funding to ensure that our Nation's veterans have the care and services that they have earned and deserve. Specifically, it includes for the first time advance appropriations for veterans medical services—ensuring that the Department of Veterans Affairs receives funds in a timely and predictable manner. It also provides \$45 billion for veterans' health care, including \$4.6 billion for mental health treatment and programs.

In addition, the bill includes \$23.2 billion for military construction and family housing, including \$9.9 million to replace the 144th Squadron's current operations facilities at Fresno-Yosemite International Air National Guard Base. The squadron currently operates across several outdated facilities that are not sufficient for modern day operations. The facility will ultimately be

used to house F-15C Eagle aircraft squadron operations. F-15Cs are expected to arrive at the base in 2012 to replace the aging F-16C fleet. The 144th Fighter Wing provides air defense for California from Oregon to the Mexican border and is vital to the Nation's security.

The Senate voted on a number of amendments to this bill that have important consequences and I want to provide some additional information on two of my votes.

Last night, the Senate rejected a motion to send this bill back to the Appropriations Committee. I joined 68 of my colleagues in voting against this motion because I believe that this is a strong, bipartisan bill. By sending this bill back to committee, we would be unfairly asking our Nation's veterans to wait even longer for care. The men and women who have served our country so honorably should not be forced to wait for critical services.

And today, the Senate voted to reject an amendment that would prohibit the use of funds in this bill to build or make security improvements to a facility in the United States to hold a detainee who is transferred here from Guantanamo Bay. What it would have done is prevent the administration from making vital security improvements to our detention facilities. Ensuring that detention facilities have the highest possible security is critical to our national security and this amendment would have restricted that ability unnecessarily.

Mr. AKAKA. Mr. President, this Military Construction and Veterans Affairs Appropriations Act for 2010 rightfully prioritizes the health care of the Nation's wounded warriors by substantially increasing discretionary health care spending for fiscal year 2010. This bill includes a \$45.1 billion appropriation for the Veterans Health Administration that will enable VA to treat an estimated 6.1 million patients in 2010, including \$533 million to support the enrollment of 266,000 nondisabled, modest-income veterans. This funding furthers the Administration's goal of enrolling more than 500,000 of these previously ineligible veterans by 2013. In addition to enrolling more veterans of modest means, this bill provides for \$440 million to improve the health of rural veterans.

The 2010 Milcon-VA Appropriations Act includes a total of \$34.7 billion for medical services, \$4.8 billion for construction, and \$580 million for medical and prosthetic research. Total discretionary spending will be increased over \$3.9 billion above the fiscal year 2009 enacted level.

I am delighted that for the first time VA will receive advance appropriations—an additional \$48.2 billion in for fiscal year 2011—for three VA medical care accounts. This coincides with the landmark legislation, Veterans Health Care Budget Reform and Transparency Act of 2009, which was signed into law as Public Law 111-81 by the President

on October 22, 2009. Funding VA health care in advance will go a long way toward rectifying the chronic underfunding of VA health care, which has left so many of the Nation's veterans with unmet health care needs.

This bill fully funds VA's research programs. The \$580 million appropriation for VHA research represents a \$70 million increase from the fiscal year 2009 enacted level and an amount equal to the budget request. Through these funds, VA will be able to pursue targeted research goals like developing better prosthetic devices for the younger veterans returning from the Iraq and Afghanistan wars. VA can continue research into conditions like post-traumatic stress disorder, traumatic brain injury, and gulf war illness. In addition, VA can continue to recruit and retain quality health care providers, as over three-quarters of VA's researchers also provide direct patient care.

I am pleased that this bill contains an amendment I offered that will extend VA's authority to operate the Manila VA Regional Office.

Earlier this year, over 60 years after the end of the World War II, surviving Filipino World War II veterans finally received a measure of compensation for their service in the form of a one-time lump sum payment. These past months have demonstrated that dispersing these payments has been an enormous challenge, with multiple steps to authenticate the service of these World War II veterans.

Unfortunately, VA's authority to operate the Manila VA Regional Office will expire on December 31, 2009. There remains much work to be done in order to continue processing claims and ensuring these veterans are awarded benefits they have waited six long decades to receive. For this and other purposes, the operational authority of the Manila Regional Office must be extended.

The Manila Regional Office currently administers compensation, pension, vocational rehabilitation and employment, and education benefits to over 18,000 beneficiaries. In addition, VA also administers Social Security in the Philippines. Keeping this facility fully functioning is necessary for these deserving individuals to receive critical veterans' benefits as well to carry out an integral part of the U.S. mission to the Republic of the Philippines.

I extend my deepest thanks to the staff of the Manila Regional Office who have continued to demonstrate unwavering dedication to their duty to assist Filipino World War II veterans and indeed all veterans who apply for benefits from VA.

Finally, I mention Senator BARR's amendment, included in the underlying bill, that would directly support efforts to address homelessness among our Nation's veterans. His provisions, of which I am a cosponsor, are offset by funds currently allocated for administrative costs for an existing homeless program that is essentially defunct—the Multifamily Transitional Housing Loan Guarantee Program.

I will be working with Senator BARR in the future to ensure that the unspent money for this program—\$43 million—can be used for more active homeless programs, such as the Grant and Per Diem Program.

In closing, I thank Senators JOHNSON and HUTCHISON, the chair and ranking member of the Subcommittee on Military Construction and Veterans Affairs; Senators INOUE and COCHRAN, the chair and ranking member of the Appropriations Committee; and their staffs for their hard work in putting this bill together and for working to incorporate important veterans-related provisions in the package. Additionally, I thank the Members who filed VA-related amendments who worked with the Veterans' Affairs Committee to come to agreement on issues that could be addressed in this bill.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The substitute, as amended, is agreed to.

The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

Mrs. HUTCHISON. 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.

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 348 Leg.]

YEAS—100

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

The bill (H.R. 3082), as amended, was passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

Mr. JOHNSON. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment, requests a conference with the House, and the Chair appoints the following conferees.

The Presiding Officer appointed Mr. JOHNSON, Mr. INOUE, Ms. LANDRIEU, Mr. BYRD, Mrs. MURRAY, Mr. REED, Mr. NELSON of Nebraska, Mr. PRYOR, Mr. LEAHY, Mrs. HUTCHISON, Mr. BROWNBACK, Mr. MCCONNELL, Ms. COLLINS, Ms. MURKOWSKI, and Mr. COCHRAN.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. 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. JOHNSON. Mr. President, I wish to thank my colleagues for their help in getting this bill completed. It was a long and slow process, but I am thankful we were able to dispose of a majority of the amendments that were offered.

This is a good bill. It is truly a bipartisan bill and contains some good programs that will help out military men and women and our Nation's vets. The bill provides investments in infrastructure for our military, including barracks and family housing, training and operational facilities, and childcare and family support centers. In addition, it fulfills the Nation's promise to our vets by providing the resources needed for the medical care and benefits that our vets have earned through their service.

As I have mentioned, for the first time the bill contains advance funding for vets' medical care for fiscal year 2011. This funding will ensure that the VA has a predictable stream of funding and that medical services will not be adversely affected should another stop-gap funding measure be needed in the future.

I wish to thank my ranking member, Senator HUTCHISON, for her work on this bill. She was critical in getting the amendments cleared on her side of the aisle. I wish to thank her staff, Dennis Balkham and Ben Hammond, for their hard work. I also wish to thank the majority staff, Chad Schulken and Andy Vanlandingham, for their hard work on this important bill. I would especially like to thank the subcommittee clerk, Christina Evans, for her hard work and leadership on this subcommittee.

I also wish to acknowledge the hard work of the floor staff and the cloakroom staffs. Thank you, Dave and Lula, for helping us get to this point.

Mr. President, let me again thank my colleagues. Thank you.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

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

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

#### EXECUTIVE SESSION

#### NOMINATION OF DAVID F. HAMILTON TO BE UNITED STATES CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT—Resumed

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

The assistant legislative clerk read the nomination of David F. Hamilton, of Indiana, to be United States Circuit Judge for the Seventh Circuit.

The PRESIDING OFFICER. Under the previous order, there will now be 60 minutes of debate divided between the Senator from Vermont, Mr. LEAHY, and the Senator from Alabama, Mr. SESSIONS.

The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, I wish to begin by thanking our colleague, Chairman LEAHY, for his leadership in this area. He has been a model of decorum and patience, and I am personally grateful for his leadership.

My father, as my colleagues may recall, served for 18 years on the Judiciary Committee. I lack his patience and therefore never have, but I admire very much Senator LEAHY and those who help shepherd these judicial nominations, which, unfortunately, are all too frequently unnecessarily contentious.

Secondly, I note the presence—I am sure he will be speaking shortly—of our colleague, Senator SESSIONS. Although Senator SESSIONS and I have a disagreement over this nomination, we have worked well in many areas, and I look forward to collaborating with him in the future in those many areas where we do find ourselves in agreement.

Today, I find myself in agreement with my friend and colleague from my home State of Indiana, Senator LUGAR, who yesterday on this floor issued a compelling statement in support of the nomination of David Hamilton for the Seventh Circuit Court of Appeals. For all those Members of this body or those viewing us from afar who have questions about Judge Hamilton, I strongly recommend they read Senator LUGAR's very eloquent statement in his behalf. He went through every suggested con-

troversy point by point, debunking those who raised concerns about Judge Hamilton, and ended up by noting his 40 years of acquaintance with both the nominee and his family and his strong support for Judge Hamilton's nomination.

I rise today to speak in favor of the nomination of Judge David Hamilton. I join with Senator LUGAR to recommend Judge Hamilton because I know firsthand that he is a highly capable lawyer who understands the limited role of the Federal judiciary.

In recent days, some of Judge Hamilton's critics have unfairly characterized his record and even suggested that his nomination should be filibustered. I rise today to set the record straight and hope my colleagues will join Senator LUGAR and me in supporting this superbly qualified nominee.

Before I speak to Judge Hamilton's qualifications, I wish to briefly comment on the state of the judicial confirmation process generally. In my view, this process has too often become consumed by ideological conflict and partisan acrimony. I believe this is not how the Framers intended us to exercise our responsibility to advise and consent.

During the last Congress, I was proud to work with Senator LUGAR to recommend Judge John Tindler as a bipartisan, consensus nominee for the Seventh Circuit. Judge Tindler was nominated by President Bush and unanimously confirmed by the Senate by a vote of 93 to 0.

It was my fervent hope Judge Tindler's confirmation would serve as an example of what could happen when two Senators from different parties work together to recommend qualified, nonideological jurists to the Federal bench.

I know President Obama agrees with this approach. His decision to make Judge Hamilton his first judicial nominee was proof that he wanted to change the tone and follow the "Hoosier approach" of working across party lines to select consensus nominees.

On the merits, Judge Hamilton is an accomplished jurist who is well qualified to be elevated to the appellate bench. He has served with distinction as a U.S. district judge for over 15 years, presiding over approximately 8,000 cases. He is now the chief judge of the Southern District of Indiana, where he has been widely praised for his effective leadership. Throughout his career, Judge Hamilton has demonstrated the highest ethical standards and a firm commitment to applying our country's laws fairly and faithfully.

In recommending Judge Hamilton, I have the benefit of being able to speak from personal experience, because he was my legal counsel when I had the privilege of serving as Indiana's Governor.

If you ask Hoosiers about my 8 years as Governor, you will find widespread agreement that we charted a moderate, practical, and bipartisan course. As my

counsel, David Hamilton helped me craft bipartisan solutions to some of the most pressing problems facing our State.

He helped resolve several major lawsuits that threatened our State's financial condition. He wrote a tough new ethics policy to ensure that our State government was operating openly and honestly.

In addition to his insightful legal analysis, I could always count on David Hamilton for his sound judgment and the commonsense Hoosier values he learned growing up in southern Indiana. Like most Hoosiers, David Hamilton is not an ideologue.

During his service in State government, he also developed a deep appreciation for the separation of powers and the appropriate role of the different branches of government. If confirmed, he will bring to the seventh circuit a unique understanding of the important role of the States in our Federal system and will be ever mindful of the appropriate role of the Federal judiciary. He understands the appropriate role for a judge is to interpret our laws, not to write them.

Despite Judge Hamilton's long record as a thoughtful, nonideological jurist, his critics have sought to portray him as an "activist" judge hostile to religion. I have no doubt these attacks come as a surprise to his father, the Reverend Richard Hamilton, who is the former pastor of St. Luke's United Methodist Church in Indianapolis.

It is only in the upside-down, bipartisan world of Washington, DC, that the humble son of an Indiana zealot can be turned into a partisan zealot hostile to religion, which David Hamilton is not. To my mind, such outrageous attacks say more about the sad status of our judicial confirmation process than they do about Judge Hamilton.

Some of Judge Hamilton's critics have even suggested his nomination reaches the level of "extraordinary circumstances" justifying a filibuster. This is a nominee jointly recommended to the President by a moderate Democrat and the Senate's senior Republican. If this nomination constitutes "extraordinary circumstances," then that phrase has ceased to have any meaning whatsoever. I sincerely hope that all involved will agree to give Judge Hamilton the up-or-down vote he so clearly deserves. If not, I fear that filibusters will become routine regarding judicial nominees. That is not the way our Framers intended us to operate, nor the way that we should.

On a personal note, I have known Judge David Hamilton for over 20 years. I know him to be a devoted husband to his wife Inge, and a loving father to his two daughters, Janet and Devney. He is the nephew of former Congressman Lee Hamilton, a man whose integrity is beyond reproach.

As someone who personally knows and trusts Judge Hamilton, I say to my colleagues he is the embodiment of

good judicial temperament, intellect, and evenhandedness. If confirmed, he will be a superb addition to the Seventh Circuit Court of Appeals.

I urge my colleagues to join me and Senator LUGAR in supporting this extremely well-qualified and deserving nominee.

Before I end, let me say a couple of additional things. David Hamilton has been subjected to a number of unfounded attacks, probably the most ludicrous of which is that he is anti-religion in general and hostile to Jesus Christ in particular. His father was a 40-year Methodist pastor. David Hamilton was baptized and married by his father. Before he served as a Federal district court judge, he placed his hand upon the Bible—the Old and New Testament alike—and pledged loyalty to our Nation and devotion to our laws. He is not hostile to religion or to Jesus Christ. That charge is unfounded.

Likewise, it has been suggested that he is, in some way, soft on crime. A particular case has been cited involving child pornography. I find this to be ironic since he sentenced the accused to the maximum sentence allowed by law—the maximum sentence allowed by law, not 1 day less. Judge Hamilton has had the responsibility of handing down 700 criminal sentences in his time on the bench. The Justice Department has appealed two—a mere fraction of 1 percent. Judge Hamilton is not soft on crime.

Finally, it has been suggested that Judge Hamilton is a judicial activist. A case in our State involving abortion rights has been cited in that regard. I find that to be ironic, as well, because the president of the Indiana Federalist Society, an organization not known for embracing activist judges, strongly endorsed Judge Hamilton's nomination, saying:

I regard Judge Hamilton as an excellent jurist with a first-rate intellect. He is unflinching polite to lawyers and asks tough questions to both sides, and he is very smart—to the left of center, but well within the mainstream.

That is the position of Geoffrey Slaughter, president of the Indiana Federalist Society.

I find this set of circumstances to be most unfortunate. David Hamilton is superbly qualified. I think this is, more than anything else, a comment on the sad state of our judicial nominating process, where this individual has been caricatured as out of sorts with reality, and if extraordinary circumstances are found with regard to David Hamilton, I am afraid that filibusters of judicial nominations will become routine on the floor of the Senate. That would not be good for this body or our country. I hope we don't go there today.

Again, I urge my colleagues to join with me and Senator LUGAR in strongly invoking cloture on this nomination and voting to confirm him to the court of appeals.

I am glad to see Senator SESSIONS. I noted our many areas of agreement and

it has been my pleasure working with the Senator from Alabama in the past—even as we have a difference of opinion about this nomination today.

I ask unanimous consent that the time for any quorum calls be charged equally to both sides.

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

Mr. BAYH. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I thank Senator BAYH for his comments and admire his support for a friend, the nominee under consideration today. He is an excellent Senator who continues to strive for fairness and good policy in the Senate.

Certainly, no one likes to oppose a nominee for the Federal bench. It is not a very pleasant thing to do. Having seen that process from both sides, I particularly don't relish the thought. But judges are seeking lifetime appointments to the Federal bench, and they would hold their office for life, without the ability of the public to review, even if the judge conducts himself in a way that is not appropriate. The American people may vote us out of office, and they do from time to time. They can vote their Governors out, as well as others. But Federal judges are not subject to that. Therefore, I think it is critically important that before we bestow that lifetime appointment, that power to define the meaning of words in our laws and our Constitution, we be certain that the nominee is a person who is committed, as the oath says, to serving under the Constitution and the laws and not above them.

This nominee has some problems. Unfortunately, it is not totally an isolated matter. There is indeed a philosophy prevalent among many judges in law schools that has led to, I think, an abuse of office by certain judges. In recent years, they have developed an idea that the Constitution is not a changeless contract with the American people, but a "living document," they say—in other words, a malleable instrument that they are free to massage, so that it is made to read as they would like it to read, or as they wish it had been written rather than doing their duty, which is to follow the document as it was in fact written.

I believe this disrespects the Constitution, weakens the Constitution. If it is not respected by this judge today, what would prohibit a judge tomorrow with a different philosophy from violating it at that point? I think it is indeed a dangerous philosophy, one that Judge Hamilton has bought into. That is part of his approach to law.

I do think judges must be committed to their oath and to the Constitution, and that they are not empowered to amend the Constitution, or write footnotes to it. Judge Hamilton has been nominated by the President for the U.S. Court of Appeals for the Seventh Circuit. He is now a Federal district judge. In that capacity, he is one step

below the Supreme Court, and he would have considerably more power to define words in our laws and Constitution than he does as a district judge. During his campaign, the President promised to seek a bipartisan administration, but we have had a number of candidates, I think, for the judiciary, and efforts on matters such as health care, that demonstrate otherwise. Some time ago, a number of us—I think all 40 Republicans—wrote and suggested that he re-nominate some outstanding candidates for the circuit court, who President Bush had submitted and were not confirmed, just as President Bush re-nominated some of President Clinton's nominees when he took office. We suggested it would be a good first step in showing that kind of commitment to openness. But the White House never even acknowledged that letter.

With Judge Hamilton, his first judicial nominee, I think we have a problem. According to some press reports, Judge Hamilton's nomination was intended to send a pacifying signal to the Republicans, and they indicated—some of the Administration's spokesmen—that future nominees would be more ideologically provocative. I am at a loss to think that we would have someone with greater ideological commitment than Judge Hamilton. Perhaps we will see that in the future. I don't think we have seen that to date. I have voted for most of the President's nominees, but some I have not supported.

To begin with, Mr. Hamilton was a board member and vice president of the ACLU chapter of Indiana. They take some very strong positions on constitutional questions that I think are unjustified. He signed onto that organization fully knowing what they stood for. He previously worked for and has been associated with ACORN, which is certainly not a mainstream organization but a real left-wing group. Investigations and reports of their activities have not made us feel good about ACORN, that is for sure.

There is a theory that Judge Hamilton's views are outside the mainstream of President Obama's other nominees, the vast majority of whom have openly rejected the President's so-called empathy standard, and have stated that empathy should not play a role in a judge's consideration of a case. Associate Justice Sotomayor rejected this notion explicitly at her confirmation.

However, instead of embracing the constitutional historic standard of jurisprudence that Justice Sotomayor said she believed in, one that says judges must faithfully adhere to the rule of law as written, Judge Hamilton has embraced openly the empathy standard which, I submit, is no standard at all. It is not a legal standard.

In response to a follow-up question after his hearing, Judge Hamilton said empathy was "important in fulfilling judicial oaths." He further stated, and this was in answer to a question, I believe, by Senator HATCH—he further stated:

A judge needs to empathize with parties in the case, plaintiff and defendant, crime victim and accused defendant, so that the judge can better understand how the parties came to be before the court and how rules affect those parties and others in similar situations.

I disagree with that. It is a pretty significant disagreement, actually. Whenever a judge empathizes with a party, whenever a judge uses or allows his personal beliefs, biases, or experiences to inform or influence a decision in favor of one party, he would then necessarily disfavor the other party. Empathy directly conflicts with the judicial oath which requires judges to faithfully and impartially "administer justice without respect to persons, and do equal right to the poor and the rich . . . under the Constitution and laws of the United States."

Judge Hamilton has said he believes a judge will "reach different decisions from time to time . . . taking into account what happened and its effect on both parties, what are the practical consequences."

But this is an outcome-determinative philosophy of law, and outcomes are to be considered by the legislative branch, the policymaking branch, when they pass the law. We pass laws and we do our best to figure out what impact they will have and how they should be enforced, and we draw the lines at this and that. It goes to a judge. Then a judge now is empowered to say: I know they wrote this, but I don't like the effect it is going to have on party A, so I am not going to enforce it. I don't want to be harsh. I don't want to be a strict constructionist. I believe I have the ability to empathize with the parties. The way I feel today I empathize with this party and not that party.

You see, that is not law. It is not law in the great American tradition of law. It is more akin to politics. Judges put on robes, they take oaths, they conduct themselves—the judges I have known over the years—in every way possible to send a message that they follow their oath and they do their duty and they treat people fairly, without bias or prejudice or empathy. Is empathy not a form of prejudice for one party or another?

I think this is a big deal. These are big issues, and I think Judge Hamilton's position is incorrect. He is a good person; I do not dispute that. But we are talking about whether he should be empowered to be an appellate judge, one step below the U.S. Supreme Court.

His view of the role of a judge troubles me. In a 2003 speech he said the role of a judge includes "writing a series of footnotes to the Constitution."

In explaining this answer to a question Senator HATCH submitted to him after the hearing, he wrote that he believes the Framers intended for judges to be able to amend the Constitution through evolving case law, in effect saying:

Both the process of case-by-case adjudication and the Article V amendment processes are constitutionally legitimate, and were

both, in my view, expected by the Framers, provided that case-by-case interpretation follows the usual methods of legal reasoning and interpretation.

I think that is a pretty strong statement. He says the process of case-by-case adjudication and Article V amendment processes are constitutionally legitimate—in effect, constitutionally legitimate ways to alter the document.

Article V is the amendment process. That is how we amend the Constitution. I am troubled by his statements. That was just recently when he submitted a written answer to questions. That is not a sound view of judging, in my opinion.

I would say, indeed, it is the essence of an activist judicial philosophy. That philosophy has impacted a number of his rulings as a Federal district court judge. His rulings show a lack of appreciation for the popular will of the people, of the State and Federal Government, and the elected branches. In more than a few instances he has used his position to drive a political agenda, it seems clear to me. Some can say it is not. We all make our best judgment about those matters. I think in this case he has a political agenda that is guided by personal beliefs and not the rule of law.

He has been reversed quite a number of times by the Seventh Circuit Court of Appeals, the very court for which he has now been nominated.

I would like to next look at the *Hinrichs v Bosma* case. I do not contend, and it is not right to say, Judge Hamilton is hostile to religion. It does appear he is hostile to the free expression of religion in certain circumstances and has been reversed as a result of it.

I want to be fair to him. In the *Hinrichs* case, he enjoined or issued an order to the speaker of the Indiana House of Representatives, telling the speaker that he cannot allow sectarian prayers, ruling that the prayers being said violated the Establishment Clause of the Constitution because many of the prayers expressly mentioned Jesus Christ. Yet in a post-judgment motion, Judge Hamilton permitted the use of Allah by a Muslim imam who was invited to pray at the legislature because he found there was "little risk" that such prayers "would advance a particular religion or disparage others."

I don't think that is a sound legal approach. But that is exactly what he said. People can say he did not mean that. But that is what happened. Judge Hamilton concluded in that case:

When government prayers are expressly and consistently sectarian, i.e., when they express faith of a particular religion, then the opportunity for prayers is being used to advance a particular religion contrary to the mandate of the Establishment Clause.

I don't think that is accurate because the law is, indeed, difficult in this area. But this is one of the more dramatic rulings I have seen in this area of the law.

In addition to prohibiting such sectarian prayers, as he defined it, Judge

Hamilton held that the speaker of the house must advise any officiant who opens the legislature with a prayer that a prayer must be nonsectarian, must not advance any one faith, or disparage another, and must not use "Christ's name or any other denominational appeal."

The Seventh Circuit initially denied the speaker's request for a stay of that injunction, finding that the ruling was supported by some precedent. However, after full briefing and oral argument, they reversed and remanded with instructions to dismiss, finding that the plaintiffs lacked standing.

I would just note for my colleagues that every day this Senate opens with a prayer. We have a Chaplain on the payroll of the U.S. Government who walks up those steps and stands behind the Speaker's chair and opens the session with a prayer and periodically mentions Jesus's name in that process. So I don't know how we get to this. Nobody, I assume, would challenge what we do here—at least they have not done so effectively yet.

In *Grossbaum v Indianapolis-Marion County Building Authority*, Judge Hamilton denied a rabbi's plea to allow a menorah to be part of a municipal building's holiday display. The Seventh Circuit unanimously reversed that erroneous opinion, finding that Judge Hamilton failed to acknowledge the rabbi's right to display the menorah as symbolic religious speech protected by the Constitution.

As we know, in the Constitution's first amendment it says Congress—us—Congress shall make no law respecting the establishment of a religion, or prohibiting the free exercise thereof. That is all the Constitution says about religion. It just as strongly prohibits limitations on free exercise of religion as it clearly prohibits the government from establishing a church and making it preferable over others.

It is interesting. The results reached in these decisions are strikingly similar to the positions consistently advocated by the ACLU, the organization with which Judge Hamilton has been associated prior to becoming a judge.

Judge Hamilton's problematic rulings are not limited to cases involving religion. Lawyers quoted in the *Almanac of the Federal Judiciary* describe him as one of the most lenient judges in his district in criminal matters. His rulings on the bench have lived up to that reputation.

In the *Rinehart* case, Judge Hamilton, I think inappropriately, acted and used his opinion in the case to request clemency—that is either elimination of the penalty he imposed pursuant to the mandatory Federal guidelines, at least within that range—for a police officer who had pled guilty to two counts, not of seeing pornography or possessing pornography but producing child pornography. A 32-year-old officer had engaged in "consensual"—consensual sex with two teenagers and videotaped the activity.

In *United States v Woolsey*, the Seventh Circuit faulted Judge Hamilton for disregarding an earlier felony drug conviction in order to avoid imposing a life sentence on a repeat offender. He didn't want to do that so he ignored the prior conviction that would have called for that.

In reversing his decision, the Seventh Circuit reminded Judge Hamilton that he was not free to ignore prior convictions, regardless of whether he deemed the penalty for recidivists to be appropriate.

Judge Hamilton's most activist decision may be a series of rulings in *A Woman's Choice v. Newman*. Through the rulings in this case, Judge Hamilton succeeded in blocking the enforcement of an Indiana informed consent law for 7 years. In reversing, the Seventh Circuit court noted that Judge Hamilton had abused his discretion. This is how they described it.

This is a strong condemnation, from my experience, as to how appellate judges deal with lower court judges who make errors. They know judges make errors from time to time. They just reverse it and try not to be too critical. But this is what they said in this case:

For seven years Indiana has been prevented from enforcing a statute materially identical to a law held valid by the Supreme Court in *Casey*, by this court in *Karlin*, and by the Fifth Circuit in *Barnes*. No court anywhere in the country (other than one district judge in Indiana) has held any similar law invalid in the years since *Casey* . . . Indiana (like Pennsylvania and Wisconsin) is entitled to put its law into effect and have that law judged by its own consequences.

They were referring to Judge Hamilton. In other words, if the judge didn't like the consequences of it and if his empathy made him believe this was not a good policy, he is not empowered to do that. The legislature passed a constitutional statute that simply said: Before a person has an abortion, they must be given notice of what the ramifications are so they can be informed when they make their decision. Apparently, he didn't like that. For 7 years, through a series of rulings, he kept it from being enforced. This case is a blatant example of him allowing his personal views to frustrate the will of the people and the popularly elected representatives of the government of Indiana. The people of Indiana went through a lot as a result. There were multiple appeals and lawsuits and attorneys. They were forced to expend great sums of money to overcome what appeared to me to be obstructionism.

Chief Justice Roberts said it best when he said judges should be neutral umpires, calling balls and strikes based on the law and the evidence. Unfortunately, Judge Hamilton disagrees with the idea that a judge should be a neutral umpire. This is what he said:

Judges reach different decisions from time to time. In that sense, the call is not was that a ball or a strike. But taking into account what happened and its effects on both parties, what are the practical consequences.

We don't want a baseball umpire who says: If I call this a strike, that will be the third out and the game will be over. I believe, with all sincerity, these views represent a results-oriented, activist philosophy that is hostile to the great American role of a judge in our constitutional system. I believe it disqualifies him for elevation to the court of appeals.

This is one of those extraordinary circumstances where the President should be informed of that fact by a vote of the Senate. That is why I will not be able to support cloture.

It will be the first time I have voted against cloture in a matter of this kind. I take this seriously. I talked about it some yesterday. If we could reach an agreement with my colleagues, Senator LEAHY and others, to not follow the filibuster rule, I think the Senate would probably be better. But under President Bush, some 30 filibusters against his nominees were effected. Eventually, we had a political brouhaha here for several years that culminated in a decision that the filibuster would be acceptable if you believed there were extraordinary circumstances justifying that against a nominee. This judge's history and background reach that level. That is why I will not be voting for him.

I don't think we should abuse this policy. I think we would be better off if we did not. But that is what the Senate basically decided when the Gang of 14 reached their agreement in the midst of a debate, for those who said you shouldn't filibuster and for those who said you can, and they reached that agreement. I think that is probably the state of the situation in the Senate. Based on that standard, I will oppose cloture.

I yield the floor.

Mr. HATCH. Mr. President, today the Senate takes up the nomination of David Hamilton to the U.S. Court of Appeals for the Seventh Circuit. This controversial nominee's record including his decisions, speeches, and testimony before the Judiciary Committee reflects an activist judicial philosophy that is inconsistent with the proper role of judges in our system of government. As a result, while I voted for cloture, I will vote against confirmation.

Even with control of both the White House and Senate, and with the largest Senate majority in 30 years, Democrats are still complaining about the slow judicial appointment pace. But we have nominees for only 19 of the current 99 judicial vacancies. Twenty-four of the 80 current vacancies for which there are no nominees are more than 1 year old. And yet one of the nominees we have received and who will have a hearing tomorrow would fill a seat on the U.S. district court that is not vacant at all.

At this point in 2001, President George W. Bush had sent nearly twice as many judicial nominees to the Senate despite dealing with the aftermath of the 9/11 terrorist attacks and a Senate controlled by the other political

party. And nominees to the U.S. district court this year have been confirmed nearly 15 percent faster than President Bush's district court nominees during the 107th Congress.

Democrats have nonetheless accused the minority of engaging in filibusters. If the word "filibuster" is used anytime the Senate does not blindly and immediately rubberstamp nominees, then the word no longer means anything at all. Democrats have circulated their talking points to reporters and commentators, who in some cases repeat outright falsehoods. Last week, the Judiciary Committee chairman placed in the Record a commentary by a law professor claiming that there had already been cloture votes on three judicial nominees. The CONGRESSIONAL RECORD is supposed to be a nonfiction work.

On the one hand, Democrats claim the Senate is not confirming nominees and then, on the other hand, complain that Senators actually must vote on them. This no doubt baffles many Americans, who probably think that voting is one of the things Senators come here to do. But the practice of using a rollcall vote to confirm noncontroversial judicial nominees was already firmly established, and not by Republicans. The percentage of district court nominees confirmed by rollcall vote during the administration of George W. Bush was 26 times higher than during the previous 50 years. You heard that right, 26 times higher. And the percentage of those rollcall votes without any opposition skyrocketed as well. The majority today has no one to blame but themselves for forcing such changes in confirmation tradition and practice.

If Republicans really wanted to obstruct President Obama's nominees, I suppose we could have followed the Democrats' example from 2001. Under Senate rules, pending nominations expire and return to the President when the Senate adjourns or recesses for more than 30 days. We routinely waive that rule to carry pending nominations over the August recess. But on August 3, 2001, Democrats objected to that traditional practice in order to send 45 judicial nominees back to the President. Some had been nominated literally the day before. Some had been nominated to life-tenured Federal courts, but others to term-limited courts such as the U.S. Court of Claims or the District of Columbia Superior Court. It did not matter to my Democratic friends, they did anything and everything they could to keep nominees from any consideration at all, including inventing entirely new forms of obstruction.

And then, of course, there were the first filibusters in American history used to defeat majority-supported judicial nominees. My Democratic friends invented that one too during the previous administration. Their scorched-earth campaign changed many long-established confirmation traditions and practices. So it is little wonder that

today, with such a controversial nominee before us, many on this side of the aisle feel justified in following the Democrats' playbook. I do not blame them for that. I voted for cloture today because I continue to believe that the Constitution's assignment of roles in the judicial selection process counsels against using the filibuster to defeat majority-supported nominees. Democrats should not have dragged the Senate across that line, and I fear that doing so may have unalterably changed how this body fulfills its role in the judicial selection process. Yet, for now at least, I still believe that the Senate fulfills its advice and consent role best by voting up or down on nominees that have been reported to the floor. That is why I voted for cloture on this nomination.

That said, I must vote against confirmation of this controversial nominee. Qualifications for judicial office include not only legal experience but also judicial philosophy. I define judicial philosophy as an understanding of the power and proper role of judges in our system of government. Judge Hamilton's activist record fails that standard.

Turning to that record, Judge Hamilton has rendered a pattern of decisions that evidence a willful assertion of personal views over the requirements of the law. Now I know we will hear that only a fraction of Judge Hamilton's decisions as a U.S. district judge are controversial. Most of any judge's decisions make no waves and raise no flags. When he served in this body, President Obama himself said that only 5 percent of the Supreme Court's decisions are truly the hard cases, and this percentage may shrink with each step down the judicial pyramid. I need not recount the few cases that my friends on the other side found more than sufficient to oppose so many nominees in the past. The cases that matter are the ones that tell us what we need to know about a judge and his judicial philosophy. I know other Senators will be speaking about a number of these and I want to highlight two of them.

In one notorious case, Judge Hamilton for 7 years blocked enforcement of Indiana's law requiring informed consent before a woman can obtain an abortion. The Supreme Court had 5 years earlier upheld a Pennsylvania informed consent law that the seventh circuit would later describe as "materially identical" to the one before Judge Hamilton. That was the precedent he should have followed. Instead, he turned a minor factual distinction into a constitutional difference and issued a preliminary injunction in 1995. Following the Supreme Court, the Seventh Circuit upheld a virtually identical Wisconsin statute in 1999, but Judge Hamilton also ignored that precedent and issued a permanent injunction in 2001 against the Indiana law. I do not see any way to explain his decisions in this case except as a will-

ful assertion of his own opinion over what the law required. When the Seventh Circuit finally reversed him in 2002, it said that no court anywhere in America had done what Judge Hamilton had done.

In another case, Judge Hamilton chose to ignore one of a defendant's prior drug convictions so that he did not have to impose a life sentence. In Judge Hamilton's personal opinion, a court in another state—where Judge Hamilton, of course, had no jurisdiction whatsoever should have set aside that earlier conviction and so he was simply going to ignore it. Mind you, even the defendant himself had not denied the earlier conviction, but Judge Hamilton was still going to substitute his own judgment. In one of the most stunning statements I have ever read in a judicial opinion, Judge Hamilton wrote that he "ought to treat as having been done what should have been done." In other words, he would not let the law, the facts, rulings of other courts with proper jurisdiction, or anything else stand in the way of how he wanted things to be. That is perhaps the ultimate mark of the activist judge, driven by results and finding whatever means necessary to get there. When the Seventh Circuit reversed Judge Hamilton, it cited its own precedents that Judge Hamilton should have followed and concluded: "Furthermore, we have admonished district courts that the statutory penalties . . . are not optional, even if the court deems them unwise or an inappropriate response to repeat drug offenders."

A judge should not have to be told that statutory requirements are not optional. A judge should not have to be told that he must decide cases based on the law rather than on his personal sense of justice or his belief about what should have been done at other times by other courts. A judge who must be told that he has an activist approach to judging that, in my opinion, should not be rewarded with promotion to the federal appeals court.

Those are just two of Judge Hamilton's decisions which I found fit a disturbing pattern of deciding cases based on his own views rather than the law. I also found that the rest of Judge Hamilton's record reflected the same activist view of judicial power. In speeches, for example, Judge Hamilton has endorsed the view that "part of our job here as judges is to write a series of footnotes to the Constitution." He has said that those supporters to the equal rights amendment to the Constitution "lost the battle but have won the war" because the Supreme Court changed the Constitution in substantially the same way that the ERA would have.

This latter view that judges may amend the Constitution through their decisions is particularly troubling. I asked Judge Hamilton about this statement in written questions following his hearing. Judge Hamilton stated that both the process of case-by-case adjudication and the article V amendment

process are constitutionally legitimate means of changing the Constitution and both were expected by America's Founders. He is wrong on both counts. If judges may change the Constitution through their decisions, they literally can make the law they use to decide cases. The Constitution cannot control judges if judges control the Constitution.

America's Founders flatly and explicitly rejected that view. In his farewell address, President George Washington said that if the Constitution must be changed, "let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation." By his own words, the Father of our Country disputed Judge Hamilton's assertion about the judiciary's proper role. In *Marbury v. Madison*, Chief Justice Marshall wrote that America's Founders intended the Constitution to govern courts as well as legislatures. This notion that constitutional amendments by judges are as legitimate as those by the people is completely inconsistent with the proper role of judges in our system of government but completely consistent with the activist approach evidenced by Judge Hamilton's decisions.

Well, I have said enough here to indicate the basis for my opposition to this controversial judicial nominee. I regret that President Obama chose someone with such an activist judicial philosophy as his first judicial nominee. I had hoped that he would take a more balanced approach to judicial selection, choosing consensus nominees that most Senators could support. I hope the nominee before us today does not set a pattern to be followed in the future and I will vote against his confirmation.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I wish to respond to some of the things the distinguished Senator from Alabama has said. To call this the first filibuster of a judicial matter this year is not totally accurate. We have people who are confirmed unanimously after being blocked for month after month by the Republican side, who then says: But we didn't filibuster.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. LEAHY. Yes.

Mr. SESSIONS. Will the Senator cite a single vote prior to this where this Senator has voted against cloture?

Mr. LEAHY. That is not what I said. I am saying we have had several nominees who were approved, not only judicial but others, overwhelmingly—80, 90, 100 votes. They had to wait month after month because the Republican side would not allow us to even proceed to them by filibustering or threatening a filibuster. You have de facto de jure filibusters. During President Clinton's time, the Republicans pocket-filibustered 60 of President Clinton's nominees.

I yield up to 5 minutes to the distinguished senior Senator from Pennsylvania.

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

Mr. SPECTER. Mr. President, I have sought recognition to speak in favor of the nomination. Speaking candidly, perhaps bluntly, Judge Hamilton is a pawn in partisan political warfare. That is the long and short of it. This is the 90th filibuster in the past several months. This follows a pattern, regrettably, that goes back almost two decades, when both sides, Democrats and Republicans at various times, have engaged in filibusters against judicial nominees where there was no justification to do so. It occurred extensively during the Clinton administration. At that time, on the other side of the aisle, I supported many of President Clinton's nominees. It occurred during the Bush administration, when I chaired the Judiciary Committee, and there were repeated filibusters by Democrats against President Bush's nominees.

At that time, this Chamber was almost torn apart with the ferocity and intensity of the partisanship, with serious consideration being given to what was called the nuclear or constitutional option, when there was serious consideration given to altering the traditional requirement of 60 votes to end a filibuster. There was a tactic devised to challenge the ruling of the Chair, which could be overruled by or upheld by only 51 votes, and thereby move the judicial nominees without the traditional 60 votes. Fortunately, sanity and tradition prevailed and we worked out a compromise with the so-called Gang of 14 to confirm some and to reject others. Now we find the pattern continues.

It is my hope that at some point we can declare a truce, an armistice, and stop the partisan political warfare. The nomination of Judge Hamilton would be a good occasion to do that.

Senator LUGAR, in his mild manner, in a floor statement in support of the nomination, has said:

The confirmation process is often accompanied by the same oversimplification and distortions that are disturbing even in campaigns for offices that are, in fact, political.

Having worked with Senator LUGAR in this Chamber for the better part of three decades, I have observed his modesty, his circumspection, and his understatement. But those soft words about oversimplification and distortions give a clue to what is going on today.

Regrettably, this is part of a broader picture, a broader picture of partisan political warfare. On the major issues of the day, the stimulus package, not one Member of 170-plus in the House of Representatives, not one Republican Member was for the stimulus package. Only three Republicans in this Chamber would even talk to Democrats. In the House of Representatives, on com-

prehensive health care reform, only one Republican out of 170-plus stood in favor of the bill. He became a hero or, perhaps more accurately, an oddity. In the Senate, only one Republican in the Finance Committee would stand and vote in favor of reform. Is it any wonder why the Congress of the United States is held in such low esteem by the American public? Is it any wonder why approval ratings across the board are dropping in practically free-fall, with a dull thud, because the American people see what is going on in this Chamber and in the Chamber across the Rotunda and are, frankly, disgusted with it. They are sick and tired of seeing the partisan politics at play.

A great deal has been said about the qualifications of David Hamilton. Beyond any doubt, he is well qualified for the job. During my tenure on the Judiciary Committee, some three decades, part of which I served as chairman, I have seldom seen a better qualified candidate. I am reminded of the objections raised by Democrats to Judge Southwick, picking a couple lines from a couple opinions. Fortunately, sanity prevailed and Judge Southwick was confirmed. This is an outstanding man.

One additional note. His uncle is Lee Hamilton, the very distinguished former Member of the House of Representatives.

I address all my colleagues: Let's call a truce. Let's end the partisan political warfare. Let's start with the confirmation of Judge Hamilton.

Mr. LEAHY. I thank the distinguished Senator from Pennsylvania.

I yield up to 4 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. I thank the distinguished chairman of the Judiciary Committee, not only for his commitment but his patience as he has had to labor through objection after objection, stalling tactic after stalling tactic, to fill these critical judgeships. On March 17, President Obama nominated his first judge to the Federal bench, David Hamilton, whose nomination the Republicans are now filibustering. He nominated him on March 17. Judge Hamilton is not a partisan judge. He has an excellent record. He has upheld the law. He has been an impartial umpire of cases before him. For 15 years, he has served with distinction on the Federal district court, and he has the strong support of his two home State Senators, a distinguished Republican and a distinguished Democrat. He has the highest rating from the American Bar Association. Yet the Republicans are still stalling his confirmation vote. Again, he was nominated on March 17.

This fair and impartial judge is being blocked for no other reason than to stop us from filling a critical seat on the appeals court with President Obama's nominee.

As we know, and as the distinguished Senator from Pennsylvania spoke about a moment ago, this is not a first.

In fact, 90 times so far this year—I am going to have to get a bigger chart soon—90 times we have seen Republicans come to the floor and object in some manner to moving our country forward, to moving the people's agenda forward.

Over and over again, we are seeing tactics to simply slow the Senate down, and a majority of these objections, as the Presiding Officer knows, have ended actually in unanimous votes once we have actually gotten through all of the process, all of the strategies, and actually gotten to a vote. Almost in every case, people have been confirmed overwhelmingly, if not unanimously, and the same is true with legislation.

We are at a point where the stalling has to stop. We have two wars happening. We have the highest unemployment in a generation. We have an economy to worry about, financial reform to worry about, and certainly health care, which is about jobs, which is in front of us now.

The time is now to stop. Every Senator has the right to vote yes or no on a nominee or on legislation. But 90 times—and counting—we have simply seen objections and stalling tactics to slow down the business of this country. I hope we are going to see that stop in the interest of everything we need to get done.

I strongly support this nominee.

Thank you, Mr. President.

**THE PRESIDING OFFICER.** The Senator from Vermont.

**Mr. LEAHY.** Mr. President, I ask the distinguished Presiding Officer to notify me when I have 3 minutes remaining.

**THE PRESIDING OFFICER.** The Chair will do so.

**Mr. LEAHY.** Mr. President, today, the Senate finally turns to the Republican filibuster against the nomination of Judge David Hamilton of Indiana to the Seventh Circuit. Republican Senators who, just a few years ago, protested that such filibusters were unconstitutional. Republican Senators who joined in a bipartisan memorandum of understanding to head off the "nuclear option" that the Republican Senate leadership was intent on activating. Republican Senators who agreed that nominees should only be filibustered under "extraordinary circumstances." Those same Republican Senators are now abandoning all that they said they stood for, and are instead joining together in an effort to prevent an up-or-down vote on the nomination of a good man and a good judge, David Hamilton of Indiana.

The American people should see this for what it is: more of the partisan, narrow, ideological tactics that Senate Republicans have been engaging in for decades as they try to pack the courts with ultraconservative judges. What is at stake for the American people are their rights, their access to the courts, their ability to seek redress for wrongdoing.

I thank the distinguished Senator from Michigan for pointing out these 90 delays just in this year alone. In evaluating this nomination, the nonpartisan American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Judge Hamilton "well qualified," the highest rating possible. He has served as a Federal district Judge for 15 years and is now the chief judge in his district. His nomination is supported by the senior Republican in the Senate, his senior home State Senator, Senator LUGAR, and by Senator BAYH. That is correct: Judge Hamilton has the support of both of his home state Senators, the longest-serving Republican in the Senate, and a well-respected moderate Democrat.

Unlike his predecessor, President Obama has reached across the aisle to work with Republican Senators in making judicial nominations. The nomination of Judge Hamilton is an example of that consultation. Other examples are the recently confirmed nominees to vacancies in South Dakota, who were supported by Senator THUNE, and the nominee confirmed to a vacancy in Florida, supported by Senators MARTINEZ and LEMIEUX. Still others are the President's nomination to the Eleventh Circuit from Georgia, supported by Senators ISAKSON and CHAMBLISS, his recent nominations to the Fourth Circuit from North Carolina, which I expect will be supported by Senator BURR, and the recent nomination to a vacancy in Alabama supported by Senators SHELBY and SESSIONS on which the Judiciary Committee held a hearing 2 weeks ago.

I remind those Republican Senators who endorsed the Memorandum of Understanding on Judicial Nominations in 2005 of what they wrote when there was a Republican President in the White House. How quickly they seem to forget. They said:

We believe that, under Article II, Section 2, of the United States Constitution, the word "Advice" speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

How easy it was for them to say at a time when we had a Republican President. Now we have a Democratic President who has done exactly what these Republican Senators recommended. He has consulted with home state Senators from both sides of the aisle regarding his judicial nominees. And yet Republican Senators still say: Whoops, no. We are going to stall. We are going to filibuster. We are going to make you wait 6 months to get a nominee through, in one instance, who then got a unanimous vote.

In the last administration, with a Republican President, they condemned filibusters of judicial nominations as "unconstitutional," "obstructionist," and "offensive." They issued a threat, though, to filibuster before President Obama made a single nomination. They wrote in a March 2 letter to the President:

If we are not consulted on, and approve of, a nominee from our states, the Republican Conference will be unable to support moving forward on that nominee.

Well, of course, they were consulted. The President, in his first nomination, went to the senior most member of the Republican Party, Senator LUGAR, for his approval and his support. He ended up doing every single thing the Republicans demanded that he do, and their response was: Whoops, never thought you would do what we asked for. We are still going to filibuster.

The American people and the Senate need to understand that Judge Hamilton was nominated with the support and strong endorsement of Senator LUGAR, the longest-serving Republican in the Senate. At Judge Hamilton's hearing over 7 months ago Senator LUGAR described Judge Hamilton as "an exceptionally talented jurist" and "the type of lawyer and the type of person one wants to see on the Federal bench." He knows David Hamilton and said of him at his hearing:

I have known David since his childhood. His father, Reverend Richard Hamilton, was our family's pastor at St. Luke's United Methodist Church in Indianapolis, where his mother was the soloist in the choir. Knowing first-hand his family's character and commitment to service, it has been no surprise to me that David's life has borne witness to the values learned in his youth.

Senator LUGAR gave a brilliant speech on the Senate floor just yesterday, speaking in favor of Judge Hamilton. I encourage every member of the Senate to review his well-considered statement in which he rebuts the thin, partisan attacks on Judge Hamilton and his record. As Senator LUGAR said, a fair review of his judicial record "will reveal that Judge Hamilton has not been a judicial activist and has ruled objectively and within the judicial mainstream."

Senator LUGAR is one of the finest Senators to have ever served in the Senate. First elected in 1976, he is the longest serving U.S. Senator in Indiana history. He is a strong man with strong views, a conservative Republican. He is no one's shill.

Instead of praising the President for consulting with the senior Republican in the Senate, the Republican leadership has doubled back on their demands when a Republican was in the White House. No more do they talk about each nominee being entitled to an up-or-down vote. That position is abandoned and forgotten. Instead, they now seek to filibuster this judicial nomination and engage is the very act that Republican leaders used to contend that they never do. They have also abandoned the new position they

took only months ago when they threatened to filibuster if not consulted. We are forced to overcome a filibuster of this nomination despite the President's bipartisan consultation with Senator LUGAR.

When President Bush worked with Senators across the aisle, I praised him and expedited consideration of his nominees. When President Obama reaches across the aisle, the Senate Republican leadership delays and obstructs his qualified nominees.

Today is November 17. By November 17 of the first year of George W. Bush's Presidency, the Senate had confirmed 18 district and circuit court judges. By contrast, once cloture is invoked and the Republican filibuster ended, Judge Hamilton will be just the seventh lower court nomination the Senate has considered all year. We achieved those results in 2001 with a controversial and confrontational Republican President after a mid-year change to a Democratic majority in the Senate. We did so in spite of the attacks of September 11; despite the anthrax-laced letters sent to the Senate that closed our offices; and while working virtually around the clock on the USA PATRIOT Act for six weeks. By comparison, the Republican minority this year has allowed action on only one-third that many judicial nominations to the Federal circuit and district courts as were confirmed by this date in 2001.

Charlie Savage made this point in *The New York Times* this past Sunday when he wrote:

By this point in 2001, the Senate had confirmed five of Mr. Bush's appellate judges . . . and 13 of his district judges. Mr. Obama has received Senate approval of just two appellate and four district judges.

David Savage of the *Los Angeles Times* wrote if even starker terms yesterday:

So far, only six of Obama's nominees to the lower federal courts have won approval. By comparison, President George W. Bush had 28 judges confirmed in his first year in office, even though Democrats held a narrow majority for much of the year.

This is not for lack of qualified nominees. There are eight judicial nominees, including Judge Hamilton who have been reported by the Judiciary Committee on the Senate Executive Calendar. Had those nominations been considered in the normal course, we would be on the pace Senate Democrats set in 2001 when fairly considering the nominations of our last Republican President.

Another aspect of the Republican obstruction is its refusal to consider the nomination of Professor Christopher Schroeder to serve as the Assistant Attorney General for the Office of Legal Policy at the Justice Department. Professor Schroeder has been stalled on the Senate Executive Calendar by Republican objection since July 28 since it was reported by the Judiciary Committee without a single dissenting vote. Professor Schroeder is a distinguished scholar and public servant who

has served with distinction on the staff of the Senate Judiciary Committee and in the Justice Department. He has support across the political spectrum.

I can only imagine that the reason his confirmation is being delayed is part of the partisan effort to slow progress on judicial nominees. The Office of Legal Policy is traditionally involved in the vetting of those nominees. So when Republican Senators excuse their obstruction by suggesting that the President has not sent the Senate enough nominees, they are wrong on at least two counts. They have not allowed the Senate to act on the nominees he has sent, and they are delaying appointment of the Assistant Attorney General who contributes to that process.

President Bush's first nominee to head that division, Viet Dinh, was confirmed 96 to 1 only 1 month after he was nominated, and only a week after he his nomination was reported by the committee. The three nominees to that office that succeeded Mr. Dinh—Daniel Bryant, Rachel Brand, and Elisebeth Cook—were each confirmed by voice vote in a shorter time than Professor Schroeder's nomination has been pending. As Charlie Savage wrote in *The New York Times* this weekend:

In addition, no one has been confirmed as head of the Justice Department's Office of Legal Policy, which helps vet judges; Mr. Obama's nomination of Christopher Schroeder for the position remains stalled in the Senate.

As chairman of the Judiciary Committee, I treated President Bush's nominees better than the Republicans had treated President Clinton's. That effort has made no difference; Senate Republicans are now treating this President's nominees worse still. During the 17 months I chaired the Judiciary Committee in President Bush's first term, we confirmed 100 of his judicial nominees. At the end of his Presidency, although Republicans had run the Judiciary Committee for more than half his tenure, more of his judicial nominees were confirmed when I was the chairman than in the more than 4 years when Republicans were in charge.

Last year, with a Democratic majority, the Senate reduced circuit court vacancies to as low as 9 and judicial vacancies overall to as low as 34, even though it was the last year of President Bush's second term and a Presidential election year. That was the lowest number of circuit court vacancies in decades, since before Senate Republicans began stalling Clinton nominees and grinding confirmations to a halt. In the 1996 session, the Republican-controlled Senate confirmed only 17 judges, and not a single circuit court nominee. Because of those delays and pocket filibusters, judicial vacancies grew to over 100, and circuit vacancies rose into the mid-thirties.

Rather than continued progress, we see Senate Republicans resorting to their bag of procedural tricks to delay

and obstruct. They have ratcheted up the partisanship and seek to impose ideological litmus tests. If partisan, ideological Republicans will filibuster David Hamilton's nomination, the nomination of a distinguished judge supported by his respected home State Republican Senator, they will filibuster anybody. This is partisanship gone rampant.

Senate Republicans are intent on turning back the clock to the abuses they engaged in during their years of resistance to President Clinton's moderate and mainstream judicial nominations. The delays and inaction we are seeing now from Republican Senators in considering the nominees of another Democratic President are regrettably familiar. Their tactics have resulted in a sorry record of judicial confirmations this year. There are more judicial nominees recommended to the Senate and sitting on the Executive Calendar awaiting consideration than the Senate has confirmed all year.

Last week, the Senate was finally allowed to consider the nomination of Judge Charlene Honeywell of Florida, but only after 4 weeks of unexplained delays. She was confirmed without a single negative vote, 88-0. The week before, the Senate was finally allowed to consider the nomination of Irene Berger, who has now been confirmed as the first African-American Federal judge in the history of West Virginia. The Republican minority delayed consideration of her nomination for more than 3 weeks after it was reported unanimously by the Judiciary Committee. When her nomination finally came to a vote, it was approved without a single negative vote, 97-0. The week before that the Senate was finally allowed to consider the nomination of Roberto A. Lange to the District of South Dakota. The Republican minority required 3 weeks before allowing consideration of that nomination after it was unanimously reported by the Judiciary Committee to the Senate. They also required 2 hours of debate before allowing the Senate to vote on that nomination. They, in fact, used less than 5 minutes of the time they demanded to discuss that nomination and that came when the ranking Republican on the Judiciary Committee spoke to endorse the nominee. That nomination had the support of both Senator JOHNSON and Senator THUNE, a member of the Senate Republican leadership. Ultimately, Judge Lange's nomination was confirmed 100-0. That follows the pattern that Republicans have followed all year with respect to President Obama's nominations.

Last week, the Senate finally debated the nomination of Judge Andre Davis of Maryland to a seat on the Fourth Circuit. He was confirmed 72-16. Sixteen Republican Senators voted in favor of the nomination and 16 were opposed. As Senators, they may vote as they see fit. What was wrong was that they delayed Senate consideration of that nomination for 5 months.

The obstruction and delays in considering President Obama's judicial nominations is especially disappointing given the extensive efforts by President Obama to turn away from the divisive approach taken by the previous administration and to reach out to Senators from both parties as he selects mainstream, well-qualified nominees. The President has done an admirable job of working with Senators from both sides of the aisle, Democrats and Republicans.

Professor Carl Tobias wrote about President Obama's approach recently in a column that appeared in McClatchy newspapers across the country on October 30. He wrote:

Obama has emphasized bipartisan outreach, particularly by soliciting the advice of Democratic and Republican Judiciary Committee members, and of high-level party officials from the states where vacancies arise, and by doing so before final nominations.

He had it right when he wrote that the real problem lies not with President Obama or with his nominations but with the Republican Senate minority. They are the principle cause of the current, sorry record regarding Senate confirmation of this President's outstanding nominees.

Federal judicial vacancies, which had been cut in half while George W. Bush was President, have already more than doubled since last year. There are now 98 vacancies on our Federal circuit and district courts, including 22 circuit court vacancies. There are another 23 future judicial vacancies already announced. Justice should not be delayed or denied to any American because of overburdened courts, but that is the likely result of the stalling and obstruction.

Despite the fact that Senate Republicans had pocket filibustered President Clinton's circuit court nominees, Senate Democrats opposed only the most extreme of President Bush's ideological nominees and worked to reduce judicial vacancies. This is not an extreme nominee. This is a nominee in the mold of Judge John Tinker, President Bush's nominee to the Seventh Circuit, also a well-respected district court judge in Indiana who was unanimously rated "well-qualified" by the American Bar Association. His nomination was supported by both Senator LUGAR and Senator BAYH and was confirmed 93-0 just 84 days after the Judiciary Committee held a hearing on his nomination.

When he testified in support of Judge Hamilton, Senator LUGAR thanked Senator BAYH for "the thoughtful, cooperative, merit-driven attitude that has marked his own approach to recommending prospective judicial nominees" and his "strong support for President Bush's nominations of Judge Tinker for the Seventh Circuit and of Judge William Lawrence for the Southern District of Indiana." I supported both of those nominees with the endorsement of both of Indiana's Sen-

ators and both were easily confirmed. This nomination should be no different.

I hope that Senators now considering whether to even allow this nomination to be considered by the full Senate heed the advice of Senator LUGAR, which he reiterated yesterday when he said:

[I] believe our confirmation decisions should not be based on partisan considerations, much less on how we hope or predict a given judicial nominee will rule on particular issues of public moment or controversy. I have instead tried to evaluate judicial candidates on whether they have the requisite intellect, experience, character and temperament that Americans deserve from their judges, and also on whether they indeed appreciate the vital, and yet vitally limited, role of the Federal judiciary faithfully to interpret and apply our laws, rather than seeking to impose their own policy views.

As other editorial pages across the country have already done, the Washington Post today urges Senate Republicans to reject the distortions of Judge Hamilton's record, and to heed Senator LUGAR's "words of praise for Judge Hamilton's record, intellect and character and allow a vote, and then vote in favor of confirmation." I could not agree more.

Mr. President, I ask unanimous consent that a copy of today's editorial be printed in the RECORD.

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

[From The Washington Post, Nov. 17, 2009]

GIVING HYPOCRISY A BAD NAME

During the Bush administration, Republicans decried Democratic attempts to filibuster judicial nominees. Some went so far as to label such filibuster attempts unconstitutional and threatened to exercise the "nuclear option" to ban the procedural tool in nomination matters.

Yet now Republicans are threatening to filibuster in an attempt to thwart confirmation of President Obama's first judicial nominee, Indiana federal Judge David F. Hamilton. The Senate is scheduled to vote on cloture Tuesday on Judge Hamilton's nomination to the U.S. Court of Appeals for the 7th Circuit. The prospect of a filibuster is made all the more ridiculous because Judge Hamilton has been rated "well-qualified" by the American Bar Association, enjoys the support of both home state senators, including Republican Richard G. Lugar, and even wins praise from the conservative Federalist Society of Indiana.

Sen. Jeff Sessions of Alabama, ranking Republican on the Judiciary Committee, has distorted Judge Hamilton's record on the trial court in an effort to rally the GOP caucus. For example, Mr. Sessions, arguing that Judge Hamilton is too liberal, cites a case in which Judge Hamilton struck down as unconstitutional sectarian Christian prayers in the Indiana state house but allowed those that referred to Allah. Mr. Sessions points out that the decision was overturned by the court of appeals that Judge Hamilton now hopes to join.

But the senator fails to explain that Judge Hamilton documented that 41 of the 53 invocations during the 2005 session of the Indiana House were given by Christian clergy; nine were delivered by elected officials; one each was said by a Muslim imam, a Jewish rabbi and a layperson. Such a lopsided tally, Judge

Hamilton reasoned, could leave the constitutionally unacceptable impression that Indiana lawmakers favored one religion above all others. Judge Hamilton explained in his written opinion that the ruling did not "prohibit the House from opening its session with prayers if it chooses to do so, but will require that any official prayers be inclusive and non-sectarian, and not advance one particular religion." Mr. Sessions also fails to note that the 7th Circuit reversed Judge Hamilton on procedural grounds and not because it disagreed.

There are probably not the 40 votes needed to block Judge Hamilton's nomination from reaching the floor. We hope that Republicans in large numbers heed Mr. Lugar's words of praise for Judge Hamilton's record, intellect and character and allow a vote—and then vote in favor of confirmation. In this instance, a vote for Judge Hamilton will be a vote to restore much needed comity and integrity to the process—qualities that the next Republican president will greatly appreciate when his nominees are considered.

Mr. LEAHY. Senator LUGAR believes Judge Hamilton "is superbly qualified under both sets of criteria." I agree. I urge the Senate to reject these efforts and end this filibuster with a bipartisan vote.

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

The PRESIDING OFFICER. The Senator has a minute and a half remaining.

Mr. SESSIONS. All right. I will briefly say that for the first time, I believe, in the history of the Senate, a number of President Bush's nominees were systematically filibustered. At 30 different times, cloture votes were required, and some failed, so the nominee did not go forward. That was unprecedented in the history of the Senate.

Now my colleagues say the dispute over that eventually got settled by the fact that a group of 14 Senators said: We need a compromise, and this is the compromise. You should not filibuster a Presidential judicial nomination unless there are extraordinary circumstances.

I opposed that. I have opposed filibusters before. But I do think since we have had no debate on this nominee to date, and this nominee has extraordinary statements in cases, and a record that indicates to me a lack of commitment to following the law—even though he is a person with whom I have no problem as to character and intelligence and ability, but I do not agree with his judicial philosophy—therefore, I believe this side cannot acquiesce to a precedent that says Democratic Presidents can get their judges confirmed with 51 votes; but if a Republican President nominates a nominee, he has to have 60 votes.

The PRESIDING OFFICER. The time is expired.

Mr. SESSIONS. So I think we have changed the rule, unfortunately. I think based on this situation, I will ask my colleagues not to support cloture.

I yield the floor.

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

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

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

Mr. REID. Mr. President, I am going to use some leader time now to speak on a matter that will shortly be before the Senate.

As I indicated to you, the Chair, we will vote on advancing the nomination of a man named David Hamilton, a supremely qualified individual who is already a district court judge from the State of Indiana. He has been an outstanding trial court judge, and he has been nominated by President Obama to be a judge in the Seventh Circuit. But, as many have heard here over this last hour or so—and you might have guessed simply if you have followed the Senate over the last 2 years—Republicans would rather we didn't vote on this man, ever. They would rather that a critical seat such as this remain empty, but not because of who was nominated to fill that seat; Judge Hamilton's professional performance has been exceptional. His qualifications are stupendous. He is widely admired on all sides because of his stellar judicial performance and his fair judicial philosophy. Senators from that State, Democrat EVAN BAYH and the Republican, the long-serving Senator RICHARD LUGAR, strongly urge confirmation. He is a man who is respected.

It is unusual that we would have the Republicans focus on one opinion he wrote dealing with religion. No one should ever second-guess this man's religious capacity.

He served as the attorney for Gov. EVAN BAYH. His father is a 40-year minister of a large Methodist Church in Indianapolis in which Judge Hamilton was baptized. Senator LUGAR, the Republican senior Senator from Indiana, has called Judge Hamilton exactly the kind of person one would want to see on the Federal bench. He has called him brilliant, fair, and committed to the law. I agree.

I have had the good fortune to serve in Congress with his uncle, Lee Hamilton, a longtime-serving Member of the House of Representatives from Indiana, the chairman of the Foreign Affairs Committee—really a good person. Being a good person and being involved in public service runs in that family, obviously, because of Judge Hamilton and Chairman Lee Hamilton.

The Federalist Society of Indiana, a strongly conservative institution—and that is an understatement—acknowledges that Judge Hamilton is well within the mainstream of the law. The American Bar Association has rated him as high as anyone can be rated.

The solitary decision of his, that is, Judge Hamilton, with which the Republicans claim to find fault is one in which Judge Hamilton stood for the separation of church and state, a principle protected by the first words of our Constitution's first amendment.

The reason most Republicans object to advancing his nomination has nothing to do with Judge Hamilton himself and everything to do with pure partisanship. Such shortsightedness is the reason why, even though the Judiciary Committee approved Judge Hamilton back in early June—he was nominated in April—he has had to wait 166 days for this procedural vote and it has had to be forced upon the Senate. We have a lot of things to do here in this body. It is very unfortunate we had to file cloture on a judge.

Judge Hamilton is far from the first victim of this partisan strategy to slow and stall the Senate. We have had that happen over 90 times already this year. In fact, Republican Senators have made a habit of objecting to the least objectionable nominees of President Obama's. The Senate has so far confirmed six judges for the court of appeals and the district court. Five of them were reported out of committee by voice vote. That means they were so obviously qualified that the committee didn't even feel the need to have a roll-call vote. When they reached the Senate floor, four of those five passed unanimously by votes of 88 to 0, 97 to 0, 99 to 0, and 100 to 0. Yet Republicans forced us to wait, wait, and wait for all of those votes in the first place. They did so for no other reason than to waste the American people's time.

I was stunned to hear my friend from Alabama say we haven't had enough time to debate this man. We have offered consent agreements, we have talked to everyone: How much time do you want? You can have it. We haven't had a debate on this nominee because we had to file cloture. The Republicans didn't want a debate on it. This is how the Republicans have forced the Senate to operate. It is not how it always works or how it should work. When President Bush was in office, as we have heard the distinguished chairman of the committee say on many occasions, the Democratic majority in the Senate confirmed three times as many nominees as we have been able to confirm in the same amount of time under President Obama.

Let's be clear. We are not yet voting on whether to confirm Judge Hamilton for this important position. Our votes today simply indicate whether we believe the judge, Judge Hamilton, deserves an up-or-down vote before the full Senate.

The votes of each Senator today will demonstrate whether he or she believes

in the Senate's power as outlined in our Constitution to advise and give its consent to the President's nominations to the Federal bench.

Going to law school was a very good experience for me. It was not like undergraduate school. It wasn't how much you could memorize. For those of us who endured law school, we did more than learn about obscure facts and learn rigid legal rules; we analyzed the abstract thinking behind our laws and the logic out of which our great judicial system grew. That is what law school is all about. That is what lawyers train to do—think abstractly lots of times.

One of the very first principles I learned in law school—and I still have it in my mind—was following precedent. I believe in what we call stare decisis. It is how we maintain consistency in our court rulings, and it is a cornerstone of the common law we brought over from Great Britain when we became a country. Precedent is a simple notion: Once a rule has been established, we must apply that standard to all future cases in which the facts are similar to the first. This concept predates our courts, our Constitution, and even our country. Every aspiring lawyer studied it and every judge considers it when deciding a case.

The future of that same legal system rests before the Senate today. In the Senate, as in the law, what we say in this Chamber and in the public record should set the precedent for our own actions. That is why the Parliamentarians who serve us so well understand the precedents. We ask them a question, and they follow the precedent.

Here is what has been decided in the Senate previously. The record is replete with my Republican colleagues—including Members of the Republican leadership today and the Judiciary Committee—speaking about the solemn responsibility of the Senate to confirm judges. In other words, the record is replete with precedent.

For example, my counterpart, the distinguished Senator from Kentucky, the Republican leader, has argued strongly that the present judicial nomination deserves a simple up-or-down vote. He reminded the Senate of that not long ago; in fact, it was May of 2005. He said that our job is to give our advice and consent and not, as he put it in May 2005, and I quote, "advise and obstruct." I agree. Two years earlier, my distinguished counterpart said that filibustering judges—which is exactly what is happening right now at a record pace—is "a terrible precedent." I sincerely hope the Republican leader heeds his own words and doesn't repeat the very obstruction he condemned in the past.

The ranking member of the Judiciary Committee, the junior Senator from Alabama, has also rightly called the filibustering of judicial nominations "obstructionism," and that is his word. He has said it is "very painful," and he has described it as "a very, very grim thing." He is right.

The Senator from Alabama went further to say the following:

We ought to be pleased that a nominee has cared enough about his or her country to speak out about issues that come before the country.

I agree. I share the belief that those who have chosen to serve our Nation must be able to get to work without delay. I hope the gratitude of the Senator from Alabama will be reflected in his vote this afternoon.

The Republican whip, the junior Senator from Arizona, has expressed similar disgust with judicial filibusters such as the one we are seeing today. In November of 2003, he said:

It is time to take politics out of the confirmation process, give nominees the up-or-down vote they deserve, and move the orderly process of justice forward.

He, too, is right. I hope the Senator from Arizona will consider that orderly process when he votes on advancing Judge Hamilton's nomination a few minutes from now.

The senior Republican Senator from Utah, who has served as chairman of the Judiciary Committee three separate times and still sits on that distinguished panel, also spoke out strongly against filibustering judges. He said in 2005 that doing so "undermines democracy, the judiciary, the Senate, and the Constitution." And it does. I hope the Senator from Utah doesn't contribute to such affronts by voting no today.

Another Republican Senator, the senior Senator from Iowa, who also serves on the Judiciary Committee, warned in 2003 that filibustering judges would lead to "a constitutional crisis." I agree with him. I hope he helps us avert a filibuster and avoids a crisis by voting yes today for Judge Hamilton.

Another Republican Senator, the junior Senator from Texas, who served on the Judiciary Committee and was a supreme court justice in Texas, said in 2006 he hopes the filibuster of judicial nominees "should never happen again, and that all nominees of a President are entitled to an up-or-down vote." That was a few years ago. He called what Republicans are doing today "an abomination" and "the most virulent form of unnecessary delay one can imagine." The same Senator also said on the Senate floor that he finds it "simply baffling that a Senator would vote against even voting on a judicial nomination." I find it baffling, also. I sincerely hope the Senator from Texas will not delay us unnecessarily by supporting his party's filibuster. I could go on with a lot more quotes. It was interesting this morning. I listen to National Public Radio. There was a nice piece on there talking about what the Republicans are doing here, and it had the actual voices of the Senators. I cannot give the voices, but that was done on public radio, where they had the voices of the Senators saying things such as I have read today.

I could go on and on. For example, another Republican Senator, the senior Senator from Kansas, has said that

forcing supermajorities to confirm nominees—which is what a filibuster does—is inappropriate.

Another Republican Senator, the senior Senator from Idaho—and by the way, his brother was a law school professor at Brigham Young University, where my son-in-law went to law school. My son-in-law has a wonderful mind, and he said he was the best professor he ever had and the smartest he ever had. Unfortunately, he died as a very young man. The senior Senator from Idaho said: "It turns the Constitution on its head and begins a very dangerous precedent with regard to how the nominees for the judicial branch are treated by the Senate."

He talked about what a filibuster does. Again, my Republican friends are right. I hope the Senators from Idaho and Kansas will make sure filibusters still have no place in the confirmation process, and I hope they don't make such a practice precedent. They can do so by voting yes today.

Every single Senator may vote either for or against the nomination as he or she sees fit. That right will never be in jeopardy. But that is not the issue before us today. The question before us is whether the President of the United States deserves to have his nominees reviewed by the Senate, as the Constitution demands he does.

I feel so strongly about what took place a few years ago. We could go back and debate whether President Bush's nominations—whether he should have gotten more than what he did. We know he got hundreds of them. As I said on the floor, the point is, what the Republicans were going to do—a very slight majority—is they were going to do away with precedent, with filibusters in the Senate. I said at that time, if they did that and I ever came into a position of authority, I would never reverse it. I felt that strongly about it. If the Republicans would make us do what I think is wrong—that is, vote on cloture on all these nominations—it will take a lot of time and it is not fair. We should not do that.

I only say to my friends that very few judges were held up by the Democrats when we were in the minority. Some were held up. Regardless, when I took this job in 1998—when I was elected to a leadership position—I said we should treat the Republicans as we would like to be treated, which is the Golden Rule. When we got the majority, I said the same thing. That is how I feel about it. Let's go by the Golden Rule in the Senate. Let's treat judicial nominees the way they would want them treated if the roles were reversed. I hope we can do that.

That is not the issue before us today. The issue today is whether the President of the United States deserves to have his nominees get a vote up or down. The question before us is whether the President deserves to have his nominees reviewed by the Senate, as the Constitution demands he does.

The question before the Senate is whether the nominees themselves de-

serve to be confirmed or rejected based on their judicial philosophy, their experience, moral turpitude, and whatever else people decide they don't like—their looks or they are too old or too young, whatever. But it should be on that person's qualifications as seen by the individual Senators.

The question is whether Senators who publicly demand up-or-down votes when it is politically convenient will follow the precedents they set for themselves, even when it is not. The vote we are about to hold will give us that answer. I hope we will have a large vote on being able to proceed to this nomination, and I hope we don't get into this situation where, out of spite—because there has always been plenty of time to debate this man—postcloture we have to wait 30 hours to confirm the nomination. That would not look good for this body, and I hope it is not necessary.

Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. REID. I ask for the yeas and nays.

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

The yeas and nays were ordered.

#### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The bill 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 David F. Hamilton, of Indiana, to be a United States Circuit Judge for the 7th Circuit.

Harry Reid, Herb Kohl, Sheldon Whitehouse, Richard J. Durbin, Benjamin L. Cardin, Patty Murray, Mark Begich, Kirsten E. Gillibrand, Mark R. Warner, Russell D. Feingold, Al Franken, Roland W. Burris, Dianne Feinstein, Patrick J. Leahy, Barbara Boxer, Charles E. Schumer, Edward E. Kaufman.

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

The question is, Is it the sense of the Senate that debate on the nomination of David F. Hamilton, of Indiana, to be a U.S. circuit judge for the Seventh Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Texas (Mrs. HUTCHISON).

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

The result was announced—yeas 70, nays 29, as follows:

[Rollcall Vote No. 349 Ex.]

## YEAS—70

Akaka	Franken	Murkowski
Alexander	Gillibrand	Murray
Baucus	Gregg	Nelson (NE)
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Hatch	Reed
Bingaman	Inouye	Reid
Boxer	Johnson	Rockefeller
Brown	Kaufman	Sanders
Burr	Kerry	Schumer
Byrd	Kirk	Shaheen
Cantwell	Klobuchar	Shaw
Cardin	Kohl	Snowe
Carper	Landrieu	Specter
Casey	Lautenberg	Stabenow
Chambliss	Leahy	Tester
Collins	Levin	Thune
Conrad	Lieberman	Udall (CO)
Cornyn	Lincoln	Udall (NM)
Dodd	Lugar	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	

## NAYS—29

Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Risch
Brownback	Graham	Roberts
Bunning	Grassley	Sessions
Burr	Inhofe	Shelby
Coburn	Isakson	Vitter
Cochran	Johanns	Voinovich
Corker	Kyl	Wicker
Crapo	LeMieux	

## NOT VOTING—1

Hutchison

The PRESIDING OFFICER. On this vote the yeas are 70, the nays are 29. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. CARDIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## UNANIMOUS CONSENT AGREEMENT—S. 1963

Mr. REED. Mr. President, I ask unanimous consent that upon disposition of the nomination of Judge David Hamilton and the Senate resuming legislative session that the Senate then proceed to the consideration of Calendar No. 190, S. 1963, Veterans Health Care Initiatives, and that the bill be considered under the following limitations: that general debate on the bill be limited to 30 minutes equally divided and controlled between Senators AKAKA and BURR or their designees; that the only amendment in order be a Coburn amendment regarding funding priorities which is at the desk and that it be printed in the RECORD once this agreement is entered; that debate on the amendment be limited to 3 hours, with 2 hours under the control of Senator COBURN and 60 minutes under the control of Senator AKAKA or his designee; that upon the use or yielding back of all time, the Senate proceed to vote in relation to the Coburn amendment; that upon disposition of the Coburn amendment, the bill, as amended, if amended, be read a third time, and the

Senate then proceed to vote on passage of the bill.

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

(The amendment (No. 2785) is printed in today's RECORD under "Text of Amendments.")

Mr. REED. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BURRIS. I ask unanimous consent to speak as in morning business.

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

## HEALTH CARE REFORM

Mr. BURRIS. Mr. President, as I address this Chamber today, there is a broad consensus across the country that our health care system is broken. It simply doesn't work for Americans anymore. Everyone agrees that we need real comprehensive health care reform. In order to accomplish this, I believe we must include a strong public option to restore competition, cost savings, and accountability to the health care insurance industry. In fact, I have stated before that I will not vote for any reform measure that fails to include a strong public option.

A few of my colleagues are still not convinced. Some have honest questions. But there are others who are not interested in winning this argument on the merits. A few of my colleagues across the aisle are trying to stop this Congress from passing any health care reform at all. Some of my distinguished Republican friends have said our proposals are simply too expensive. They say a trillion dollars is too high a price to pay for a better health care system.

I beg to differ. We already pay far too much for health care. Our reform bill would reduce costs over the long term. It would allow consumers to hold insurance companies accountable for the first time in many years. It would restore real competition to markets that are currently monopolized by a few big corporations. It would accomplish all of that without adding to the budget deficit. Yet my colleagues continue to insist that health care reform would be too expensive. Despite the number of Americans suffering under our broken system, they want to talk about fiscal responsibility instead of health care reform. My Republican friends have simply lost their credibility when it comes to this issue. They say they would not support reform that will save lives and improve health outcomes for millions because it costs too much. Yet under a Republican President, they were willing to write bigger and bigger checks to benefit the wealthy.

In 2001, when President Bush asked Congress to pass tax cuts that mostly

helped the super rich, the total cost came to \$1.35 trillion over 10 years. That is more than \$300 billion more than our health care reform bill, and it provided significant benefits to far fewer Americans.

More than half of the current Republican caucus was serving in the Senate at the time of this vote. Did they try to block the bill? Did they stand up and say: \$1.3 trillion for the super rich—that is wasteful, irresponsible, and far too costly? No, they did not.

When President Bush called, they answered. My Republican friends voted in favor of this massive spending program, even though it added more than \$1 trillion to the deficit.

Many of the same people now want to put the brakes on a deficit-neutral health care reform bill designed to help millions of ordinary Americans.

Later in 2003, just as this country began to spend hundreds of billions of dollars to conduct two wars, President Bush asked for yet another tax cut. This tax cut also benefited the richest of the rich and added \$330 billion more to the deficit.

But did my distinguished Republican colleagues urge fiscal responsibility? Did they demand that the President explain how he would finance the wars or balance the budget before they voted on another massive tax cut? No, they did not. Their vocal support for fiscal responsibility was nowhere to be found. Once again, they voted overwhelmingly for the second round of tax cuts.

Yet as I address this Chamber today, a few of the same Senators are doing everything they can to stop us from passing health care reform.

I would urge the American people to consult the record for themselves. The same voices that now oppose extending health care coverage actually supported spending significantly more money to pad the bank accounts of the richest people in this country.

It is the same story for expensive programs such as Medicare Part D. More than half of the Republicans still in the Senate voted for \$400 billion of new spending back in 2003. Almost all of these distinguished Senators voted time and again to fund the ongoing wars in Iraq and Afghanistan, which have cost the American taxpayers more than \$1 trillion and far too many American lives.

I do not mean to suggest every single one of these spending programs was a bad idea. But I would like to point out that when my Republican colleagues talk about "fiscal responsibility," they are talking about an issue on which they have lost their credibility. They recklessly added trillions of dollars to the deficit under a Republican President, but today they oppose health care reform even though it will be paid for by cost offsets. Their actions simply do not match their words. They are placing cynical politics ahead of good policy.

So I have a question for my Republican friends who have been Members

of this Senate since 2001: If they supported almost \$2 trillion of deficit spending for tax relief for the rich, then, I ask them, exactly how much are we allowed to spend for health care that will benefit millions of people across this country?

Mr. President, 45,000 Americans die every single year because they do not have insurance and cannot get the quality care they need. Without competition in the industry, insurance companies have raised premiums, denied benefits, and refused coverage to millions. So I ask my colleagues: How much is too much for this Congress to spend to save these lives?

My colleagues like to talk about responsibility, so I put it to them that the only responsible course of action is to pass this health care bill, and pass it now. That is the reaction we need.

Unfortunately, there are some in this Chamber who are not interested in addressing the issue of health care reform. There are some who do not want to have an honest, open debate on the subject. They want to kick the can further down the road, as our predecessors have done time and time again for the last 100 years.

That would be the easy answer—to leave it to someone else to solve the difficult problem of health care reform after the problem has gotten even worse, to settle for the status quo or put a band-aid on a gaping wound and hope that future legislators will muster the political will that a century of lawmakers has lacked. There are some in this body who would settle for this.

But I believe the American people deserve better. Especially in difficult times, they demand better of their representatives in Congress. So I say to my colleagues, as great leaders have said to us time and time again throughout our history: Let's seize this moment to do what is right, not what is easy. Let's summon the will to succeed where others have failed.

It is time to deliver on meaningful health care reform. It is time for competition, cost savings, and accountability in the insurance industry. It is time to be honest with the American people.

Friends, colleagues—Republicans and Democrats—this is no time for partisan games and empty rhetoric. This is time for action. Millions of Americans are counting on us to make health care reform a reality, and we must not let them down. I will say that again. We must not let them down.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I oppose the nomination of Judge David

Hamilton to be a Seventh Circuit Appeals Court judge. I have serious concerns about this nomination and will be voting not to confirm him.

During his time as a Federal judge on the U.S. District Court for the Southern District of Indiana, Judge Hamilton has issued a number of highly controversial rulings and, more importantly, has been reversed in some very prominent cases. In my opinion, these decisions strongly indicate that Judge Hamilton is an activist judge who will ignore the law in favor of his own personal ideology and beliefs.

For example, in one case, Judge Hamilton succeeded in blocking enforcement of an informed consent law for 7 years. In that case, called *A Woman's Choice v. Newman*, Judge Hamilton struck down an Indiana law requiring that certain medical information be given to a woman in person before an abortion can be performed. The Seventh Circuit overruled Judge Hamilton's decision, stating:

For 7 years, Indiana law has been prevented from enforcing a statute materially identical to a law held valid by the Supreme Court in *Casey*, by this court in *Karlin*, and by the Fifth Circuit in *Barnes*. No court anywhere in the country (other than one district judge in Indiana) has held any similar law invalid in the years since *Casey*. . . . Indiana (like Pennsylvania and Wisconsin) is entitled to put its law into effect and have that law judged by its own consequences.

That was the circuit court overturning Judge Hamilton. It seems to me that Judge Hamilton went out of his way to make his finding and actually block the Indiana law. That is not the proper role of a judge.

In addition, Judge Hamilton has shown hostility against the expression of religion in the public square. In two prominent cases, he ruled against public prayer in the State legislature and religious displays in public buildings, and in both cases he was reversed. In the case of *Hinrichs v. Bosma*, Judge Hamilton enjoined the speaker of the Indiana house of representatives from permitting sectarian prayer. Judge Hamilton ruled that the Indiana State legislature was prohibited from starting its session with prayers, specifically those that expressly mentioned Jesus Christ, but that it would be permissible for a prayer to mention Allah. The Seventh Circuit overturned Judge Hamilton's decision in *Hinrichs*, and subsequently the Indiana house passed a resolution 85-to-0 opposing Judge Hamilton's ruling.

Then in *Grossbaum v. Indianapolis-Marion County Building Authority*, Judge Hamilton ruled that a county could prohibit the display of a menorah in a nonpublic forum. The Seventh Circuit unanimously reversed Judge Hamilton, noting that the judge disregarded relevant Supreme Court precedent to reach his ruling and that he failed to recognize a rabbi's first amendment right to display the menorah as symbolic religious speech.

Judge Hamilton also ignored clear statutory mandate so he could impose

his own personal beliefs when sentencing criminal defendants. Example: In the 2008 case *U.S. v. Woolsey*, Judge Hamilton disregarded an earlier conviction in order to avoid imposing a life sentence on a repeat drug offender. The Seventh Circuit reversed the decision, admonishing Judge Hamilton, specifically stating that he was "not free to ignore" prior conviction because "statutory penalties for recidivism . . . are not optional, even if the court deems them unwise or an inappropriate response to repeat drug offenders."

In another case, *U.S. v. Rinehart*, Judge Hamilton used his court opinion to request clemency for a police officer who pled guilty to two counts of producing child pornography. In this case, the police officer had engaged in and videotaped "consensual" sex with two teenagers.

In addition, in writings and speeches, Judge Hamilton has indicated that he approves of the concept that judges should make policy from the bench. For example, he has embraced President Obama's empathy standard, a standard so radical that even the new Supreme Court Justice Sotomayor had to rebuke it at her confirmation hearings. In response to written questions for his confirmation hearing, Judge Hamilton answered this way:

Federal judges take an oath to administer justice without respect to persons, and to do equal right to the poor and to the rich. Empathy—to be distinguished from sympathy—is important in fulfilling that oath. Empathy is the ability to understand the world from another person's point of view. A judge needs to empathize with all parties in cases—plaintiff and defendant, crime victims and accused defendant—so that the judge can better understand how the parties came to be before the court and how legal rules affect those parties and others in similar situations.

To empathize with the parties is not the proper role of a judge. Rather, the proper role of a judge is to apply the law to the facts in an impartial manner, and that is what we refer to as blind justice.

Further, in a 2003 speech, Judge Hamilton endorsed the idea that the role of a judge includes "writing footnotes to the Constitution" through evolving case law. He said:

Judge S. Hugh Dillin of this court has said that part of our job here as judges is to write a series of footnotes to the Constitution. We all do that every year in cases large and small.

Oddly enough, the last time I checked, it was the role of Congress to write laws, not the judicial branch. Judge Hamilton's personal bias has been noted by lawyers who practice before him. In fact, statements of local practitioners in the *Almanac of the Federal Judiciary* described Judge Hamilton as "the most lenient of any judges in the district." Another quote: "One of the more liberal judges of the district." Another quote: "Goes out of his way to make the defendant comfortable." Another quote: "He is your

best chance for downward departures.” Lastly, “in sentencing, he tends to be very empathetic to the downtrodden, or to those who commit crimes due to poverty.”

Contrary to how the White House has tried to characterize Judge Hamilton, I believe that the record amply demonstrates that Judge Hamilton is an activist judge. He has taken radical positions, and a number of his rulings indicate that Judge Hamilton will impose his own personal beliefs and values in cases. We should not promote an individual whose track record clearly demonstrates that he will carry out an outside-of-the-mainstream personal agenda on the Federal appeals court. For these reasons, I will oppose the nomination of Judge Hamilton to the Seventh Circuit. If he was going to serve on a circuit, as many times as he has been overruled, it would be more appropriate for him to be on the Ninth Circuit, where a lot of those decisions on appeal are overturned by the Supreme Court—about 9 times out of 10.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

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

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

#### NATIONAL DEBT

Mr. LEMIEUX. Mr. President, the clock has struck 12 on a \$12 trillion debt. Like Cinderella when she was revealed when the clock struck 12, this Congress is now revealed—revealed for the problem it has in spending more than we can afford. We are being a body and an institution that spends money without thinking about the future of this great country. It spends the money of our children and our grandchildren.

It took this country 193 years to spend a trillion dollars and to get a trillion dollars into debt. We are now \$12 trillion into debt as of today. That \$12 trillion is the equivalent of \$40,000 per person, \$107,000 per household. This is what American families are now responsible for, because unlike American families who sit around their kitchen tables and try to make ends meet, and unlike the States that have to balance their budgets, this Congress spends more than it has. There is no evaluation in this Congress about how much money is being taken in versus how much money we spend.

Instead, we raised this year \$1.4 trillion in debt, more debt in a single year than the past 4 years combined.

Outside this Chamber, outside the main entrance, is a clock, called the Ohio Clock—the fabled clock that has been in this institution for more than a hundred years. It stands there to tell the time. I suggest that standing next to that clock should be the debt clock to remind the Members of this Senate, and perhaps our friends in the House, that we are spending money we cannot afford to spend, and it is risking the future of our children and grandchildren.

As you know, I have three small boys, Max, Taylor, and Chase, 6, 4, and 2, and a baby on the way. We worry for their future—just like Americans across this country and my fellow Floridians are worrying for the future of their children. How can we afford this and continue to spend more than we have?

I have been coming to the floor weekly to talk about the various appropriation bills I have been voting on—and, frankly, voting against—because they spend more and more of the people's money and put this country further into debt.

Today, we have marked this occasion with \$12 trillion in debt—an amount of money that is hard to fathom, an amount of money that is so large it is hard to comprehend. But we know that every family in America is now responsible—every household—for \$107,000. That debt now rides upon their shoulders.

In a week—perhaps even this week—Democrats in the Chamber are going to introduce a health care reform bill that is estimated to spend another \$1 trillion. This bill will raise taxes, cut Medicare, and increase premiums—another large governmental program, when we cannot afford the programs we have. We should focus on spending the money we have, spending it more efficiently and effectively, before we go on to create a new program, a new bureaucracy, and more obligations than we can afford.

The Congressional Budget Office estimates that the health care plan being brought forth by the Democrats in this Chamber will spend 24.5 percent of GDP, 19 percent in revenue only. So we have 19 percent in revenue, but 24.5 percent of GDP, which is a huge unsustainable gap. It was recently reported that the deficit for October alone is \$176 billion—\$26 billion more than estimates by economists. In fact, the debt increased by \$40 billion just over this past weekend.

Our spending is out of control. The Federal Government does not recognize it. This Congress cannot afford the programs it has, let alone the programs it wants. So I am here to sound the alarm. I could not let this day pass as we hit this \$12 trillion mark in national debt.

I look forward to coming back to the floor to explain again and again to the American people that this is a problem that must be solved. We cannot continue to spend our children's and grandchildren's future.

I yield the floor.

The PRESIDING OFFICER (Mr. TESTER). The Senator from Delaware is recognized.

Mr. KAUFMAN. Mr. President, I ask to speak as in morning business.

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

#### IN PRAISE OF ANN AZEVEDO

Mr. KAUFMAN. Mr. President, I rise once more to honor an outstanding Federal employee.

Next week, American families will gather around dinner tables in celebration of Thanksgiving.

Thanksgiving is a time for coming together. In earlier ages, members of an extended family usually resided in close proximity to one another. Today, however, the typical American family is spread across the country, with members far in distance even if close in spirit.

Americans of all backgrounds and from all walks of life will be travelling long distances to be with their loved ones. It is no wonder that Thanksgiving weekend is one of the busiest travel periods of the year.

Tens of millions of us will be driving, flying, and taking trains or ferries next week. For some it will be stressful, for others exciting. Most, though, will do it without even realizing how much work goes into keeping American travelers safe.

The Department of Transportation employee whose story I will share today has been instrumental in ensuring the safety of those who travel. But before I tell you about this outstanding public servant, I want to reflect on how important transportation is for America.

From its humble beginnings, ours has been a Nation on the move. In George Washington's day, their mercantile spirit drove our founding generation to dig canals and clear roads across the Appalachians. Steamships and railroads fueled the expansion across the West and helped close the frontier. Air travel in the last century brought every corner of our 50 States ever closer and opened new opportunities for the growth of business and tourism.

This march of progress in transportation technology has not been a smooth ride. When the railroads were new, train wrecks were fairly common. In fact, President-Elect Franklin Pierce was en route to Washington for his inauguration when his train derailed, tragically killing his 11-year-old son.

Travel by ferry or steamship on our rivers and lakes was far from safe in those days. For pioneer families, roads were often impassible during wintertime, and many lost their lives just trying to get to the West. While air travel is the safest form of transportation in our day, it was not always the case.

Making sure that our Nation's “planes, trains, and automobiles” are safe remains one of our highest priorities. My home State of Delaware, like every other State—like Montana—depends on a top-notch transportation infrastructure to facilitate economic activity, moving people and goods across markets.

Travel can and should be a safe and fun experience. No one should ever have to worry that the vehicles on our roads, rails, rivers, or in our skies are unsafe. That is where the hardworking men and women of the Department of

Transportation excel. They set and enforce regulations upholding the strictest standards in transportation safety.

The great Federal employee I have chosen to recognize this week has been a leader on safety issues at the Transportation Department's Federal Aviation Administration for 12 years.

Ann Azevedo came to the department in 1997 with nearly two decades of experience in the private sector. Working from the FAA facility in Burlington, MA, when she first started at the FAA, Ann served as the risk analysis specialist for the Engine and Propeller Directorate.

In her current role as chief scientific and technical adviser for aircraft safety analysis, Ann focuses on safety, risk management, and analyzing accidents. From the data she gathers, Ann is able to develop solutions to help prevent future incidents.

Regularly representing the FAA at national and international air safety round-tables, Ann has become a respected voice among those engaged in risk management analysis. She helped write the training manuals for turboprop and turboprop aircraft used across the industry, and she continues to teach risk analysis at the FAA Academy.

Ann holds a bachelor's degree in systems planning and management in applied mathematics and a master's of science in mechanical engineering. When she was once asked how she ended up in her chosen career field, Ann cited her love of math and an influential physics teacher in high school.

Ann was awarded the Arthur S. Flemming Award for public service in 2002 for developing safety solutions that resulted in a 64 percent decrease in the commercial aviation fatality rate between 1998 and 2002. She also was honored as Distinguished Engineer of the Year by the American Society of Mechanical Engineering in 1996.

Her work, and that of all her colleagues at the FAA and other Transportation Department agencies, helps ensure that travel in our country continues to be as safe as possible.

Most importantly, they facilitate the smiles of those arriving safely at a journey's end and seeing their loved ones for the first time after weeks, months, or even years apart.

That remains a central element of Thanksgiving, and I hope all Americans will join me in thanking Ann Azevedo and all the men and women of the Department of Transportation for their hard work keeping American travelers safe.

They keep us, whether on the road, on the rails, at sea, or in the sky, moving ever forward.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### MORNING BUSINESS

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

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

#### FORT HOOD ATTACK

Mr. FEINGOLD. Mr. President, it is with great sadness that I wish to remember victims of the horrific shootings at Fort Hood. This was a senseless attack on innocent people who were serving their country. To know that these people, 12 servicemembers and 1 civilian, were taken from their families in this way is very difficult to accept. I join with people across the country in mourning these tragic deaths. My thoughts are with each and every one of their families.

As a Senator from Wisconsin, I do feel a special duty to remember the two Wisconsinites who were killed. Both were extraordinary members of our Armed Forces, and their deaths are a terrible blow to all who knew them, and to our State. Wisconsin takes so much pride in its long tradition of military service, and in the Wisconsinites who serve so bravely in the Armed Forces today. Wisconsin has already lost so many servicemembers in recent years—90 in Operation Iraqi Freedom and 12 in Operation Enduring Freedom. We recently honored our veterans by celebrating Veterans Day, and we are thinking of these men and women and the sacrifice they made, so to suffer these additional losses at this time is simply tragic.

SSG Amy Krueger from Kiel, WI, and CPT Russell Seager from Mount Pleasant, WI, were both outstanding servicemembers, and their families and communities are heartbroken by their deaths.

Staff Sergeant Krueger, who was just 29, joined the Army after the 2001 terrorist attacks. She had deployed previously to Afghanistan in 2003 and helped soldiers dealing with combat stress. Staff Sergeant Krueger arrived at Fort Hood on November 3 and was scheduled to be redeployed to Afghanistan in December. She graduated from Kiel High School in 1998 and was very proud to serve her country. About 500 family and friends gathered recently at the Veterans Memorial Park in Kiel to remember and pay tribute to Sergeant Krueger.

CPT Russell Seager, 47, was a registered nurse and advanced practice nurse prescriber who was with the primary care mental health integration program at Zablocki VA Medical Center in Milwaukee. He also taught classes at Bryant and Stratton College in Milwaukee. As part of the combat stress control unit, Seager was tasked

with watching for warning signs among soldiers on the front lines that could signal long-term mental health problems. He is survived by his wife and adult son.

It is so tragic to think that these two people, who were trained to help fellow servicemembers cope with the stress of combat, were struck down when their help is needed the most. These servicemembers are really unsung heroes of our military today—the men and women who help other servicemembers deal with post traumatic stress disorder, which has skyrocketed since the start of the wars in Iraq and Afghanistan. Both Staff Sergeant Krueger and Captain Seager were truly selfless people who helped their fellow servicemembers through some very tough times. Both were part of the 467th Medical Detachment, which is based in Madison, WI. It is an outstanding unit doing much-needed work, and it is terrible that the unit suffered these losses.

I also want to say a few words about the four Wisconsinites who were injured at Fort Hood. At the recent memorial at Fort Hood, which was such a moving tribute to those who were killed, I had the privilege of meeting Specialist John Pagel, 28, of North Freedom, WI, who was also with the 467th Medical Detachment. Specialist Pagel is married and has two children.

I also had the privilege of meeting SPC Grant Moxon, 23, of Lodi, WI, another member of the 467th, who is a mental health specialist. Specialist Moxon graduated from UW-La Crosse. He joined the military just last year and had arrived in Texas one day before the shooting incident.

Both Sergeant Pagel and Specialist Moxon were shot but are now both doing well.

CPT Dorothy "Dorrie" Carskadon, 47, of Madison, WI, is also a member of the 467th. Carskadon fought with the Army in Iraq during Operation Desert Storm and then enlisted in the Army Reserve 2 years ago. She is a clinical social worker with the U.S. Army Reserve. She was set to deploy to Iraq to counsel troops suffering from PTSD. She was shot twice in the hip and underwent an all-night surgery. Fortunately, she is expected to make a full recovery.

Army PFC Amber Bahr, 19, of Random Lake, WI, with the 187th medical battalion, has been at Fort Hood for a year working as an Army nutritionist. She was scheduled to deploy for the first time in January. In the midst of the shootings, Bahr was putting a tourniquet onto another soldier and helping him out of harm's way before she discovered that she was shot herself. She was released Friday night from the hospital.

I think the conduct of Private First Class Bahr, and everyone at the base who responded to the attack with such heroism, says volumes about the men and women who serve today. I am so proud of them, and so profoundly saddened by this attack. As the nation grieves, we offer heartfelt thanks to all

the brave servicemembers who so selflessly serve our country.

I yield the floor.

#### VOTE EXPLANATIONS

Mr. ISAKSON. Mr. President, I was unavoidably detained and not present for rollcall vote No. 341 on November 5, 2009, rollcall votes Nos. 342 and 343 on November 9, 2009, and rollcall votes Nos. 344 and 345 on November 16, 2009. I ask that the record reflect that had I been present I would have voted as follows: 1. Rollcall vote No. 341 on the confirmation of Ignacia S. Moreno, of New York, to be an Assistant Attorney General: "yea"; 2. Rollcall vote No. 342 on the confirmation of Andre M. Davis of Maryland, to be U.S. Circuit Judge for the Fourth Circuit: "nay"; 3. Rollcall vote No. 343 on the confirmation of Charlene Edwards Honeywell, of Florida, to be U.S. District Judge for the Middle District of Florida: "yea"; 4. Rollcall vote No. 344 on the Coburn amendment No. 2757, to require public disclosure of certain reports: "yea"; and 5. Rollcall vote No. 345 on the Coburn motion to commit H.R. 3082 to the Committee on Appropriations; Military Construction and Veterans Affairs Appropriations Act, 2010: "yea".

#### FEED AMERICA DAY

Mr. UDALL of New Mexico. Mr. President, I am pleased to have worked with Senator HATCH, and my other colleagues in the Senate to unanimously pass the Feed America Day resolution.

Over the past several years, States, cities, and communities throughout the country have declared the Thursday before Thanksgiving as Feed America Day. In observance of this day, citizens are encouraged to sacrifice two meals and donate the money they would have spent on food to a local religious or charitable organization for the purpose of feeding the hungry.

As the economic downturn has struck our nation, employment rates have dropped and more and more families have had to turn to food banks and other emergency food services to meet their day-to-day needs. Our emergency food providers are being stretched to their limits to try to meet the current demand for assistance. Vicki Metheny, a constituent of mine who has run the food bank in San Juan County, NM for the last 18 years, told my office earlier this week that this is the first time in her years of service that she has been really worried about whether the food bank will be able to keep up with the unprecedented need in local communities. A similar message is coming from food pantries and emergency food providers across the country.

As we approach the Thanksgiving festivities, it is my hope that individuals will take the time to think of those in their community who may be struggling to keep food on the table. To miss a few meals and make a modest donation to a local food pantry is a

small thing, but if many of us join together in this effort, we can have a large impact. And a large impact is what we must have if we are to keep our families and food pantries afloat this year.

According to the U.S. Department of Agriculture, last year more than 49 million Americans, including almost 17 million children, live in households with either "low" or "very low" food security, meaning that these households cannot keep healthy food on the table without the assistance of Federal programs or local emergency food providers. In my home State of New Mexico, food insecurity impacts over 14 percent of the population.

There are many efforts underway at the Federal level and at the local level to build up the economy and create opportunities for families to become more financially stable. This resolution is just one reminder that there is a need for assistance in each of our communities, and that each of us can and should take steps to confront hunger locally.

#### ADDITIONAL STATEMENTS

##### HONORING JERRY AND ANITA ZUCKER

• Mr. GRAHAM. Mr. President, I ask my colleagues to join me in honoring the memory of a dedicated public servant and leader, Jerry Zucker. I also ask that we pay tribute to Jerry's wife Anita. After a lifetime of unprecedented service to his State and Nation as a businessman and philanthropist, Mr. Zucker passed away in Charleston, SC, on April 12, 2008, at the age of 58. His death was a loss to Charleston and the Nation.

While he will be remembered by most as a successful businessman, I will remember him as a larger-than-life figure who donated generously and quietly to many causes. Born in Tel-Aviv, Israel, Mr. Zucker came to the United States with his family in 1952. He grew up in Charleston, SC, and Jacksonville, FL, and graduated from the University of Florida with a triple major in mathematics, chemistry, and physics. He later received a masters in electrical engineering from Florida State University in Tallahassee, FL. Zucker was a scientist and inventor before becoming a businessman. Over his lifetime he had more than 350 inventions and patents, including his development of the pacemaker.

In 1983, he founded the InterTech Group, a global conglomerate specializing in fabrics and plastics for a range of uses. As founder, chairman, and chief executive officer of the company, he helped grow the InterTech Group into one of the country's largest privately held businesses. Jerry was also CEO of Toronto-based Hudson's Bay Company, Canada's largest department store chain. He was the first American citizen to lead the company. After his

death, Anita took over as chairwoman and chief executive officer of Hudson's Bay Company. She became the first woman to hold the position in the company's 338-year history.

Jerry is greatly admired for what he did outside of the business world. Jerry was a humble philanthropist. He gave millions of dollars to a wide range of charities, from his synagogue in Charleston to international medical missions. Anyone who reached out to him for help never went away with an empty hand. And for every charitable check Zucker wrote, he invested numerous behind-the-scenes volunteer hours. He quietly and unassumingly delivered goodie baskets to holiday volunteers, helped the local Boy Scouts of America's Coastal Carolina Council, and served as chairman of the South Carolina Aquarium. Because of his impact on the Charleston community, North Charleston recently dedicated their newest middle school to Zucker's memory, naming it the Jerry Zucker Middle School of Science.

Together with his wife Anita, he is celebrated in South Carolina and around the Nation for his philanthropic and community endeavors, as well as quiet leadership. His personal mission was "repairing the world," which he implied to be a work in progress. I am confident Anita will continue this mission. Through Anita and the Zucker Family Foundation, through his countless gifts of wisdom, ingenuity, dollars, and time, Jerry Zucker will continue to repair the world.

I ask that the Senate join me in commemorating Mr. Zucker's lifelong dedication to the service of our country and to the State of South Carolina. The best tribute we can give to Jerry is to continue his vision and follow in his humble footsteps.●

##### SIX BRAVE OKLAHOMANS

• Mr. INHOFE. Mr. President, I would like to take a moment to recognize the courageous actions of six brave Oklahomans. On August 25, 2009, in the evening hours of the day, these six men, Daniel Richards, David Cox, Nick Niemann, Cody Click, Luck Tucker, and Casey Johnson, saved a life. That evening a call came in about a man having severe chest pains and possibly a heart attack at a residence in a rural area east of the town of Roland, OK. Roland Fire Department first responders were paged to respond, and upon their arrival they found a male subject lying on the ground not breathing. The six first responders immediately started CPR and hooked the individual up to an automated external defibrillator and delivered a resuscitating shock from the AED. The first responders continued CPR and working with the patient for 12 minutes until an EMS unit arrived on scene. When the patient was placed in the ambulance he was breathing and had a pulse. The patient was transported to Spark's Medical Center in Fort Smith, AR, where the

emergency room doctor stated that the “firefighters saved this man’s life.” The patient needed to have a stint placed in the main artery of the heart and suffered some-short term memory loss, but he recovered and went home from the hospital in about 7 days. These men are true heroes. The town of Roland, the State of Oklahoma, and I are extremely thankful to them for their service and honored to have them serving one of Oklahoma’s finest communities.●

#### TRIBUTE TO ROBERT ALTMAN

● Mr. NELSON of Florida. Mr. President, today I honor the life and service of SGT Robert Altman, United States Army. Sergeant Altman is a member of the greatest generation that selflessly served our Nation during a time of perhaps the world’s greatest turmoil.

He risked his life and endured almost unbearable pain and suffering as a prisoner of the Japanese during World War II.

He gave so much—so that all of us might be free.

Sergeant Altman was a crew member on a B-17 stationed at Clark Field in the Philippines. It was just 3 days after the attack on Pearl Harbor that his bomber, commanded by another Floridian, CPT Colin P. Kelly, Jr., loaded three 600-pound bombs and took off with orders to attack airfields on what is now Taiwan.

On the way, the crew spotted a large Japanese invasion force landing on the north coast of Luzon in the Philippines.

Captain Kelly radioed Clark Field for permission to attack. But two calls brought only a response to stand by. Kelly and the crew made two practice runs at 20,000 feet, and then the bombardier released the bombs in a line from the carrier’s stern to its bow. According to Sergeant Altman, two of the three bombs bracketed the ship; one was a direct hit. The enemy boat began to sink and was scuttled by its captain.

On the way home to Clark Field, their lone B-17 was attacked and set aflame by Japanese Zeros. Kelly stayed with the plane long enough to allow everyone else to bail out, before he went down within miles of the airfield. Captain Kelly’s body was found near the site.

Sergeant Altman suffered serious injuries and soon after was offered a flight to safety. But he turned it down believing he could better serve his country by staying. He was subsequently captured and taken to Japan, where he was held as a POW for 40 months. During that time, he was forced into slave labor for the Japanese until his release from Omori Prison, Tokyo Bay on August 29, 1945.

But it was the early report of his and his crew’s heroism in that attack after Pearl Harbor that inspired a nation reeling in shock. Alone and far from friendly territory, Sergeant Altman and his fellow heroes served their country well.

Today, Bob is an avid Florida Gator fan and I will have the honor of presenting him this statement before the game on November 21. Captain Kelly’s younger sister, Emmy, and her children, Mary and Colin, will be there, too.

I would hope Bob gets to see many more games. Today, I send best wishes from the U.S. Senate to SGT Robert Altman and his family and friends, including the family of CPT Colin P. Kelly, Jr.●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGE FROM THE HOUSE

At 10:13 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1506. An act to provide that claims of the United States to certain documents relating to Franklin Delano Roosevelt shall be treated as waived and relinquished in certain circumstances.

H.R. 3539. An act to designate the facility of the United States Postal Service located at 427 Harrison Avenue in Harrison, New Jersey, as the “Patricia D. McGinty-Juhl Post Office Building”.

H.R. 3767. An act to designate the facility of the United States Postal Service located at 170 North Main Street in Smithfield, Utah, as the “W. Hazen Hillyard Post Office Building”.

The message also announced that the House passed the following bills, without amendment:

S. 1314. An act to designate the facility of the United States Postal Service located at 630 Northeast Killingsworth Avenue in Portland, Oregon, as the “Dr. Martin Luther King, Jr. Post Office”.

S. 1825. An act to extend the authority for relocation expenses test programs for Federal employees, and for other purposes.

#### MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 3539. An act to designate the facility of the United States Postal Service located at 427 Harrison Avenue in Harrison, New Jersey, as the “Patricia D. McGinty-Juhl Post Office Building”; to the Committee on Homeland Security and Governmental Affairs.

H.R. 3767. An act to designate the facility of the United States Postal Service located at 170 North Main Street in Smithfield, Utah, as the “W. Hazen Hillyard Post Office Building”; to the Committee on Homeland Security and Governmental Affairs.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-3628. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, a report relative to the implementation of earned value management (EVM); to the Committee on Armed Services.

EC-3629. A communication from the Deputy Secretary of Defense, transmitting the report of (3) officers authorized to wear the insignia of the grade of rear admiral in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

EC-3630. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the report of a violation of the Antideficiency Act that occurred within the Defense Information Systems Agency in fiscal years 2003 and 2004, and has been assigned Defense Systems Information Systems Agency case number 06-01; to the Committee on Appropriations.

EC-3631. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency with respect to Syria that was declared in Executive Order 13338 of May 11, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC-3632. A communication from the President of the United States, transmitting, pursuant to law, a report on the continuation of the national emergency with respect to Iran that was declared in Executive Order 12170 on November 14, 1979; to the Committee on Banking, Housing, and Urban Affairs.

EC-3633. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Technical Amendment of Cross-Media Electronic Reporting Rule” (FRL No. 8980-7) received in the Office of the President of the Senate on November 10, 2009; to the Committee on Environment and Public Works.

EC-3634. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Amendments” (FRL No. 8979-8) received in the Office of the President of the Senate on November 10, 2009; to the Committee on Environment and Public Works.

EC-3635. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Tier I Field Directive—The Use of Estimates from Probability Samples” (LMSB-4-0809-032) received in the Office of the President of the Senate on November 13, 2009; to the Committee on Finance.

EC-3636. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Industry Director's Directive No. 2—Super Completed Contract Method" (LMSB-4-0209-006) received in the Office of the President of the Senate on November 13, 2009; to the Committee on Finance.

EC-3637. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates" (Notice 2009-88) received in the Office of the President of the Senate on November 13, 2009; to the Committee on Finance.

EC-3638. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Effective Date of Regulations Under Section 411(b)(5)(B)(i); Relief Under Section 411(d)(6); and Notice to Pension Plan Participants" (Announcement 2009-82) received in the Office of the President of the Senate on November 13, 2009; to the Committee on Finance.

EC-3639. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Withholding on Wages of Nonresident Alien Employees Performing Services Within the United States" (Notice 2009-91) received in the Office of the President of the Senate on November 16, 2009; to the Committee on Finance.

EC-3640. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to law, status reports relative to Iraq for the period of August 15, 2009, through October 15, 2009; to the Committee on Foreign Relations.

EC-3641. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Australia relative to the manufacture and service of F/A-18 Trailing Edge Flaps, Trailing Edge Flap Shrouds, Ailerons, and Aileron Shrouds and their associated minor components and parts in the amount of \$100,000,000 or more; to the Committee on Foreign Relations.

EC-3642. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Japan relative to the overhaul and manufacture of SIIS-3XT4/T4 ejection seats for the XT4/T4 trainer aircraft in the amount of \$100,000,000 or more; to the Committee on Foreign Relations.

EC-3643. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad relative to the Laser Target Designator/Range Finders and Gated Laser illuminators for Night Television for the AC-130U Gunship for end-use by the United States of America; to the Committee on Foreign Relations.

EC-3644. A communication from the Assistant Secretary, Bureau of Legislative Affairs,

Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad relative to the manufacture of Modified 20mm 102mm PELE Ammunition for end-use by the United States of America; to the Committee on Foreign Relations.

EC-3645. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad relative to the manufacture of the GAU-19 Gun for end-use by the United States of America; to the Committee on Foreign Relations.

EC-3646. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad relative to the modification CH-47SD Chinook Helicopters to the CH-47F configuration for end-use by Singapore in the amount of \$50,000,000 or more; to the Committee on Foreign Relations.

EC-3647. A communication from the Director, Directorate of Standards and Guidance, Occupational Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled "Revising Standards Referenced in the Acetylene Standard; Final Rule" (RIN1218-AC08) received in the Office of the President of the Senate on November 10, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC-3648. A communication from the Assistant General Counsel of the Division of Regulatory Services, Office of Postsecondary Education, Department of Education, transmitting, pursuant to law, the report of a rule entitled "Institutions and Lender Requirements Relating to Education Loans, Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program" (RIN1840-AC95) received in the Office of the President of the Senate on November 10, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC-3649. A communication from the Deputy Director of Regulations and Policy Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "New Animal Drug Applications" (Docket No. FDA-2009-N-0436) received in the Office of the President of the Senate on November 10, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC-3650. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Fiscal Year 2008 Medical Device User Fee and Modernization Act of 2002 (MDUFMA) Financial Report"; to the Committee on Health, Education, Labor, and Pensions.

EC-3651. A communication from the Director, Congressional Affairs, Federal Election Commission, transmitting, pursuant to law, a report entitled "Federal Election Commission 2009 Performance and Accountability Report"; to the Committee on Homeland Security and Governmental Affairs.

EC-3652. A communication from the Acting Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the Corporation's Annual Management Report for fiscal year 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-3653. A communication from the Acting General Counsel, National Indian Gaming

Commission, transmitting, pursuant to law, the report of a rule entitled "Amendments to Various National Indian Gaming Commission Regulations" (RIN3141-0001) received in the Office of the President of the Senate on November 12, 2009; to the Committee on Indian Affairs.

EC-3654. A communication from the Director of Legislative Affairs, Office of the Director of National Intelligence, transmitting, pursuant to law, a report relative to the vacancy in the position of Principal Deputy Director of National Intelligence, received in the Office of the President of the Senate on November 13, 2009; to the Select Committee on Intelligence.

EC-3655. A communication from the General Counsel, Executive Office for Immigration Review, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands" (RIN1125-AA67) received in the Office of the President of the Senate on November 12, 2009; to the Committee on the Judiciary.

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. KERRY for the Committee on Foreign Relations.

\*James LaGarde Hudson, of the District of Columbia, to be United States Director of the European Bank for Reconstruction and Development.

\*Jose W. Fernandez, of New York, to be an Assistant Secretary of State (Economic, Energy, and Business Affairs).

\*Frederick D. Barton, of Maine, to be Representative of the United States of America on the Economic and Social Council of the United Nations, with the rank of Ambassador.

\*Daniel W. Yohannes, of Colorado, to be Chief Executive Officer, Millennium Challenge Corporation.

\*Gustavo Arnavat, of New York, to be United States Executive Director of the Inter-American Development Bank for a term of three years.

\*Frederick D. Barton, of Maine, to be an Alternate Representative of the United States of America to the Sessions of the General Assembly of the United Nations, during his tenure of service as Representative of the United States of America on the Economic and Social Council of the United Nations.

\*Robert R. King, of Virginia, to be Special Envoy on North Korean Human Rights Issues, with the rank of Ambassador.

\*William E. Kennard, of the District of Columbia, to be Representative of the United States of America to the European Union, with the rank and status of Ambassador Extraordinary and Plenipotentiary.

Nominee: William E. Kennard.

Post: Chief of Mission—USEU.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: \$2300, 2/27/07, Obama for America; —\$2300, 2/27/07, Obama for America; \$2300, 2/27/07, Obama for America; \$2300, 3/29/07, Obama for America; —\$2300, 3/29/07, Obama for America; \$2300, 3/29/07, Obama for America; \$1000, 9/28/07, Udall for Colorado; \$2300, 9/30/07, Chris Dodd for President; \$5000, 11/30/07,

DNC Campaign; \$500, 5/22/08, Friends of Jay Rockefeller; \$1000, 6/16/08, Patrick Murphy for Congress; \$250, 6/30/08, Brad Miller for U.S. Congress; \$28500, 6/30/08, Obama Victory Fund-DNC; \$2000, 8/26/08, Richard Neal for Congress; \$5000, 9/26/08, Democratic Senatorial Campaign Committee; \$1000, 10/3/08, Committee for Change; \$500, 10/24/08, Patrick Murphy for Congress.

2. Spouse: Deborah Kennedy; \$2300, 6/18/07, Obama for America; \$2300, 3/27/07, Obama for America.

3. Children and Spouses: Robert James Kennard; \$0.

4. Parents: Helen Z. Kennard; \$0; Robert A. Kennard-Deceased.

5. Grandparents: James L. Kennard-Deceased; Marie Kennard-Deceased; Arthur King-Deceased; Grace D. King-Deceased.

6. Brothers and Spouses: None.

7. Sisters and Spouses: Lydia H. Kennard; \$250, 3/5/08, Woodrow Myers, candidate For U.S. Congress from Indiana; Sammi Reeves (brother in-law); \$2300, 12/7/07, Romney for President; \$500, 4/19/09, Gary Miller for Congress; Gail M. Kennard; \$30, 11/12/08, Democratic National Committee; \$25, 10/16/08, Obama for America; \$25, 10/8/09, Obama for America; \$25, 8/25/08, Obama for America; \$25, 7/17/08, Obama for America; \$25, 5/29/08, Obama for America; \$25, 3/26/08, Woodrow Myers, candidate for U.S. Congress from Indiana; \$25, 3/6/08, Obama for America; \$50, 2/18/09, Obama for America.

\*Carmen Lomellin, of Virginia, to be Permanent Representative of the United States of America to the Organization of American States, with the rank of Ambassador.

Nominee: Carmen Lomellin.

Post: Ambassador, U.S. Permanent Representative to the Organization of American States.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: \$500, 3/31/2006, Menendez for Senate; \$1,000, 12/27/07, Hillary Clinton for President; \$250, 12/13/2007, Hillary Clinton for President; \$800, 1/27/2008, Hillary Clinton for President; \$1,000, 3/20/2008, Udall for Us All; \$250, 07/28/2008, Judy Feder for Congress; \$250, 08/12/2008, Poder PAC; \$250, 09/12/2008, Poder PAC; \$250, 10/12/2008, Poder PAC; \$250, 11/12/2008, Poder PAC; \$250, 10/24/2008, and Obama Victory Fund.

1. Spouse: None.

1. Children and spouses: None.

2. Parents: Vincent M. Lomellin-Deceased; Esther Lomellin-Deceased.

3. Grandparents: Florentino Martinez-Deceased; Elvira Martinez Garcia-Deceased; Jesus Lomellin-Deceased; Susana Lucio Lomellin-Deceased.

4. Brothers and spouses: David Lomellin—No spouse, None.

5. Sisters and Spouses: Theresa Muñoz, None; David Muñoz, None; Martha Gonzalez, None; R. Luis Gonzalez, \$1,000, 7/23/07, Bill Richardson for President; Lucia Lomellin, None; Martin Nava, None.

\*Cynthia Stroum, of Washington, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Luxembourg.

Nominee: Cynthia Stroum.

Post: Ambassador to Luxembourg.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the in-

formation contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Cynthia Stroum: -\$1,000, 09/24/09, Democratic National Committee (refunded 02/19/08 contribution); 250, 05/29/09, Citizens For Arlen Specter; 1,800, 03/06/09, People For Patty Murray U.S. Senate; 10,000, 12/25/08, Presidential Inaugural Committee; 100 10/29/08 Darcy Burner for Congress; 1,000, 08/04/08, Friends of Rahm Emanuel; 500, 07/10/08, Darcy Burner for Congress; 1,500, 06/21/08, AIPAC (paid by Stroum Enterprises); 28,500, 05/28/08, Democratic White House Victory Fund (see below); Democratic National Committee (rcvd funds); 1,000, 05/12/08, Adam Smith for Congress; 1,000, 03/11/08, Friends of Maria (Cantwell 2006); 1,000, 02/23/08, Insee for Congress; 1,000, 02/19/08, Democratic National Committee; 250, 02/18/08, Tester for U.S. Senate; 70, 11/18/07, AIPAC; 1,000, 11/13/07, People For Patty Murray U.S. Senate; 1,000, 11/15/07, Democratic National Committee; 5,000, 06/14/07, Democratic Senatorial Campaign Committee; 1,500, 05/24/07, AIPAC (paid by Stroum Enterprises); 1,000, 04/04/07, Friends For Barbara Boxer; 2,500, 03/29/07, Obama For America; 500, 03/25/07, People For Patty Murray U.S. Senate; 2,300, 03/01/07, John Edwards for President; 2,100, 01/16/07, Obama For America (Exploratory Committee); 500, 10/25/06, Washington State Democratic Central Committee (Victory 2006); 65, 10/23/06, AIPAC; 250, 10/12/06, Adam Smith for Congress; 100, 09/29/06, Darcy Burner for Congress; 1,500, 09/11/06, AIPAC (paid by Stroum Enterprises); 5,000, 07/31/06, Washington State Victory (see below); Washington State Democratic Central Committee (rcvd funds); 1,000, 03/31/06, Stabenow for Senate; 1,000, 03/21/06, People For Patty Murray U.S. Senate; 1,000, 03/20/06, Hopefund; 1,000, 01/24/06, Friends of Hillary (Senate 2006); 2,000, 12/11/05, Friends of Joe Lieberman; 250, 11/07/05, Citizens For Harkin; 250, 10/26/05, Friends for McDermott; 1,500, 09/14/05, AIPAC (paid by Stroum Enterprises); 65, 09/13/05, AIPAC; 55, 09/01/05, AIPAC; 500, 05/07/05, People For Patty Murray U.S. Senate; 5,000, 03/23/05, Washington Senate 2006 (see split below); Democratic Senatorial Campaign Committee \$3,800; Friends of Maria (Cantwell Senate 2006) \$1,200.

2. Spouse: None.

3. Children and Spouses: Courtney Stroum Meagher; 2,300, 08/21/07, Obama For America.

4. Parents: Samuel N. Stroum-Deceased; Althea Stroum; 1,000, 06/09/08, Obama For America; 500, 10/20/06, Friends of Maria Cantwell; 1,000, 12/06/05, Friends of Maria Cantwell; 500, 12/01/05, Friends of Joe Lieberman.

5. Grandparents: Nathan Stroum-Deceased; Ethel Stroum-Deceased; George Diesenhaus-Deceased; Esther Diesenhaus-Deceased.

6. Brothers and Spouses: None.

7. Sisters and Spouses: Marsha Glazer; 2,300, 01/08/08, Obama For America; 2,300, 01/08/08, Obama For America; Jay Glazer; 13,500, 10/02/08, DNC Services Corporation/DNC; 13,500, 10/02/08, Obama Victory Fund; 15,000, 09/30/08, Committee For Change; 1,042, 09/30/08, Georgia Federal Elections Committee; 1,330, 09/30/08, North Carolina Democratic Party-Federal; 969, 09/30/08, Indiana Democratic Congressional Victory Committee; 15,000, 09/23/08, Obama Victory Fund; 15,000, 09/23/08, DNC Services Corporation/DNC; 4,600, 01/01/08, Obama For America; 2,000, 10/31/06, Democratic Congressional Campaign Committee.

\*Michael C. Polt, of Tennessee, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Estonia.

Nominee: Michael C. Polt.

Post: Tallinn, Estonia.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: 0.

2. Spouse: 0.

3. Children and Spouses: Nicholas M. Polt; Lindsay M. Polt; 0.

4. Parents: Karl H. Polt (deceased); Margaret R. Reed; 0.

5. Grandparents: Adalbert Riedl (deceased); Theresia Riedl (deceased); Karl Polt (deceased); Maria Polt (deceased); 0.

6. Brothers and Spouses: None; 0.

7. Sisters and Spouses: Martina C. Polt; 0.

\*John F. Tefft, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Ukraine.

Nominee: John Francis Tefft.

Post: Ukraine.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: Mariella C. Tefft: None.

3. Children and Spouses: Christine M. Tefft; \$100, 2008, Obama/Biden Campaign; Cathleen M. Tefft: None; Andrew Horowitz: None.

4. Parents: Floyd F. Tefft-Deceased; Mary J. Tefft-Deceased.

5. Grandparents: Floyd B. Tefft-Deceased; Lucy B. Tefft-Deceased; James Durkin-Deceased; Julia Durkin-Deceased.

6. Brothers and Spouses: Thomas M. Tefft: None; Julie C. Tefft: None; James F. Tefft: None; Victoria Tefft: None.

7. Sisters and Spouses: Patricia M. Tefft-Deceased; Sheila L. Tefft: None; Rajiv Chandra: None.

\*David Huebner, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to New Zealand, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Samoa.

Nominee: David Huebner.

Post: Ambassador to New Zealand and Samoa.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: N/A.

2. Spouse: N/A.

3. Children and Spouses: N/A.

4. Parents: Elizabeth P. Huebner, None; David Huebner, None.

5. Grandparents: N/A; deceased.

6. Brothers and Spouses: Richard L. Huebner, none; Christie Huebner, None.

7. Sisters and Spouses: N/A.

\*Peter Alan Prahar, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federated States of Micronesia.

Nominee: Peter Alan Prahar.

Ambassador to the Federal States of Micronesia.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Donee, amount, date, and donee:

1. Self: \$105, 01/31/2005, Democratic National Committee (DNC); \$100, 05/10/2005, Democratic Congressional Campaign Committee (DCCC); \$100, 01/06/2006, DNC; \$100, 01/10/2006, DCCC; \$110, 07/21/2006, DNC; \$100, 01/22/2007, DNC; \$100, 12/17/2007, DNC; \$100, 01/24/2008, DNC; \$100, 08/13/2008, DNC; \$100, 04/13/2009, DCCC.

2. Spouse: Amy Prahar: \$100, 01/22/2009, DCCC; \$100, 04/21/2009, DNC.

3. Father: Louis B. Prahar: None; Mother: Ruth Prahar: Deceased.

4. Father-in-law: Choi Che Wing: None; Mother-in-law: Deceased.

5. Brother: John P. Prahar: None; Sister-in-law: Rista Prahar: None.

6. Sister: Barbara A. Kranick: None; Brother-in-law: Gordon Kranick: None.

7. Sister: Joan E. Prahar: Deceased.

Mr. KERRY, Mr. President, for the Committee on Foreign Relations I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

\*Foreign Service nomination of Terence Jones.

\*Foreign Service nominations beginning with Andrea M. Cameron and ending with Aleksandra Paulina Zittle, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 10, 2009.

\*Foreign Service nominations beginning with Laurie M. Major and ending with Maria A. Zuniga, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 17, 2009.

\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

#### 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. LEVIN:

S. 2780. A bill to amend the Small Business Act to establish a small business intermediary lending pilot program; to the Committee on Small Business and Entrepreneurship.

By Ms. MIKULSKI (for herself, Mr. ENZI, Mr. HARKIN, Mr. BROWN, Mr. CARDIN, Mr. ALEXANDER, Mr. BARRASSO, Mr. BURR, Mr. GREGG, Mr. THUNE, and Mr. DODD):

S. 2781. A bill to change references in Federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual

to references to an individual with an intellectual disability; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. McCASKILL (for herself, Ms. COLLINS, Mr. BENNETT, Mr. BROWN, Mr. NELSON of Florida, Mr. LEMIEUX, and Mr. CASEY):

S. 2782. A bill to provide personal jurisdiction in causes of action against contractors of the United States performing contracts abroad with respect to members of the Armed Forces, civilian employees of the United States, and United States citizen employees of companies performing work for the United States in connection with contractor activities, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BAYH (for himself, Mr. LUGAR, and Ms. CANTWELL):

S. 2783. A bill to amend the Internal Revenue Code of 1986 to provide incentives for used oil re-refining, and for other purposes; to the Committee on Finance.

By Mr. CARPER (for himself and Mr. VOINOVICH):

S. 2784. A bill to amend the Internal Revenue Code of 1986 to permanently extend the estate tax as in effect in 2009, and for other purposes; to the Committee on Finance.

By Mrs. LINCOLN (for herself and Mr. FRANKEN):

S. 2785. A bill to provide grants to improve after-school interdisciplinary education programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEAHY (for himself and Mr. HATCH):

S. 2786. A bill to amend titles 18 and 28 of the United States Code to provide incentives for the prompt payments of debts owed to the United States and the victims of crime by imposing late fees on unpaid judgments owed to the United States and to the victims of crime, to provide for offsets on amounts collected by the Department of Justice for Federal agencies, to increase the amount of special assessments imposed upon convicted persons, to establish an Enhanced Financial Recovery Fund to enhance, supplement, and improve the debt collection activities of the Department of Justice, to amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement officers, and for other purposes; to the Committee on the Judiciary.

By Mr. THUNE (for himself, Mr. VITTER, Mr. BENNETT, Mr. INHOFE, Mr. JOHANNIS, Mr. BARRASSO, Mr. GRASSLEY, Mr. CORNYN, Mr. ENSIGN, Mr. CRAPO, Mr. ROBERTS, Mr. ENZI, Ms. MURKOWSKI, Mr. BURR, Mr. COBURN, and Mr. BOND):

S. 2787. A bill to repeal the authority of the Secretary of the Treasury to extend the Troubled Asset Relief Program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEVIN (for himself and Mr. McCAIN):

S. 2788. A bill to amend the Military Construction Authorization Act for Fiscal Year 2010 to authorize construction of an Aegis Ashore Test Facility at Pacific Missile Range Facility, Hawaii; to the Committee on Armed Services.

By Mr. VOINOVICH (for himself, Mrs. GILLIBRAND, and Mr. KAUFMAN):

S. 2789. A bill to establish a scholarship program to encourage outstanding undergraduate and graduate students in mission-critical fields to pursue a career in the Federal Government; to the Committee on Finance.

By Mr. DODD (for himself, Mr. HARKIN, Mr. FRANKEN, Mr. BROWN, and Mr. MERKLEY):

S. 2790. A bill to allow Americans to receive paid sick time so that they can address their own health needs, and the health needs of their families, related to a contagious illness; to the Committee on Health, Education, Labor, and Pensions.

#### ADDITIONAL COSPONSORS

S. 332

At the request of Mrs. FEINSTEIN, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 332, a bill to establish a comprehensive interagency response to reduce lung cancer mortality in a timely manner.

S. 456

At the request of Mr. DODD, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 456, a bill to direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop guidelines to be used on a voluntary basis to develop plans to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs, to establish school-based food allergy management grants, and for other purposes.

S. 584

At the request of Mr. HARKIN, the names of the Senator from Maryland (Mr. CARDIN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 584, a bill to ensure that all users of the transportation system, including pedestrians, bicyclists, transit users, children, older individuals, and individuals with disabilities, are able to travel safely and conveniently on and across federally funded streets and highways.

S. 593

At the request of Mrs. FEINSTEIN, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 593, a bill to ban the use of bisphenol A in food containers, and for other purposes.

S. 611

At the request of Mr. LAUTENBERG, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 611, a bill to provide for the reduction of adolescent pregnancy, HIV rates, and other sexually transmitted diseases, and for other purposes.

S. 619

At the request of Mrs. FEINSTEIN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 619, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S. 850

At the request of Mr. KERRY, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 850, a bill to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens

Fishery Conservation and Management Act to improve the conservation of sharks.

S. 1067

At the request of Mr. FEINGOLD, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1147

At the request of Mr. KOHL, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1147, a bill to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

S. 1152

At the request of Mr. DODD, the names of the Senator from Massachusetts (Mr. KIRK) and the Senator from Oregon (Mr. MERKLEY) were added as cosponsors of S. 1152, a bill to allow Americans to earn paid sick time so that they can address their own health needs and the health needs of their families.

S. 1156

At the request of Mr. HARKIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1156, a bill to amend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users to reauthorize and improve the safe routes to school program.

S. 1183

At the request of Mr. DURBIN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1183, a bill to authorize the Secretary of Agriculture to provide assistance to the Government of Haiti to end within 5 years the deforestation in Haiti and restore within 30 years the extent of tropical forest cover in existence in Haiti in 1990, and for other purposes.

S. 1194

At the request of Ms. CANTWELL, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1194, a bill to reauthorize the Coast Guard for fiscal years 2010 and 2011, and for other purposes.

S. 1317

At the request of Mr. LAUTENBERG, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 1317, a bill to increase public safety by permitting the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspected dangerous terrorists.

S. 1341

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1341, a bill to amend the Internal Revenue Code of 1986 to impose an excise tax on certain proceeds received on SILO and LILO transactions.

S. 1402

At the request of Mr. MERKLEY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1402, a bill to amend the Internal Revenue Code of 1986 to increase the amount allowed as a deduction for start-up expenditures.

S. 1559

At the request of Mr. KERRY, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 1559, a bill to consolidate democracy and security in the Western Balkans by supporting the Governments and people of Bosnia and Herzegovina and Montenegro in reaching their goal of eventual NATO membership, and to welcome further NATO partnership with the Republic of Serbia, and for other purposes.

S. 1589

At the request of Ms. CANTWELL, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 1589, a bill to amend the Internal Revenue Code of 1986 to modify the incentives for the production of biodiesel.

S. 1612

At the request of Mrs. LINCOLN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1612, a bill to amend the Internal Revenue Code of 1986 to improve the operation of employee stock ownership plans, and for other purposes.

S. 1646

At the request of Mr. REED, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1646, a bill to keep Americans working by strengthening and expanding short-time compensation programs that provide employers with an alternative to layoffs.

S. 1765

At the request of Mr. CARDIN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1765, a bill to amend the Hate Crime Statistics Act to include crimes against the homeless.

S. 1790

At the request of Mr. DORGAN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1790, a bill to amend the Indian Health Care Improvement Act to revise and extend that Act, and for other purposes.

S. 1792

At the request of Mr. ROCKEFELLER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1792, a bill to amend the Internal Revenue Code of 1986 to modify the re-

quirements for windows, doors, and skylights to be eligible for the credit for nonbusiness energy property.

S. 1938

At the request of Mr. ROCKEFELLER, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1938, a bill to establish a program to reduce injuries and deaths caused by cellphone use and texting while driving.

S. 2128

At the request of Mr. LEMIEUX, the names of the Senator from Texas (Mrs. HUTCHISON), the Senator from Georgia (Mr. ISAKSON) and the Senator from Wyoming (Mr. BARRASSO) were added as cosponsors of S. 2128, a bill to provide for the establishment of the Office of Deputy Secretary for Health Care Fraud Prevention.

S. 2607

At the request of Mr. REID, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 2607, a bill to amend the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 to repeal a provision of that Act relating to geothermal energy receipts.

S. 2730

At the request of Mr. BROWN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 2730, a bill to extend and enhance the COBRA subsidy program under the American Recovery and Reinvestment Act of 2009.

S. 2755

At the request of Mr. MENENDEZ, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 2755, a bill to amend the Internal Revenue Code of 1986 to provide an investment credit for equipment used to fabricate solar energy property, and for other purposes.

S. 2758

At the request of Ms. STABENOW, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 2758, a bill to amend the Agricultural Research, Extension, and Education Reform Act of 1998 to establish a national food safety training, education, extension, outreach, and technical assistance program for agricultural producers, and for other purposes.

S. RES. 334

At the request of Mr. HATCH, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. Res. 334, a resolution designating Thursday, November 19, 2009, as "Feed America Day".

S. RES. 353

At the request of Mrs. HAGAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. Res. 353, a resolution supporting the goals and ideals of "American Education Week".

STATEMENTS ON INTRODUCED  
BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN:

S. 2780. A bill to amend the Small Business Act to establish a small business intermediary lending pilot program; to the Committee on Small Business and Entrepreneurship.

Mr. LEVIN. Mr. President, today I introduce the Small Business Intermediary Lending Pilot Program Act of 2009.

As a member of the Small Business and Entrepreneurship Committee I have been concerned about access to affordable financing for small businesses.

The need to help small businesses find flexible credit sources has become more urgent than ever during this economic and credit crisis. The problem is serious. I have heard from numerous small businesses from across Michigan facing serious financial difficulties. Too many creditworthy businesses are having trouble procuring a loan, getting their loans renewed, or are facing higher rates or are having their lines of credit withdrawn altogether. This is happening even when the business never missed a payment.

The difficulty of finding bank financing is both a symptom and a cause of our economic troubles. The crisis that nearly toppled our economy in late 2008 and early 2009 was largely the result of a shutdown in lending by banks worried that they would be overwhelmed by bad loans. And as the lack of available credit rippled through the economy, it hit more businesses, cost them more customers, forced them to lay off more workers, and slowed economic activity even more, making banks all the more reluctant to lend and setting off a downward spiral.

The search for solutions to these problems has been intense, and we have taken some steps in Congress to alleviate them, including acting to reduce Small Business Administration lending fees, increasing the dollar amount of those loans the government would guarantee, and offering short-term loans to businesses facing immediate financial hardship. But it hasn't been enough.

In May, I told members of the Senate Small Business and Entrepreneurship Committee, on which I serve, of just one Michigan example of the problem: A small manufacturer based in the Thumb. The company's longtime bank lender told the company it could not renew the firm's 5-year loan, instead offering 90-day renewals at a much higher interest rate. The company, with 77 workers and 150 customers, sought a loan elsewhere, but other banks—28 of them—rejected its application. The company has an excellent payment history. That story can be repeated 100 times throughout the state.

With the steep decline in the availability of credit from conventional financial institutions, demand is increasing for community-based financial institutions, including Community

Development Corporations, Micro-lenders, Community Development Financial Institutions and other non-profit lenders to fill the gap created by the reluctance of private financial institutions to provide capital to businesses. As demand on these non-profit institutions to fill the gap has increased, these institutions' sources of capital are also drying up.

To address this problem, I am introducing legislation to help get financing to those small businesses that are not being served by the conventional loan programs currently available through the Small Business Administration.

The Small Business Intermediary Lending Program that I am introducing today is a three-year pilot program which authorizes the SBA in each of the three years to make 20-year loans, on a competitive basis, to up to 20 non-profit lending intermediaries around the country, with a maximum amount of \$3 million per loan. Under this proposal, intermediaries would use these SBA loans to capitalize revolving loan funds through which loans of up to \$200,000 would be made to small businesses in need of flexible debt financing. In addition, these intermediaries would assist borrowers in leveraging the SBA funds to obtain additional capital from other sources. The intermediaries would also work closely with the small business to provide technical assistance during the life of the loan.

The program would be structured along the lines of the SBA's Microloan program and USDA's Intermediary Relending Program, both of which have demonstrated the success of using intermediary lenders to improve the flow of credit to small businesses that are unable to satisfy the underwriting requirements of a congenial bank.

The program is designed to fill the lending gap that exists between SBA's Microloan program that lends up to \$35,000 and its 7(a) loan program that makes larger traditional loans to small businesses through participating banks. Many start-up and expanding small businesses may have graduated from the Microloan Program and need larger loans but cannot get 7(a) loans because they lack adequate collateral necessary for traditional loans. These small businesses may also still need technical assistance to help them succeed that would be provided by the intermediary lender under this bill.

Even before the severe economic downturn and resulting credit crunch, 7(a) lenders were not making the sorts of midsize loans the Intermediary Lending Program seeks to make. In fact, several years ago a representative for the National Association of Government Guaranteed Lenders, the 7(a) lenders' trade association, told a Small Business and Entrepreneurial Committee roundtable that 7(a) lenders are not making these midsize loans because they are not cost effective, and that the Intermediary Lending Program would fill an important niche not being filled by any existing SBA program.

We have been taking some important steps to encourage banks to lend to businesses, with varying degrees of success. Clearly more needs to be done to get credit into the hands of the small businesses that are going to create the jobs necessary to lead us out of this economic downturn. The Intermediary Lending Program I am introducing today proposes a way to get financing into the hands of those viable businesses that conventional banks are currently not lending to so that they can hire employees and grow their businesses. I urge its swift enactment.

By Ms. MIKULSKI (for herself, Mr. ENZI, Mr. HARKIN, Mr. BROWN, Mr. CARDIN, Mr. ALEXANDER, Mr. BARRASSO, Mr. BURR, Mr. GREGG, Mr. THUNE, and Mr. DODD):

S. 2781. A bill to change references in Federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual to references to an individual with an intellectual disability; to the Committee on Health, Education, Labor, and Pensions.

Ms. MIKULSKI. Mr. President, today I rise to introduce legislation that I am calling "Rosa's Law." It began by listening to the people in my own State. It began when a mother told me a compelling story about her own daughter, her family's efforts to give her daughter an opportunity for an education and to be treated with respect and with dignity. And, at the same time, it began with the advocacy of not only she and her husband but of her entire family, including her 14 year old son, Nick, who testified at the Maryland General Assembly.

As a result of their effort, I am introducing Rosa's Law. But I want to tell you about the family. I want to tell you about the Marcellinos—two determined parents with four children: Nick, age 14; Madeleine, age 12; Gigi, age 10; and Rosa, age 8. I wish you could have been with me in my office as I met with them, as I met with the parents and talked with the family.

Last year, at a roundtable on special education, I met Nina Marcellino. She told me about her daughter Rosa and the fact that Rosa had been labeled at her school some years ago as "mentally retarded" and told me of the stigma, the pain, the anguish it caused both Nina and her husband, Rosa's brother and sisters as well as Rosa herself.

The mother and father reached out to the advocacy organization, the Arc, to see what could be done to change the law. They then reached out to a member of the Maryland General Assembly in our own Maryland Legislature—a wonderful representative named Ted Sophocleus.

Mr. Sophocleus introduced legislation in the Maryland General Assembly that would change the words "mentally retarded" and substitute that with the phrase "an individual with an intellectual disability."

That is why I stand on the Senate floor today to introduce, at the request of this family, legislation on behalf of this little girl and on behalf of all of the children of the United States of America who are labeled, stigmatized, and bear a burden the rest of their lives because of the language we use in the law books.

My law simply changes the phrase “mentally retarded” to an “individual with an intellectual disability.” We do it in health, education, and labor policy without in any way negatively impinging upon either the educational or other benefits to which these children are entitled.

When it came time to bring the bill before the General Assembly, the family was there. And who spoke up for Rosa? Well, her mom and dad had been speaking up for her. Her brother Nick and her sisters Madeleine and Gigi had been speaking up for her. This wonderful boy, Nick, at the time 13 testified before the general assembly and said:

What you call people is how you treat them.

“What you call people is how you treat them.” What you call my sister is how you will treat her. If you believe she is “retarded,” it invites taunts, it invites stigmas, it invites bullying, and it also invites the slammed doors of not being treated with respect and dignity.

Nick’s words were far more eloquent that day than mine are today. I want to salute Nick for standing up for his sister. But I think we need to stand up for all because in changing the language we believe it will be the start of new attitudes toward people with intellectual disabilities. Hopefully, people will associate these new words with the very able and valuable people that go to school, work, play soccer, or live next door.

Eunice Shriver believed in this when she created the Special Olympics. She knew special needs children need special attention, but they can do very special things and look what she started.

This bill has gotten unanimous support in the Maryland legislative body. It passed in Annapolis. A few weeks before this bill swept through the General Assembly, I had the opportunity to talk to Rosa’s mom, Nina. I promised her then that if that bill passed the Maryland Legislature, I would bring it to the floor of the Senate. Well, it passed unanimously, Governor O’Malley has signed it, and today I stand before you introducing the legislation.

It makes nominal changes to policy. It gets into Federal education, health, and labor law. It simply substitutes “intellectual disability” for “mental retardation,” “individual with an intellectual disability” for “mentally retarded.”

This bill, as I can assure all who might be concerned, will not expand nor diminish services, rights, or educational opportunities. We vetted it

with legal counsel. We reached out to the very wonderful advocacy groups in this field, and they concur that this legislation would be acceptable.

The Senate has changed terminology for this population before. In the 1960s, Congress passed legislation where we took—I am almost embarrassed to say our law once referred to boys and girls as “feeble-minded.” We thought we were being advanced when we changed it to “mentally retarded.” Now, 40 years later, let’s take another big step and change it to “intellectual disability.”

This bill makes language used in the Federal Government consistent. The President’s Committee on Mental Retardation was changed by Executive order so it is now the Committee on Individuals with Intellectual Disabilities. The CDC uses “intellectual disability.” The World Health Organization uses “intellectual disability.”

I have always said the best ideas come from the people. “Rosa’s Law” is a perfect example of effective citizen advocacy—a family that pulled together for their own, and in pulling together they are pulling us all along to a new way of thinking.

I want to recognize the Marcellino family who is here with us in the gallery, and the namesake of the law, Rosa, whose picture is behind me, and she is also up there in the gallery today.

It was indeed an honor to represent this family. I believe in our country people have a right to be heard, and we listen. They have a right to be represented, which I have tried to do. Now let’s try to change the law.

I also want to take this opportunity to thank my colleagues. It is a pleasure to work with Senators HARKIN and ENZI, the chair and ranking member of the HELP Committee. I have their wholehearted support in working together.

This is going to be a bipartisan bill. It is going to be a nonpartisan bill. We are going to check our party hats at the door and move ahead and tip our hats to these boys and girls. This bill is driven by passion for social justice and compassion for the human condition. We have done a lot to come out of the dark ages of institutionalization and exclusion when it comes to people with intellectual disabilities.

I urge my colleagues to join me in going a step further. Cosponsor the legislation I offer on a bipartisan basis. Help me pass the law and know that each and every one of us can make a difference. When we work together, we can make change. I look forward to working with my colleagues in moving this bill forward in our legislative process.

Mr. ENZI. Mr. President, I am pleased to have this opportunity to join my colleague from Maryland, Senator MIKULSKI, in introducing Rosa’s law. I would like to thank her for her leadership and her commitment on this issue. Simply put, this legislation will

make an important change in the words we use to refer to those with intellectual disabilities. It is a much needed change in the law that is fully deserving of our support.

For far too long we have used words like “mental retardation” in our Federal statutes to refer to those with intellectual disabilities. This has been unfortunate because when we use such a term we send a message throughout our society that someone “is” their disability, instead of someone like us who is facing a challenge in their life. Such a term creates the unwanted impression that growth is impossible and their disability will lock them into a certain lifestyle forever.

As an example, imagine a friend with cancer. When you refer to him or her you would probably say they have cancer, or are going through cancer treatment. You wouldn’t say they “are” cancer like this term says that someone “is” their disability. It’s a distinction that makes a big difference for anyone facing such a difficult period of their lives.

This is not a unique situation. Historically, this and other unfortunate terms have been used to refer to people with disabilities of all kinds for many years.

Prior to the 1960’s, people who were viewed as having intellectual limitations were shunned from society and placed in institutions. The American dream of self-determination, independent living, and the pursuit of freedom and happiness was thought to be impossible for them to achieve. We let the limitations we helped to create with our words and our attitudes slowly take away their hopes and dreams for a better life and a brighter future.

We know now that words have meaning, sometimes far beyond what we intend. Therefore, we must be very careful about the way we describe the people we see every day, including those with disabilities, or those who are undergoing treatment for a variety of health issues. Unfortunately, the Federal Government has not dropped this term from our laws and it still appears in the regulations and statutes that come before our legislative bodies and our courts.

With this legislation we are taking a giant step forward, as we acknowledge that times have changed and we live in a much different world. Clearly this term was not developed from malice. It came from a lack of understanding of what it was like to be labeled with such a term and then left virtually alone in the effort to overcome it.

Over the years, Congress has made it known that community living, educational opportunities that lead to success in the workplace, and equal opportunity without discrimination will be available to people who are living with intellectual limitations under appropriate Federal statutes.

That was a good start. Unfortunately, several key Federal disability statutes, including the Individuals

with Disabilities Education Act, the Rehabilitation Act, the Developmental Disabilities Act, and the Genetic Information Nondiscrimination Act, still use the outmoded term. It is time for Congress to be proactive and join the States of New Hampshire, Maryland, and my home State of Wyoming by ending the use of this pejorative term and replacing it with a more carefully chosen word.

To paraphrase a quote I have heard about cancer, a disability is a word, not a sentence. We have put that philosophy into practice over the years for other disabilities. It is time we adapted it to provide support to those living with intellectual disabilities as well.

Some will ask if we are being overly sensitive, or if we are just trying to make a change to be politically correct. The answer to that question is clearly “no.”

It is no secret. When we put a “label” like that on someone we often find ourselves dealing with the label as if it is not a description of the challenges someone faces in their lives but a reflection of who that person really is. That puts them in a group with a label for a name and tells them that they are not worthy of being treated as an individual, with individual needs and interests.

I have heard from people with intellectual disabilities over the years. They have asked us to put an end to the use of that outdated term. Self-advocacy groups such as Self-Advocates Becoming Empowered and local People First Organizations as well as organizations such as the Arc of the United States, Special Olympics International, and others have already stopped using this archaic terminology and dropped the term from their agency names. The American Psychiatric Association, which publishes the Diagnostic and Statistical Manual of Mental Disorders, has already voted to use the term “Intellectual Disability” in the next publication of their manual.

I have always believed that the law is a great teacher. That is why we need to join in this effort and express our support for the efforts of those with disabilities of all kinds to live to their full potential. We can do that by eliminating the use of negative archaic terms to refer to those with intellectual limitations. Such an action on our part starts with this bill that uses the term intellectual disability in laws that are in the jurisdiction of the Senate Committee on Health, Education, Labor and Pensions. This bill makes our intent clear throughout our Nation that this term will never again be used in Congress or in any Federal office.

When I came to the Senate 13 years ago, my staff and I met almost immediately to work on our mission statement. When it was completed, one of the most important clauses we had written was our commitment that we would treat others not as we would wish to be treated, but as they would wish to be treated. There is a difference.

Today, with the passage of this important legislation, we are reaching out to those with intellectual disabilities to assure them that their government will treat them as they would wish to be treated. By so doing, we will also be directing our staffs and the staffs of federal offices throughout the U.S. that the best way for them to refer to those with disabilities or to anyone who comes into their office is by the term they have carried with them throughout their lives—their name.

By Mr. LEAHY (for himself and Mr. HATCH):

S. 2786. A bill to amend titles 18 and 28 of the United States Code to provide incentives for the prompt payments of debts owed to the United States and the victims of crime by imposing late fees on unpaid judgments owed to the United States and to the victims of crime, to provide for offsets on amounts collected by the Department of Justice for Federal agencies, to increase the amount of special assessments imposed upon convicted persons, to establish an Enhanced Financial Recovery Fund to enhance, supplement, and improve the debt collection activities of the Department of Justice, to amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement officers, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today I am pleased to join with Senator HATCH to introduce a bill that will take steps to enhance the retirement benefits granted to Assistant U.S. Attorneys who serve all Americans in a critical law enforcement role. Representative DELAHUNT is introducing companion legislation in the House. I would like to acknowledge the significant efforts made by the National Association of Assistant United States Attorneys in developing this legislation.

There are approximately 5,500 Assistant U.S. Attorneys in 93 offices throughout the U.S. all of whom are serving on the front lines to uphold the rule of law. Having served as a prosecutor for many years in Vermont, I know well the integral role prosecutors play in the administration of justice and keeping our communities safe. Federal prosecutors are a crucial component of our justice system, and this legislation recognizes the important contributions these men and women make in the enforcement of our Federal laws.

Probation officers, deputy marshals, corrections officers, and even corrections employees not serving in a law enforcement role receive benefits greater than those received by Assistant U.S. Attorneys. This is a disparity that should be remedied. By making the appropriate adjustments provided in this legislation, Congress would also help the Federal justice system retain experienced prosecutors. Of all the

prosecutors who leave the government for the private sector, 60 to 70 percent do so with experience of between 6 and 15 years. With the Department of Justice’s rapidly expanding role in combating terrorism, financial fraud, and other pressing national law enforcement challenges, we cannot afford to lose the experienced men and women who serve in this vital position. And by enhancing the retirement benefits for these prosecutors, we make service as an Assistant U.S. Attorney a more attractive path for talented young lawyers who are considering public service.

This legislation also makes substantial efforts to defray the cost to the Federal Government of providing enhanced retirement benefits to Assistant U.S. Attorneys and to make our justice system operate more efficiently. The bill includes important provisions that would assist the Department of Justice in recovering money owed to the Federal Government as a result of judgments and other fines. By bolstering the Department’s ability to collect the funds it is rightfully owed, resources would be made more available to provide the parity in retirement benefits sought by Assistant U.S. Attorneys. The result of this innovative effort to fund these benefits in an alternative manner is that the Department of Justice will, through its duties as the Nation’s law enforcement agency, be able to provide the benefits its employees deserve at little or no cost to the taxpayer.

With the introduction of this legislation, we signal that prosecutors in our society fulfill a critical and valuable role. By enacting it, Congress can send the message that the service of these prosecutors is an indispensable component of our Federal justice system. I hope all Senators will join us in supporting this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2786

*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 “Enhanced Restitution Enforcement and Equitable Retirement Treatment Act of 2009”.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

**TITLE I—ENHANCED FINANCIAL RECOVERY**

Sec. 101. Unpaid fines and restitution.

Sec. 102. Remission of criminal monetary penalties.

Sec. 103. Prioritization of restitution efforts.

Sec. 104. Imposition of civil late fee.

Sec. 105. Increase in the amount of special assessments.

Sec. 106. Enhanced financial recovery fund.

Sec. 107. Effective dates.

TITLE II—EQUITABLE RETIREMENT TREATMENT OF ASSISTANT UNITED STATES ATTORNEYS

Sec. 201. Retirement treatment of assistant United States attorneys.  
 Sec. 202. Provisions relating to incumbents.  
 Sec. 203. Agency share contributions.  
 Sec. 204. Effective date.

TITLE I—ENHANCED FINANCIAL RECOVERY

SEC. 101. UNPAID FINES AND RESTITUTION.

(a) IN GENERAL.—Section 3612 of title 18, United States Code, is amended—

(1) by striking subsections (d), (e), (g), (h), and (i); and

(2) by inserting after subsection (c) the following:

“(d) IMPOSITION OF LATE FEE.—

“(1) IN GENERAL.—A late fee shall be imposed upon a defendant if fines or restitution obligations of the defendant totaling not less than \$2,500 unpaid as of the date specified in subsection (f)(1). The late fee imposed under this paragraph shall be 5 percent of the unpaid principal balance for an individual and 10 percent for any other person.

“(2) ALLOCATION OF PAYMENTS.—

“(A) FINE.—Subject to subparagraph (C), if a late fee is imposed under paragraph (1) for a fine—

“(i) an amount equal to 95 percent of each payment made by a defendant shall be credited to the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) or as otherwise provided in that section; and

“(ii) an amount equal to 5 percent of each payment shall be credited to the Department of Justice Enhanced Financial Recovery Fund established under section 106 of the Enhanced Restitution Enforcement and Equitable Retirement Treatment Act of 2009.

“(B) RESTITUTION.—Subject to subparagraph (C), if a late fee is imposed under paragraph (1) for a restitution obligation—

“(i) an amount equal to 95 percent of each payment shall be paid to any victim identified by the court; and

“(ii) an amount equal to 5 percent of each payment shall be credited to the Department of Justice Enhanced Financial Recovery Fund established under section 106 of the Enhanced Restitution Enforcement and Equitable Retirement Treatment Act of 2009.

“(C) ORDER OF PAYMENTS.—Payments for fines or restitution shall be applied first to the principal and, if any, the late fee under paragraph (1). If the amount due on either the principal or the late fee has been paid in full and the other amount due remains unpaid, all payments for fines or restitution shall then be applied to the other unpaid obligation. If the principal and the late fee have been paid in full, all payments for fines or restitution shall then be applied to interest.

“(3) DEFINITIONS.—In this subsection—

“(A) the term ‘fines or restitution obligations’ does not include any amount that is imposed as interest, costs, or a late fee;

“(B) the term ‘principal’ does not include any amount that is imposed as interest, penalty, or a late fee; and

“(C) the term ‘restitution’ includes any unpaid balance due to a person identified in any judgment, or order of restitution, entered in any criminal case.

“(e) WAIVER OF INTEREST, PENALTY, OR LATE FEES.—

“(1) IN GENERAL.—The Attorney General may waive all or part of any interest or late fee under this section or any interest or penalty imposed under any other provision of law if the Attorney General determines that reasonable efforts to collect the interest, late fee, or penalty are not likely to be effective.

“(2) WAIVER BY COURT.—The court may waive the uncollected portion of a late fee, upon the motion of the defendant, and a showing, by a preponderance of the evidence, that—

“(A) the defendant has made a good faith effort to satisfy all unpaid fines or restitution obligations;

“(B) despite the good faith efforts of the defendant, the defendant is not likely to satisfy the obligations within the time provided for under section 3613 of this title; and

“(C) the continued collection of a late fee would constitute an undue burden upon the defendant.”.

(b) REPEAL OF DELINQUENCY AND DEFAULT PROVISIONS.—Section 3572 of title 18, United States Code, is amended by striking subsections (h) and (i).

SEC. 102. REMISSION OF CRIMINAL MONETARY PENALTIES.

Section 3573 of title 18, United States Code, is amended to read as follows:

“§ 3573. Petition of the Government for modification or remission

“(a) IN GENERAL.—Upon petition of the Government showing that reasonable efforts to collect a fine, restitution obligation, or special assessment are not likely to be effective, the court may, in the interest of justice, remit all or any part of the fine, restitution obligation, or special assessment, including interest, penalty, and late fees.

“(b) VICTIMS OTHER THAN THE UNITED STATES.—In the case of a restitution obligation owed to a victim other than the United States, the express and clearly voluntary consent of the victim is required before the court may grant such petition. No defendant shall initiate contact with a victim for the purpose of securing consent to a possible remission except through counsel, the United States attorney, or in such a manner as first approved by the court as safe and noncoercive.”.

SEC. 103. PRIORITIZATION OF RESTITUTION EFFORTS.

Section 3771 of title 18, United States Code, is amended by adding the following subsection:

“(g) GUIDELINES.—

“(1) IN GENERAL.—The Attorney General shall promulgate guidelines to ensure the effective and efficient enforcement of all criminal and civil obligations which are owed to the United States and enforced by the Department of Justice.

“(2) CONTENTS.—The guidelines promulgated under paragraph (1) shall require consideration, in making decisions relating to enforcement of criminal and civil obligations which are owed to the United States, of the amount due, the amount collectible, and whether the amount is due to individuals who are not likely to be able to enforce the obligation without assistance from the Department of Justice.”.

SEC. 104. IMPOSITION OF CIVIL LATE FEE.

(a) IN GENERAL.—Section 3011 of title 28, United States Code, is amended to read as follows:

“§ 3011. Imposition of late fee

“(a) IN GENERAL.—A late fee shall be imposed on a defendant if there is an unpaid balance due to the United States on any money judgment in a civil matter recovered in a district court as of—

“(1) the fifteenth day after the date of the judgment; or

“(2) if the day described in paragraph (1) is a Saturday, Sunday, or legal public holiday, the next day that is not a Saturday, Sunday, or legal holiday.

“(b) AMOUNT OF LATE FEE.—A late fee imposed under subsection (a) shall be 5 percent of the unpaid principal balance for an individual and 10 percent for any other person.

“(c) ALLOCATION OF PAYMENTS.—Subject to subsection (d), if a late fee is imposed under subsection (a)—

“(1) an amount equal to 95 percent of each principal payment made by a defendant shall be credited as otherwise provided by law; and

“(2) an amount equal to 5 percent of each principal payment shall be credited to the Department of Justice Enhanced Financial Recovery Fund established under section 106 of the Enhanced Financial Recovery and Equitable Retirement Treatment Act of 2007.

“(d) ORDER OF PAYMENTS.—Payments for a money judgment in a civil matter shall be applied first to the principal and, if any, the late fee under subsection (a). If the amount due on either the principal or the late fee has been paid in full and the other amount due remains unpaid, all payments for a money judgment in a civil matter shall be applied to the other unpaid obligation. If the principal and the late fee have been paid in full, all payments for a money judgment in a civil matter shall then be applied to interest.

“(e) DEFINITIONS.—In this section—

“(1) the term ‘principal’ does not include any amount that is imposed as interest, penalty, or a late fee; and

“(2) the term ‘unpaid balance due to the United States’—

“(A) includes any unpaid balance due to a person that was represented by the Department of Justice in the civil matter in which the money judgment was entered; and

“(B) does not include interest, costs, penalties, or late fees.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for subchapter A of chapter 176 of title 28, United States Code, is amended by striking the item relating to section 3011 and inserting the following:

“3011. Imposition of late fee.”.

SEC. 105. INCREASE IN THE AMOUNT OF SPECIAL ASSESSMENTS.

Section 3013 of title 18, United States Code, is amended by striking subsection (a) and inserting the following:

“(a) The court shall assess on any person convicted of an offense against the United States—

“(1) in the case of an infraction or a misdemeanor—

“(A) if the defendant is an individual—

“(i) the amount of \$10 in the case of an infraction or a class C misdemeanor;

“(ii) the amount of \$25 in the case of a class B misdemeanor; and

“(iii) the amount of \$100 in the case of a class A misdemeanor; and

“(B) if the defendant is a person other than an individual—

“(i) the amount of \$100 in the case of an infraction or a class C misdemeanor;

“(ii) the amount of \$200 in the case of a class B misdemeanor; and

“(iii) the amount of \$500 in the case of a class A misdemeanor; and

“(2) in the case of a felony—

“(A) the amount of \$100 if the defendant is an individual; and

“(B) the amount of \$1,000 if the defendant is not an individual.”.

SEC. 106. ENHANCED FINANCIAL RECOVERY FUND.

(a) ESTABLISHMENT.—There is established in the Treasury a separate account known as the Department of Justice Enhanced Financial Recovery Fund (in this section referred to as the “Fund”).

(b) DEPOSITS.—Notwithstanding section 3302 of title 31, United States Code, or any other law regarding the crediting of collections, there shall be credited as an offsetting collection to the Fund an amount equal to—

(1) 2 percent of any amount collected pursuant to civil debt collection litigation activities of the Department of Justice (in addition to any amount credited under section

11013 of the 21st Century Department of Justice Appropriations Authorization Act (28 U.S.C. 527 note);

(2) 5 percent of all amounts collected as restitution due to the United States pursuant to the criminal debt collection litigation activities of the Department of Justice; and

(3) any late fee collected under section 3612 of title 18, United States Code, as amended by this Act, or section 3011 of title 28, United States Code, as amended by this Act.

(c) AVAILABILITY.—The amounts credited to the Fund shall remain available until expended.

(d) PAYMENTS FROM THE FUND TO SUPPORT ENHANCED ENFORCEMENT OF JUDGMENTS.—

(1) USE FOR COLLECTION.—

(A) IN GENERAL.—Except as provided in paragraph (2), the Attorney General shall use not less than \$20,000,000 of the Fund in each fiscal year, to the extent that funds are available, for the collection of civil and criminal judgments by the Department of Justice, including restitution judgments where the beneficiaries are the victims of crime.

(B) ALLOCATION.—The funds described in subparagraph (A) shall be used to enhance, supplement, and improve the civil and criminal judgment enforcement efforts of the Department of Justice first, and primarily for such activities by United States attorneys' offices. A portion of the funds described in subparagraph (A) may be used by the Attorney General to provide legal, investigative, accounting, and training support to the United States attorneys' offices in carrying out civil and criminal debt collection activities.

(C) LIMITATION.—The funds described in subparagraph (A) may not be used to determine whether a defendant is guilty of an offense or liable to the United States, except incidentally for the provision of assistance necessary or desirable in a case to ensure the preservation of assets or the imposition of a judgment, which assists in the enforcement of a judgment, or in a proceeding directly related to the failure of a defendant to satisfy the monetary portion of a judgment.

(2) ADJUSTMENT OF AMOUNT.—In each fiscal year following the first fiscal year in which deposits into the Fund are greater than \$20,000,000, the amount to be used under paragraph (1)(A) shall be increased by a percentage equal to the change in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor for the calendar year preceding that fiscal year.

(3) LIMITATION.—In any fiscal year, amounts in the Fund shall be available to the extent that the amount appropriated in that fiscal year for the purposes described in paragraph (1) is not less than an amount equal to the amount appropriated for such activities in fiscal year 2006, adjusted annually in the same proportion as increases reflected in the amount of aggregate level of appropriations for the Executive Office of United States Attorneys and United States Attorneys.

(e) CURRENT AGENCY SHARE CONTRIBUTIONS.—After expending amounts in the Fund as provided under subsection (d), the Attorney General may use amounts remaining in the Fund to offset additional agency share contributions made by the Department of Justice for personnel benefit expenses incurred as a result of this Act or the amendments made by this Act relating to service as an assistant United States attorney on or after the date of enactment of this Act. The availability of amounts from the Fund shall have no effect on the implementation of title II or the amendments made by title II.

(f) RETROACTIVE AGENCY SHARE CONTRIBUTIONS.—After expending amounts in the Fund as provided under subsection (e), the

Attorney General may use amounts remaining in the Fund to offset agency share contributions made by the Department of Justice for personnel benefit expenses incurred as a result of this Act or the amendments made by this Act relating to service as an assistant United States attorney before the date of enactment of this Act.

(g) REBATE OF AGENCY OFFSETS.—After expending amounts in the Fund as provided under subsection (f), all amounts remaining in the Fund shall be credited, proportionally, to the Federal agencies on behalf of which debt collection litigation activities were conducted that resulted in deposits under paragraph (1) or (2) of subsection (b) during that fiscal year.

(h) PAYMENTS TO THE GENERAL FUND.—After expending amounts in the Fund as provided under subsection (g), all amounts remaining in the Fund shall be deposited with the General Fund of the United States Treasury.

(i) DEFINITION.—In this section, the term "United States"—

(1) includes—

(A) the executive departments, the judicial and legislative branches, the military departments, and independent establishments of the United States; and

(B) corporations primarily acting as instrumentalities or agencies of the United States; and

(2) except as provided in paragraph (1), does not include any contractor of the United States.

#### SEC. 107. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in this section, this title and the amendments made by this title shall take effect 30 days after the date of enactment of this Act.

(b) CRIMINAL CASES.—The amendments made by section 105 and subsection (d) of section 3612 of title 18, United States Code, as added by section 101 of this Act, shall apply to any offense committed on or after the date of enactment of this Act, including any offense which includes conduct that continued on or after the date of enactment of this Act.

(c) CIVIL CASES.—The amendments made by section 104 shall apply to any case pending on or after the date of enactment of this Act.

### TITLE II—EQUITABLE RETIREMENT TREATMENT OF ASSISTANT UNITED STATES ATTORNEYS

#### SEC. 201. RETIREMENT TREATMENT OF ASSISTANT UNITED STATES ATTORNEYS.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) ASSISTANT UNITED STATES ATTORNEY DEFINED.—Section 8331 of title 5, United States Code, is amended—

(A) in paragraph (30), by striking "and" at the end;

(B) in paragraph (31), by striking the period and inserting "and"; and

(C) by adding at the end the following:

"(32) 'assistant United States attorney'—

"(A) means an assistant United States attorney appointed under section 542 of title 28; and

"(B) includes an individual—

"(i) appointed United States attorney under section 541 or 546 of title 28;

"(ii) who has previously served as an assistant United States attorney; and

"(iii) who elects under section 202 of the Enhanced Restitution Enforcement and Equitable Retirement Treatment Act of 2009 to be treated as an assistant United States attorney and solely for the purposes of this title."

(2) RETIREMENT TREATMENT.—Chapter 83 of title 5, United States Code, is amended by adding after section 8351 the following:

#### "§ 8352. Assistant United States attorneys

"An assistant United States attorney shall be treated in the same manner and to the same extent as a law enforcement officer for purposes of this chapter, except as follows:

"(1) Section 8335(b)(1) of this title (relating to mandatory separation) shall not apply.

"(2) Section 8336(c)(1) of this title (relating to immediate retirement at age 50 with 20 years of service as a law enforcement officer) shall apply to assistant United States attorneys except the age for immediate retirement eligibility shall be 57 instead of 50."

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) TABLE OF SECTIONS.—The table of sections for chapter 83 of title 5, United States Code, is amended by inserting after the item relating to section 8351 the following:

"Sec. 8352. Assistant United States attorneys."

(B) MANDATORY SEPARATION.—Section 8335(a) of title 5, United States Code, is amended by striking "8331(29)(A)" and inserting "8331(30)(A)".

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—

(1) ASSISTANT UNITED STATES ATTORNEY DEFINED.—Section 8401 of title 5, United States Code, is amended—

(A) in paragraph (35), by striking "and" at the end;

(B) in paragraph (36), by striking the period and inserting "and"; and

(C) by adding at the end the following:

"(37) 'assistant United States attorney'—

"(A) means an assistant United States attorney appointed under section 542 of title 28; and

"(B) includes an individual—

"(i) appointed United States attorney under section 541 or 546 of title 28;

"(ii) who has previously served as an assistant United States attorney; and

"(iii) who elects under section 202 of the Enhanced Restitution Enforcement and Equitable Retirement Treatment Act of 2009 to be treated as an assistant United States attorney and solely for the purposes of this title."

(2) RETIREMENT TREATMENT.—Section 8402 of title 5, United States Code, is amended by adding at the end the following:

"(h) An assistant United States attorney shall be treated in the same manner and to the same extent as a law enforcement officer for purposes of this chapter, except as follows:

"(1) Section 8425(b)(1) of this title (relating to mandatory separation) shall not apply.

"(2) Section 8412(d) of this title (relating to immediate retirement at age 50 with 20 years of service as a law enforcement officer) shall apply to assistant United States attorneys except the age for immediate retirement eligibility shall be 57 instead of 50."

(c) MANDATORY SEPARATION.—Sections 8335(b)(1) and 8425(b)(1) of title 5, United States Code, are each amended by adding at the end the following: "This subsection shall not apply in the case of an assistant United States attorney."

#### SEC. 202. PROVISIONS RELATING TO INCUMBENTS.

(a) DEFINITIONS.—In this section—

(1) the term "assistant United States attorney" means an assistant United States attorney appointed under section 542 of title 28, United States Code; and

(2) the term "incumbent" means an individual who, on the date of enactment of this Act—

(A) is serving as an assistant United States attorney;

(B) is serving as a United States Attorney appointed under section 541 or 546 of title 28, United States Code; or

(C) is employed by the Department of Justice and has served at least 10 years as an assistant United States attorney.

(b) NOTICE REQUIREMENT.—Not later than 180 days after the date of enactment of this Act, the Department of Justice shall take measures reasonably designed to provide notice to incumbents on—

(1) their election rights under this title; and

(2) the effects of making or not making a timely election under this title.

(c) ELECTION AVAILABLE TO INCUMBENTS.—

(1) IN GENERAL.—An incumbent may elect, for all purposes, to be treated—

(A) in accordance with the amendments made by this title; or

(B) as if this title had never been enacted.

(2) TIME LIMITATION.—An election under this subsection shall not be effective unless the election is made not later than the earlier of—

(A) 180 days after the date on which the notice under subsection (b) is provided; or

(B) the date on which the incumbent involved separates from service.

(3) FAILURE TO ELECT.—Failure to make a timely election under this subsection shall be deemed—

(A) for an assistant United States attorney, as an election under paragraph (1)(A); and

(B) for any other incumbent, as an election under paragraph (1)(B).

(d) LIMITED RETROACTIVE EFFECT.—

(1) EFFECT ON RETIREMENT.—In the case of an incumbent who elects (or is deemed to have elected) the option under subsection (c)(1)(A), all service performed by that individual as an assistant United States attorney shall—

(A) to the extent performed on or after the effective date of that election, be treated in accordance with applicable provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, as amended by this title; and

(B) to the extent performed before the effective date of that election, be treated in accordance with applicable provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, as if the amendments made by this title had then been in effect.

(2) CREDITABLE SERVICE.—All service performed by an incumbent under an appointment under section 515, 541, 543, or 546 of title 28, United States Code and while concurrently employed by the Department of Justice shall be credited in the same manner as if performed as an assistant United States attorney.

(3) NO OTHER RETROACTIVE EFFECT.—Nothing in this title (including the amendments made by this title) shall affect any of the terms or conditions of an individual's employment (apart from those governed by subchapter III of chapter 83 or chapter 84 of title 5, United States Code) with respect to any period of service preceding the date on which such individual's election under subsection (c) is made (or is deemed to have been made).

(e) INDIVIDUAL CONTRIBUTIONS FOR PRIOR SERVICE.—

(1) IN GENERAL.—An individual who makes an election under subsection (c)(1)(A) shall, with respect to prior service performed by such individual, deposit, with interest, to the Civil Service Retirement and Disability Fund the difference between the individual contributions that were actually made for such service and the individual contributions that would have been made for such service if the amendments made by this title had then been in effect.

(2) EFFECT OF NOT CONTRIBUTING.—If the deposit required under paragraph (1) is not paid, all prior service of the incumbent shall remain fully creditable as law enforcement

officer service, but the resulting annuity shall be reduced in a manner similar to that described in section 8334(d)(2)(B) of title 5, United States Code.

(3) PRIOR SERVICE DEFINED.—In this subsection, the term "prior service" means, with respect to any individual who makes an election (or is deemed to have made an election) under subsection (c)(1)(A), all service credited as an assistant United States attorney, but not exceeding 20 years, performed by such individual before the date as of which applicable retirement deductions begin to be made in accordance with such election.

(f) REGULATIONS.—The Office of Personnel Management shall prescribe regulations necessary to carry out this title, including provisions under which any interest due on the amount described under subsection (e) shall be determined.

#### SEC. 203. AGENCY SHARE CONTRIBUTIONS.

(a) IN GENERAL.—The cost for current agency share contributions for personnel benefits incurred as a result of this Act or the amendments made by this Act may be paid from the Enhanced Financial Recovery Fund. If in any fiscal year the Fund does not have a sufficient amount on deposit to satisfy the cost for current agency share contributions for personnel benefits incurred as a result of this Act or the amendments made by this Act, the amount of the insufficiency shall be due the next fiscal year.

(b) RETROACTIVE AGENCY SHARE.—The cost for retroactive agency share contributions for personnel benefits incurred as a result of this Act or the amendments made by this Act may be paid from the Enhanced Financial Recovery Fund. Notwithstanding section 8348(f) or section 8423(b) of title 5, United States Code, an amount equal to the amount remaining in the Enhanced Financial Recovery Fund in any fiscal year, after the amounts credited to the Fund have been expended to satisfy the requirements of subsections (d) and (e) of section 106 of this Act, shall be credited toward the cost for retroactive agency share contributions for personnel benefits incurred as a result of this Act or the amendments made by this Act until such cost, along with accumulated interest, has been satisfied in full.

(c) USE OF FUNDS.—Funds appropriated for the Department of Justice shall not be used to pay for the additional cost for current or retroactive agency share contributions for personnel benefits incurred as a result of this Act or the amendments made by this Act except as directed by the Attorney General.

#### SEC. 204. EFFECTIVE DATE.

(a) IN GENERAL.—This title shall take effect on the date of enactment of this Act.

(b) INCUMBENTS.—In the case of an incumbent who elects (or is deemed to have elected) the option under section 202(c)(1)(A) of this title, the election shall not take effect until 24 months after the date of enactment of this Act, except as follows:

(1) An incumbent with at least 30 years of service as an assistant United States attorney may choose to have the election take effect at any time between 6 and 24 months after the date of enactment of this Act.

(2) An incumbent with at least 25 years of service credited as an assistant United States attorney may choose to have the election take effect at any time between 12 and 24 months after the enactment of this Act;

(3) An incumbent with at least 20 years of service credited as an assistant United States attorney may, with the approval of the Attorney General, choose to have the election take effect at any time between 6 and 24 months after the date of enactment of this Act; and

(4) An incumbent with at least 20 years service credited as an assistant United

States attorney and who is currently serving under an appointment under section 541 or 546 of title 28, United States Code, may choose to have the election take effect at any time between the enactment of this Act and 24 months after the date of enactment of this Act.

By Mr. VOINOVICH (for himself,  
Mrs. GILLIBRAND, and Mr.  
KAUFMAN):

S. 2789. A bill to establish a scholarship program to encourage outstanding undergraduate and graduate students in mission-critical fields to pursue a career in the Federal Government; to the Committee on Finance.

Mr. VOINOVICH. Mr. President, since arriving in the Senate in 1999, I have made improving the Federal workforce a priority. In that time, I have served as both chairman and ranking member of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, and have participated in many hearings to examine the personnel needs of the Federal Government. In fact, I recently attended my 52nd hearing examining Federal human capital issues.

As my colleagues surely know, over the next several years the Federal workforce will experience an unprecedented demographic transition. By December 2012, 250,000 Federal employees are expected to retire. To maintain current staff levels amidst the impending wave of Baby Boomer retirements, and to cope with the increasing workload being placed on civil servants by Congress and the administration, more than 600,000 positions will need to be filled over this time period.

This hiring challenge will be particularly significant for those positions designated by Federal agencies as "mission-critical," or necessary for carrying out basic agency responsibilities. In its recently released survey of the coming hiring challenge, Where the Jobs Are, the Partnership for Public Service estimates that 273,000 new public servants—from doctors to intelligence analysts, program managers to police officers—will need to be brought on board to maintain current staffing levels, a 40 percent increase from the previous 3-year period.

Successfully meeting this human capital challenge will require a sustained, multi-pronged effort addressing a host of issues. The Federal hiring process needs streamlining, improvements must continue in the processing of security clearances, and agencies will need to approach future hiring decisions in a strategic fashion rather than a tactical, reactive one.

No matter how effectively the Federal hiring process is planned for and managed, however, an effective workforce cannot be built in the absence of talented individuals willing to pursue careers in public service. The need for well-qualified young people with aspirations to careers in public service is particularly important for mission-

critical occupations, which tend to require highly specialized skill sets that too often are in short supply.

At the same time, the average debt load undergraduate and graduate students must bear to finance their education continues to increase. As a result, many young Americans who would otherwise be eager to join the civil service are prevented from doing so.

In an effort to help established a talent pipeline for such mission-critical positions, today I join with the distinguished Senator from New York, Senator GILLIBRAND, and the distinguished Senator from Delaware, Senator KAUFMAN, to introduce legislation aimed at encouraging and enabling young people with valuable, mission-critical skills to pursue careers in public service.

The Roosevelt Scholars Act of 2009 would establish a foundation named in honor of our 26th President and a principal architect of the modern civil service, Theodore Roosevelt. The Theodore Roosevelt Scholarship Foundation would be charged with awarding scholarships to outstanding undergraduate and graduate students pursuing fields of study identified by Federal agencies as mission-critical. In return for tuition support and a small stipend, selected students—dubbed Roosevelt Scholars—would be required to engage in 3 to 5 years of service with a Federal agency in need of an individual with a Roosevelt Scholar's unique skill set. Scholarships would be provided through the Theodore Roosevelt Memorial Scholarship Trust Fund, whose endowment would eventually provide a self-sustaining funding mechanism for Roosevelt Scholarships.

I am pleased to be joined in offering this legislation by enthusiastic partners. Senator GILLIBRAND is a strong supporter of encouraging Americans to pursue careers in public service, and I am thankful for her diligent work in advancing this legislation. Likewise, Senator KAUFMAN has demonstrated his strong support of our Nation's civil servants by his frequent appearances on the floor of this chamber to recognize the accomplishments of outstanding Federal employees. And on the other side of the Capitol Rotunda, Representatives DAVID PRICE and MICHAEL CASTLE are already hard at work promoting this important legislation.

The higher education community has been quick to see the promise offered by the Roosevelt Scholars Act. More than 100 public and private universities have endorsed this legislation, and the list continues to grow.

I will be the first to tell my colleagues that problems as daunting as those facing the Federal workforce are not solved overnight. I have learned from 18 years as a public executive—first as mayor of Cleveland, then as Governor of Ohio—that progress on such challenges is made incrementally. Opportunities offered by legislation like the Roosevelt Scholars Act are important components in a larger strategy.

I urge my colleagues to join in co-sponsoring the Roosevelt Scholars Act, and look forward to working with my colleagues in the House and Senate to provide young people the opportunity to pursue a career in public service as Roosevelt Scholars.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 2784. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2785. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 1963, to amend title 38, United States Code, to provide assistance to caregivers of veterans, to improve the provision of health care to veterans, and for other purposes; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

**SA 2784.** Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. \_\_\_\_\_. At the discretion of the Attorney General, funds appropriated under the heading "Byrne Discretionary grants" under funding for the Department of Justice in the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2009 (Public Law 111-8) to the Louisiana District Attorney's Association for the purpose to support an early intervention program for at-risk elementary students may be available to the University of Louisiana-Lafayette for the same purpose.

**SA 2785.** Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 1963, to amend title 38, United States Code, to provide assistance to caregivers of veterans, to improve the provision of health care to veterans, and for other purposes; which was ordered to lie on the table; as follows:

On page 177, after line 10, add the following:

**SEC. 1003. REQUIREMENT TO TRANSFER FUNDING FOR UNITED NATIONS CONTRIBUTIONS TO OFFSET COSTS OF PROVIDING ASSISTANCE TO FAMILY CAREGIVERS OF DISABLED VETERANS.**

The Secretary of State shall transfer to the Secretary of Veterans Affairs, out of amounts appropriated or otherwise made available in a fiscal year for "Contributions to International Organizations" and "Contributions for International Peacekeeping Activities", such sums as the Secretaries jointly determine are necessary to carry out the provisions of this Act and the amendments made by this Act.

**SEC. 1004. MODIFICATION OF ELIGIBILITY FOR FAMILY CAREGIVER ASSISTANCE.**

(a) LIMITATION.—Section 1717A(b), as added by section 102 of this Act, is amended—

(1) in paragraph (1), by striking "and" at the end;

(2) in paragraph (2)(C), by striking the period at the end and inserting "and"; and

(3) by adding at the end the following new paragraph:

"(3) who, in the absence of personal care services, would require hospitalization, nursing home care, or other residential care."

(b) EXPANSION.—Such section 1717A(b) is further amended, in paragraph (1), by striking "on or after September 11, 2001".

#### NOTICE OF HEARING

##### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Wednesday, December 2, 2009, at 10 a.m., in room SD-366 of the Dirksen Senate Office Building.

The purpose of this hearing is to receive testimony on policy options for reducing greenhouse gas emissions.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510-6150, or by e-mail to Gina\_Weinstock@energy.senate.gov

For further information, please contact Jonathan Black at (202) 224-6722 or Gina Weinstock at (202) 224-5684.

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on November 17, 2009, at 10:30 a.m., in room 562 of the Russell Senate Office Building.

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

##### COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Ms. MIKULSKI. 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 November 17, 2009, at 3 p.m., to conduct a hearing entitled "Protecting Consumers From Abusive Overdraft Fees: The Fairness and Accountability in Receiving Overdraft Coverage Act."

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

##### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on November 17, 2009, at 2:30 p.m., in room

253 of the Russell Senate Office Building.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on November 17, 2009, at 10 a.m., in room SD-366 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on November 17, 2009, at 2:15 p.m.

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

COMMITTEE ON FOREIGN RELATIONS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on November 17, 2009, at 3 p.m., to hold a hearing entitled "The U.S. and the G-20: Remaking the International Economic Architecture."

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Ms. MIKULSKI. 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 November 17, 2009, at 2:30 p.m., to conduct a hearing entitled "H1N1 Flu: Getting the Vaccine to Where It Is Most Needed."

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

SELECT COMMITTEE ON INTELLIGENCE

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on November 17, 2009, at 2:30 p.m.

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

SUBCOMMITTEE ON AFRICAN AFFAIRS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on November 17, 2009, at 10:30 a.m., to hold a Subcommittee on African Affairs hearing entitled "Counterterrorism in the Trans-Sahel: Examining U.S. Strategy."

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

SUBCOMMITTEE ON TERRORISM AND HOMELAND SECURITY

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Terrorism and Homeland Security, be authorized to meet during the session of the Senate, on November

17, 2009, at 10 a.m. in room SD-226 of the Dirksen Senate Office Building, to conduct a hearing entitled "Cybersecurity: Preventing Terrorist Attacks and Protecting Privacy in Cyberspace."

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

PRIVILEGES OF THE FLOOR

Mr. MERKLEY. Mr. President, I ask unanimous consent that a member of my team, Jeanne Atkins, be granted the privileges of the floor for the duration of the day.

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

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the majority leader, in consultation with the Republican leader, pursuant to Public Law 95-277, as amended by Public Law 102-246, appoints the following individuals as members of the Library of Congress Trust Fund Board for 5-year terms: Elaine Wynn of Nevada, vice Bernard Rapoport, and Tom Girardi of California, vice Leo Hindery.

ORDERS FOR WEDNESDAY,  
NOVEMBER 18, 2009

Mrs. MURRAY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Wednesday, November 18; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each, and that Senator ROCKEFELLER be recognized to speak; that following his remarks, there be a period of morning business for 2 hours, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first hour and the Republicans controlling the next hour; that following morning business, the Senate proceed to executive session and resume consideration of the nomination of David Hamilton to be U.S. circuit judge for the Seventh Circuit. Finally, I ask that the postcloture time count during any adjournment, recess, or period of morning business.

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

PROGRAM

Mrs. MURRAY. Mr. President, tomorrow the Senate will resume the postcloture debate time on the Hamilton nomination. If all time is used, the Senate would vote on confirmation of the nomination around 11 p.m. tomorrow.

ADJOURNMENT UNTIL 9:30 A.M.  
TOMORROW

Mrs. MURRAY. 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 6:24 p.m., adjourned until Wednesday, November 18, 2009, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

FEDERAL TRADE COMMISSION

JULIE SIMONE BRILL, OF VERMONT, TO BE A FEDERAL TRADE COMMISSIONER FOR THE TERM OF SEVEN YEARS FROM SEPTEMBER 26, 2009, VICE PAMELA HARBOUR, TERM EXPIRED.

EDITH RAMIREZ, OF CALIFORNIA, TO BE A FEDERAL TRADE COMMISSIONER FOR THE TERM OF SEVEN YEARS FROM SEPTEMBER 26, 2008, VICE DEBORAH P. MAJORAS, TERM EXPIRED.

APPALACHIAN REGIONAL COMMISSION

EARL F. GOHL, JR., OF THE DISTRICT OF COLUMBIA, TO BE FEDERAL COCHAIRMAN OF THE APPALACHIAN REGIONAL COMMISSION, VICE ANNE B. POPE, RESIGNED.

DEPARTMENT OF STATE

SCOTT H. DELISI, OF MINNESOTA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERAL DEMOCRATIC REPUBLIC OF NEPAL.

BEATRICE WILKINSON WELTERS, OF VIRGINIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TRINIDAD AND TOBAGO.

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE DEPARTMENT OF AGRICULTURE FOR PROMOTION WITHIN AND INTO THE SENIOR FOREIGN SERVICE TO THE CLASSES INDICATED: CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER:

SUZANNE E. HEINEN, OF MICHIGAN

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR:

HOLLY S. HIGGINS, OF IOWA

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR:

BERNADETTE BORRIS, OF NEW JERSEY

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES COAST GUARD RESERVE UNDER TITLE 10, U.S.C., SECTION 12203(A)

*To be captain*

ANDREW G. LISKE

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. JANET C. WOLFENBARGER

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

*To be brigadier general*

COL. FRANK J. SULLIVAN

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. WILLIAM R. BURKE

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203(A):

*To be colonel*

ELISHA T. POWELL IV

IN THE ARMY

THE FOLLOWING NAMED INDIVIDUAL TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

SCOTT E. MCNEIL

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

SCOTT E. ZIPPRICH

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

MARY B. MCQUARY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO

THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

*To be colonel*

MARVIN R. MANIBUSAN  
BRENDA F. MASON  
FRANCISCO J. NEUMAN

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

*To be colonel*

PATRICK S. CALLENDER  
JEFFREY A. MORTON  
JOEL M. PULL  
STEVEN L. SHUGART

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

MICHAEL A. BENNETT  
BERNARD J. BERCIK  
JOSEPH N. CROSSWHITE  
ROBERTO D. DIBELLA  
GREGORY C. FEWER  
THOMAS A. GAUZA  
STEVEN P. HESTER  
WILLIAM R. HINTZE  
PATRICK A. KEEN  
JEFFREY D. RAEBER  
RONALD D. RALLIS  
PETER B. RIES  
GARY M. SALADINO  
KEVIN M. WALKER