the vast majority of Americans believe the richest of the rich should contribute a little bit to bringing this country out of the economic problems we have.

So I would hope we can move forward. We are going to have a cloture vote on this matter soon. We have to get through this very important Defense bill, which is to take care of our troops. One of the managers of that, of course, is someone we look to for guidance with military matters. That is JOHN MCCAIN, who, as we know, is a certified war hero. When that is finished, we will work this out on the payroll tax.

I hope that prior to the cloture vote having taken place and being necessary, we will have some agreement on how to move forward because there are a lot of other things to do before the end of this year. There are other tax issues that are extremely important that traditionally have been completed before the end of a year such as we are in right now.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. The last time my good friend the majority leader and I had a discussion on the floor, he reminded everyone he would get the last word. Of course, since he has prior recognition to me, he can get the last word if he chooses. So I will just remind him of that at the outset. He will get the last word if he chooses to. I will not fight for the last word, but I will make this point with regard to the observation from my good friend.

We have just heard essentially the argument going into next year's election. Argument No. 1 is it could have been worse. That is an inspiring message to take to the American people. It could have been worse.

We also heard argument No. 2. The second argument goes essentially like this: After being in the administration in power for 3 years, No. 1, it is George Bush's fault. Among other causes of our current dilemma that have been cited by the President and others, in addition to the previous administration, it was a tsunami in Japan, it is the European debt crisis, of course it is the Republicans in Congress, it is those millionaires, it is those people in Wall Street. In short, it is everybody's fault but ours. That is the argument they are left with when they are going into an election year facing the American people and they have nothing else to say.

People don't think the stimulus worked. People don't like ObamaCare. They don't like Dodd-Frank. There is absolutely nothing, in terms of positive accomplishment, our good friends can cite; thus the argument: It is anybody's fault but mine.

It will be an interesting discussion going into next year, but it strikes me that our job in the Senate is not to frame campaign arguments on a weekly basis but actually try to get something done. As my friend indicated, there are things that need to be done before the end of this year: The Defense authorization bill that we will finish this week, the appropriations bills in one way or another—either a combination of them or a continuing resolution, each of them, through the end of the next fiscal year.

We have tax extenders. We have the doc fix. We have the completion, in spite of the exercise we will engage in tomorrow, with two approaches to continuing the payroll tax extension. I have already indicated the overwhelming majority of Republicans think it should be extended, and so we will have to figure out how to package that and actually accomplish something, not just come out on the floor and score political points but actually accomplish something for the American people on things such as unemployment insurance, extension of the payroll tax reduction enacted a year ago, and the doc fix. These are the kinds of things that actually have to be done. The more time we spend on the floor with these political messaging votes, the less time we actually have to do what the American people sent us to do.

So I will be working with my friend, the majority leader. I mean, we work together every day. When we get past the political speeches and the show votes, there are things that need to be done, and we will be working together to get those things accomplished before Christmas.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. I agree with virtually everything the Republican leader said. I do think the Presidential election will be based on what took place in the Bush administration and how we have tried to recover from that, and how things have been exacerbated because of the tsunami and because of the European debt crisis.

I also agree wholeheartedly with my friend that we need to work together the rest of this Congress. It is difficult to do, but we need to set aside Presidential politics and work in our sphere as legislative leaders to try to move this country along. So I look forward to that, and I appreciate the constructive remarks of my friend.

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

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

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1867, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1867) to authorize appropriations for fiscal year 2012 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Merkley amendment No. 1174, to express the sense of Congress regarding the expedited transition of responsibility for military and security operations in Afghanistan to the Government of Afghanistan.

Feinstein amendment No. 1125, to clarify the applicability of requirements for military custody with respect to detainees.

Feinstein amendment No. 1126, to limit the authority of Armed Forces to detain citizens of the United States under section 1031.

Franken amendment No. 1197, to require contractors to make timely payments to subcontractors that are small business concerns.

Cardin/Mikulski amendment No. 1073, to prohibit expansion or operation of the District of Columbia National Guard Youth Challenge Program in Anne Arundel County, MD.

Begich amendment No. 1114, to amend title 10, United States Code, to authorize space-available travel on military aircraft for members of the reserve components, a member or former member of a reserve component who is eligible for retired pay but for age, widows and widowers of retired members, and dependents.

Begich amendment No. 1149, to authorize a land conveyance and exchange at Joint Base Elmendorf Richardson, Alaska.

Shaheen amendment No. 1120, to exclude cases in which pregnancy is the result of an act of rape or incest from the prohibition on funding of abortions by the Department of Defense.

Collins amendment No. 1105, to make permanent the requirement for certifications relating to the transfer of detainees at United States Naval Station, Guantanamo Bay, Cuba, to foreign countries and other foreign entities.

Collins amendment No. 1155, to authorize educational assistance under the Armed Forces Health Professions Scholarship Program for pursuit of advanced degrees in physical therapy and occupational therapy.

Collins amendment No. 1158, to clarify the permanence of the prohibition on transfers of recidivist detainees at United States Naval Station, Guantanamo Bay, Cuba, to foreign countries and entities.

Collins/Shaheen amendment No. 1180, relating to man-portable air-defense systems originating from Libya.

Inhofe amendment No. 1094, to include the Department of Commerce in contract authority using competitive procedures but excluding particular sources for establishing certain research and development capabilities.

Inhofe amendment No. 1095, to express the sense of the Senate on the importance of addressing deficiencies in mental health counseling.

Inhofe amendment No. 1096, to express the sense of the Senate on treatment options for members of the Armed Forces and veterans for traumatic brain injury and posttraumatic stress disorder.

Inhofe amendment No. 1097, to eliminate gaps and redundancies between the over 200

programs within the Department of Defense that address psychological health and traumatic brain injury.

Inhofe amendment No. 1098, to require a report on the impact of foreign boycotts on the defense industrial base.

Inhofe amendment No. 1099, to express the sense of Congress that the Secretary of Defense should implement the recommendations of the Comptroller General of the United States regarding prevention, abatement, and data collection to address hearing injuries and hearing loss among members of the Armed Forces.

Inhofe amendment No. 1100, to extend to products and services from Latvia existing temporary authority to procure certain products and services from countries along a major route of supply to Afghanistan.

Inhofe amendment No. 1101, to strike section 156, relating to a transfer of Air Force C–12 aircraft to the Army.

Inhofe amendment No. 1102, to require a report on the feasibility of using unmanned aerial systems to perform airborne inspection of navigational aids in foreign airspace.

Inhofe amendment No. 1093, to require the detention at United States Naval Station, Guantanamo Bay, Cuba, of high-value enemy combatants who will be detained long term.

Casey amendment No. 1215, to require a certification on efforts by the Government of Pakistan to implement a strategy to counter improvised explosive devices.

Casey amendment No. 1139, to require contractors to notify small business concerns that have been included in offers relating to contracts let by Federal agencies.

McCain (for Cornyn) amendment No. 1200, to provide Taiwan with critically needed United States-built multirole fighter aircraft to strengthen its self-defense capability against the increasing military threat from China.

McCain (for Ayotte) amendment No. 1066, to modify the Financial Improvement and Audit Readiness Plan to provide that a complete and validated full statement of budget resources is ready by not later than September 30, 2014.

McCain (for Ayotte) modified amendment No. 1067, to require notification of Congress with respect to the initial custody and further disposition of members of al-Qaida and affiliated entities.

McCain (for Ayotte) amendment No. 1068, to authorize lawful interrogation methods in addition to those authorized by the Army Field Manual for the collection of foreign intelligence information through interrogations.

McCain (for Brown (MA)/Boozman) amendment No. 1119, to protect the child custody rights of members of the Armed Forces deployed in support of a contingency operation.

McCain (for Brown (MA)) amendment No. 1090, to provide that the basic allowance for housing in effect for a member of the National Guard is not reduced when the member transitions between active-duty and full-time National Guard duty without a break in active service.

McCain (for Brown (MA)) amendment No. 1089, to require certain disclosures from post-secondary institutions that participate in tuition assistance programs of the Department of Defense.

McCain (for Wicker) amendment No. 1056, to provide for the freedom of conscience of military chaplains with respect to the performance of marriages.

McCain (for Wicker) amendment No. 1116, to improve the transition of members of the Armed Forces with experience in the operation of certain motor vehicles into careers operating commercial motor vehicles in the private sector.

Udall (NM) amendment No. 1153, to include ultralight vehicles in the definition of aircraft for purposes of the aviation smuggling provisions of the Tariff Act of 1930.

Udall (NM) amendment No. 1154, to direct the Secretary of Veterans Affairs to establish an open burn pit registry to ensure that members of the Armed Forces who may have been exposed to toxic chemicals and fumes caused by open burn pits while deployed to Afghanistan or Iraq receive information regarding such exposure.

Udall (NM)/Schumer amendment No. 1202, to clarify the application of the provisions of the Buy American Act to the procurement of photovoltaic devices by the Department of Defense.

McCain (for Corker) amendment No. 1171, to prohibit funding for any unit of a security force of Pakistan if there is credible evidence that the unit maintains connections with an organization known to conduct terrorist activities against the United States or United States allies.

McCain (for Corker) amendment No. 1172, to require a report outlining a plan to end reimbursements from the Coalition Support Fund to the Government of Pakistan for operations conducted in support of Operation Enduring Freedom.

McCain (for Corker) amendment No. 1173, to express the sense of the Senate on the North Atlantic Treaty Organization.

Levin (for Bingaman) amendment No. 1117, to provide for national security benefits for White Sands Missile Range and Fort Bliss.

Levin (for Gillibrand/Portman) amendment No. 1187, to expedite the hiring authority for the defense information technology/cyber workforce.

Levin (for Gillibrand/Blunt) amendment No. 1211, to authorize the Secretary of Defense to provide assistance to State National Guards to provide counseling and reintegration services for members of reserve components of the Armed Forces ordered to active duty in support of a contingency operation, members returning from such active duty, veterans of the Armed Forces, and their families.

Merkley amendment No. 1239, to expand the Marine Gunnery Sergeant John David Fry scholarship to include spouses of members of the Armed Forces who die in the line of duty.

Merkley amendment No. 1256, to require a plan for the expedited transition of responsibility for military and security operations in Afghanistan to the Government of Afghanistan.

Merkley amendment No. 1257, to require a plan for the expedited transition of responsibility for military and security operations in Afghanistan to the Government of Afghanistan.

Merkley amendment No. 1258, to require the timely identification of qualified census tracts for purposes of the HUBZone Program.

Leahy amendment No. 1087, to improve the provisions relating to the treatment of certain sensitive national security information under the Freedom of Information Act.

Leahy/Grassley amendment No. 1186, to provide the Department of Justice necessary tools to fight fraud by reforming the working capital fund.

Wyden/Merkley amendment No. 1160, to provide for the closure of Umatilla Army Chemical Depot, OR.

Wyden amendment No. 1253, to provide for the retention of members of the reserve components on active duty for a period of 45 days following an extended deployment in contingency operations or homeland defense missions to support their reintegration into civilian life.

Ayotte (for Graham) amendment No. 1179, to specify the number of judge advocates of the Air Force in the regular grade of brigadier general.

Ayotte (for McCain) further modified amendment No. 1230, to modify the annual adjustment in enrollment fees for TRICARE Prime.

Ayotte (for Heller/Kirk) amendment No. 1137, to provide for the recognition of Jerusalem as the capital of Israel and the relocation to Jerusalem of the United States Embassy in Israel.

Ayotte (for Heller) amendment No. 1138, to provide for the exhumation and transfer of remains of deceased members of the Armed Forces buried in Tripoli, Libya.

Ayotte (for McCain) amendment No. 1247, to restrict the authority of the Secretary of Defense to develop public infrastructure on Guam until certain conditions related to Guam realignment have been met.

Ayotte (for McCain) amendment No. 1246, to establish a commission to study the United States Force Posture in East Asia and the Pacific region.

Ayotte (for McCain) amendment No. 1229, to provide for greater cybersecurity collaboration between the Department of Defense and the Department of Homeland Security.

Ayotte (for McCain/Ayotte) amendment No. 1249, to limit the use of cost-type contracts by the Department of Defense for major defense acquisition programs.

Ayotte (for McCain) amendment No. 1220, to require Comptroller General of the United States reports on the Department of Defense implementation of justification and approval requirements for certain sole-source contracts.

Ayotte (for McCain/Ayotte) amendment No. 1132, to require a plan to ensure audit readiness of statements of budgetary resources.

Ayotte (for McCain) amendment No. 1248, to expand the authority for the overhaul and repair of vessels to the United States, Guam, and the Commonwealth of the Northern Mariana Islands.

Ayotte (for McCain) amendment No. 1250, to require the Secretary of Defense to submit a report on the probationary period in the development of the short take-off, vertical landing variant of the Joint Strike Fighter.

Ayotte (for McCain) amendment No. 1118, to modify the availability of surcharges collected by commissary stores.

Sessions amendment No. 1182, to prohibit the permanent stationing of more than two Army brigade combat teams within the geographic boundaries of the United States European Command.

Sessions amendment No. 1183, to require the maintenance of a triad of strategic nuclear delivery systems.

Sessions amendment No. 1184, to limit any reduction in the number of surface combatants of the Navy below 313 vessels.

Sessions amendment No. 1185, to require a report on a missile defense site on the east coast of the United States.

Sessions amendment No. 1274, to clarify the disposition under the law of war of persons detained by the Armed Forces of the United States pursuant to the Authorization for Use of Military Force.

Levin (for Reed) amendment No. 1146, to provide for the participation of military technicians (dual status) in the study on the termination of military technician as a distinct personnel management category.

Levin (for Reed) amendment No. 1147, to prohibit the repayment of enlistment or related bonuses by certain individuals who become employed as military technicians (dual status) while already a member of a reserve component.

Levin (for Reed) amendment No. 1148, to provide rights of grievance, arbitration, appeal, and review beyond the adjutant general for military technicians.

Levin (for Reed) amendment No. 1204, to authorize a pilot program on enhancements of Department of Defense efforts on mental health in the National Guard and Reserves through community partnerships.

Levin (for Reed) amendment No. 1294, to enhance consumer credit protections for members of the Armed Forces and their dependents.

Levin amendment No. 1293, to authorize the transfer of certain high-speed ferries to the Navy.

Levin (for Boxer) amendment No. 1206, to implement commonsense controls on the taxpayer-funded salaries of defense contractors.

Chambliss amendment No. 1304, to require a report on the reorganization of the Air Force Materiel Command.

Levin (for Brown (OH)) amendment No. 1259, to link domestic manufacturers to defense supply chain opportunities.

Levin (for Brown (OH)) amendment No. 1261, to extend treatment of base closure areas as HUBZones for purposes of the Small Business Act.

Levin (for Brown (OH)) amendment No. 1263, to authorize the conveyance of the John Kunkel Army Reserve Center, Warren, OH.

Levin (for Leahy) amendment No. 1080, to clarify the applicability of requirements for military custody with respect to detainees.

Levin (for Wyden) amendment No. 1296, to require reports on the use of indemnification agreements in Department of Defense contracts.

Levin (for Pryor) amendment No. 1151, to authorize a death gratuity and related benefits for Reserves who die during an authorized stay at their residence during or between successive days of inactive duty training.

Levin (for Pryor) amendment No. 1152, to recognize the service in the reserve components of the Armed Forces of certain persons by honoring them with status as veterans under law.

Levin (for Nelson (FL)) amendment No. 1209, to repeal the requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation.

Levin (for Nelson (FL)) amendment No. 1210, to require an assessment of the advisability of stationing additional DDG–51 class destroyers at Naval Station Mayport, FL.

Levin (for Nelson (FL)) amendment No. 1236, to require a report on the effects of changing flag officer positions within the Air Force Material Command.

Levin (for Nelson (FL)) amendment No. 1255, to require an epidemiological study on the health of military personnel exposed to burn pit emissions at Joint Base Balad.

Ayotte (for McCain) modified amendment No. 1281, to require a plan for normalizing defense cooperation with the Republic of Georgia.

Ayotte (for Blunt/Gillibrand) amendment No. 1133, to provide for employment and reemployment rights for certain individuals ordered to full-time National Guard duty.

Ayotte (for Blunt) amendment No. 1134, to require a report on the policies and practices of the Navy for naming vessels of the Navy.

Ayotte (for Murkowski) amendment No. 1286, to require a Department of Defense inspector general report on theft of computer tapes containing protected information on covered beneficiaries under the TRICARE Program.

Ayotte (for Murkowski) amendment No. 1287, to provide limitations on the retirement of C–23 aircraft.

Ayotte (for Rubio) amendment No. 1290, to strike the national security waiver authority in section 1032, relating to requirements for military custody.

Ayotte (for Rubio) amendment No. 1291, to strike the national security waiver authority in section 1033, relating to requirements for certifications relating to transfer of detainees at United States Naval Station, Guantanamo Bay, Cuba, to foreign countries and entities.

Levin (for Menendez/Kirk) amendment No. 1414, to require the imposition of sanctions with respect to the financial sector of Iran, including the Central Bank of Iran.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11 a.m. will be equally divided and controlled between the Senator from Michigan, Mr. LEVIN, and the Senator from Arizona, Mr. MCCAIN, or their designees.

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

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

Mr. MCCAIN. Madam President, I would like to say to my colleagues, we have been waiting approval of a managers' package of amendments that have been cleared by both sides. It is not a managers' package. It is simply a group of amendments that have been proposed by Members on both sides of the aisle, approved—no one has objected—and yet there are objections to moving forward with these amendments in a package. There are important amendments by Members on both sides.

I would urge my colleagues who would object to moving forward with this package of amendments which have been agreed to by both sides—and there has been no objection voiced to them individually—that I would like to move to adopt those shortly before the vote on cloture at 11 o'clock. If someone objects to that, then I would insist that they come over to the floor and object. That is the procedure we will follow that I would like to inform my colleagues.

In other words, we have a group of amendments. They have been cleared by both sides; no one objects. And yet there seems to be an objection to moving forward with a group of amendments that has already been agreed to. So according to parliamentary rules, I will insist that the Member be here present to object when I move forward with the package shortly before the hour of 11. Anyone watching in the offices, please inform your Senator of that decision.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Madam President, just to reinforce something the Senator from Arizona said, these are amendments there is no objection to on the substance. We have worked very hard, working with all the Senators, to clear amendments. That process will continue after the cloture vote as well. But we now have this group we have worked very hard on. We know of no objection. If there were an objection, they would not be in a cleared package. So we know of no objection. None have been forthcoming. They have been here for a day or two now, and the Senate needs to work its will.

This is the way we should be operating, if there is no objection to an amendment, if people have had a chance to look at it. They have been cleared on both sides. Any committee on jurisdiction that has an interest has been talked to, and that has been taken care of. This is, it seems to me, the right way to proceed.

I commend Senator MCCAIN for what he just said and join with him in that sentiment.

The bill we have before us that we will be voting cloture on at about 11 o'clock would authorize $662 billion for national defense programs. This is $27 billion less than the President's budget request. It is $43 billion less than the amount appropriated for fiscal year 2011. We have been able to find savings without reducing our strong commitment to the men and women of our Armed Forces and their families, without undermining their ability to accomplish the mission we have assigned to them that they handle so remarkably bravely and consistently. So we have identified and scrubbed this budget to find those savings, and the bill we will be voting cloture on—and, hopefully, adopting cloture—reflects those savings.

Because of our action last night on the counterfeit parts amendment, the bill now contains important new provisions to help fight the tide of counterfeit electronic parts, primarily from China, that is flooding the defense supply chain. I went through the provisions last night, and I will not repeat them here other than to say we are taking strong action to make sure the parts that are provided to our weapons systems are new parts as required and are not counterfeit parts.

There are a number of steps in this bill. They are effective and strong steps. We require, for instance, that parts that are being supplied come from the original manufacturer of those parts or an authorized distributor of those parts or, if that is not possible because the parts are no longer being manufactured or there is no authorized distributor, that whoever is supplying those parts be certified by the Department of Defense, the way they currently are, by one part of the Department of Defense, the Missile Defense Agency, as being a reliable supplier.

We have had too many cases of missiles and airplanes that have defective parts, and the lives of our people in uniform depend upon these as being quality parts. We are not going to accept the status quo anymore in terms of counterfeiting, mainly from China, and we are taking this strong action in

this bill now, following last night's action, to make sure this status quo is reversed.

We have over 96,000 U.S. soldiers, sailors, airmen, and marines on the ground in Afghanistan. We have 13,000, as we speak, remaining in Iraq. There are many issues upon which we disagree. But every one of us knows we must provide our troops with the support they need and deserve as long as they are in harm's way. Senate action on the Defense bill will improve the quality of life for our men and women in uniform. It will give them the tools they need to remain the most effective fighting force in the world, and it will also send a critically important message that we as a nation stand behind our troops and their families and we appreciate their service.

So I hope we can adopt the cloture motion which is before us so we can proceed to the postcloture period, where we can then resolve the remaining amendments that can be resolved, and then pass this bill, hopefully, tomorrow. But we have a lot of work to do today and tomorrow. We have many dozens of amendments yet to be voted on, disposed of, and hopefully cleared in many cases.

With that, I yield the floor.

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

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

Mr. LEVIN. Madam President, the following amendments have been cleared by myself and the ranking member. We have cleared a number of amendments on both sides. We are working with many Members. There will be an additional package after this one. We are going to continue to try to clear amendments. We expect that we will. We know of no objection to any of the following amendments despite their being available for review.

They are amendments numbered: 1056 on behalf of Senator WICKER, 1066 on behalf of Senator AYOTTE, 1102 on behalf of Senator INHOFE, 1116 on behalf of Senator WICKER, 1122 on behalf of Senator SHAHEEN, 1129 on behalf of Senator REID, 1130 on behalf of Senator REID, 1132 on behalf of Senator MCCAIN, 1134 on behalf of Senator BLUNT, 1143 on behalf of Senators HAGAN and PORTMAN, 1149, as modified by changes at the desk, on behalf of Senator BEGICH, 1162 on behalf of Senator WARNER, 1164 on behalf of Senator WARNER, 1165 on behalf of Senator WARNER, 1166, on behalf of Senator WARNER, 1167, as modified by changes at the desk, on behalf of Senator WARNER, 1178, as modified by changes at the desk, on behalf of Senator MURRAY, 1180, as modified by changes at the desk, on behalf of Senator COLLINS, 1183, as modified by changes at the desk, on behalf of Senator SESSIONS, 1207 on behalf of Senator COBURN, 1210 on behalf of Senator NELSON (FL), 1227 on behalf of Senators MCCAIN and PORTMAN, 1215, as modified by changes at the desk, on behalf of Senator CASEY, 1228 on behalf of Senators MCCAIN and PORTMAN, 1237 on behalf of Senator SHAHEEN, 1240 on behalf of Senator WARNER, 1245 on behalf of Senator MCCAIN, 1250 on behalf of Senator MCCAIN, 1266 on behalf of Senator WARNER, 1276 on behalf of Senator BAUCUS, 1280 on behalf of Senator MCCAIN, 1281, as modified, on behalf of Senator MCCAIN, 1298 on behalf of Senators WEBB and GRAHAM, 1301 on behalf of Senator LEVIN, 1303 on behalf of Senators LEVIN and MCCAIN, 1315 on behalf of Senator HATCH, 1317 on behalf of Senator PORTMAN, 1324 on behalf of Senator COCHRAN, 1326 on behalf of Senator RISCH, and 1332 on behalf of Senators LIEBERMAN and CORNYN.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. They have been cleared on this side.

Mr. LEVIN. Madam President, I ask unanimous consent that the Senate consider these amendments en bloc, that the modifications at the desk be adopted, the amendments be agreed to, and the motion to reconsider be laid upon the table.

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

The amendments (Nos. 1056, 1066, 1102, 1116, 1132, 1134, 1210, and 1250) were agreed to.

The amendments (Nos. 1180, 1183, 1215, and 1281), as modified, were agreed to, as follows:

AMENDMENT NO. 1180, AS MODIFIED

At the end of subtitle C of title XII, add the following:

SEC. 1243. MAN-PORTABLE AIR-DEFENSE SYSTEMS ORIGINATING FROM LIBYA.

(a) STATEMENT OF POLICY.—Pursuant to section 11 of the Department of State Authorities Act of 2006 (22 U.S.C. 2349bb–6), the following is the policy of the United States:

(1) To reduce and mitigate, to the greatest extent feasible, the threat posed to United States citizens and citizens of allies of the United States by man-portable air-defense systems (MANPADS) that were in Libya as of March 19, 2011.

(2) To seek the cooperation of, and to assist, the Government of Libya and governments of neighboring countries and other countries (as determined by the President) to secure, remove, or eliminate stocks of man-portable air-defense systems described in paragraph (1) that pose a threat to United States citizens and citizens of allies of the United States.

(3) To pursue, as a matter of priority, an agreement with the Government of Libya and governments of neighboring countries and other countries (as determined by the Secretary of State) to formalize cooperation with the United States to limit the availability, transfer, and proliferation of man-portable air-defense systems described in paragraph (1).

(b) INTELLIGENCE COMMUNITY ASSESSMENT ON MANPADS IN LIBYA.—

(1) IN GENERAL.—The Director of National Intelligence shall submit to the appropriate committees of Congress an assessment by the intelligence community that accounts for the disposition of, and the threat to United States citizens and citizens of allies of the United States posed by man-portable air-defense systems that were in Libya as of March 19, 2011. The assessment shall be submitted as soon as practicable, but not later than the end of the 45-day period beginning on the date of the enactment of this Act.

(2) ELEMENTS.—The assessment submitted under this subsection shall include the following:

(A) An estimate of the number of man-portable air-defense systems that were in Libya as of March 19, 2011.

(B) An estimate of the number of man-portable air-defense systems in Libya as of March 19, 2011, that are currently in the secure custody of the Government of Libya, the United States, an ally of the United States, a member of the North Atlantic Treaty Organization (NATO), or the United Nations.

(C) An estimate of the number of man-portable air-defense systems in Libya as of March 19, 2011, that were destroyed, disabled, or otherwise rendered unusable during Operation Unified Protector and since the end of Operation Unified Protector.

(D) An assessment of the number of man-portable air-defense systems that is the difference between the number of man-portable air-defense systems in Libya as of March 19, 2011, and the cumulative number of man-portable air-defense systems accounted for under subparagraphs (B) and (C), and the current disposition and locations of such man-portable air-defense systems.

(E) An assessment of the number of man-portable air-defense systems that are currently in the custody of militias in Libya.

(F) A list of any organizations designated as terrorist organizations by the Department of State, or affiliate organizations or members of such organizations, that are known or believed to have custody of any man-portable air-defense systems that were in the custody of the Government of Libya as of March 19, 2011.

(G) An assessment of the threat posed to United States citizens and citizens of allies of the United States from unsecured man-portable air-defense systems (as defined in section 11 of the Department of State Authorities Act of 2006) originating from Libya.

(H) An assessment of the effect of the proliferation of man-portable air-defense systems that were in Libya as of March 19, 2011, on the price and availability of man-portable air-defense systems that are on the global arms market.

(3) NOTICE REGARDING DELAY IN SUBMITTAL.—If, before the end of the 45-day period specified in paragraph (1), the Director determines that the assessment required by that paragraph cannot be submitted by the end of that period as required by that paragraph, the Director shall (before the end of that period) submit to the appropriate committees of Congress a report setting forth—

(A) the reasons why the assessment cannot be submitted by the end of that period; and

(B) an estimated date for the submittal of the assessment.

(c) COMPREHENSIVE STRATEGY ON THREAT OF MANPADS ORIGINATING FROM LIBYA.—

(1) STRATEGY REQUIRED.—The President shall develop and implement, and from time to time update, a comprehensive strategy, pursuant to section 11 of the Department of State Authorities Act of 2006, to reduce and mitigate the threat posed to United States citizens and citizens of allies of the United States from man-portable air-defense systems that were in Libya as of March 19, 2011.

(2) REPORT REQUIRED.—

(A) IN GENERAL.—Not later than 45 days after the assessment required by subsection

(b) is submitted to the appropriate committees of Congress, the President shall submit to the appropriate committees of Congress a report setting forth the strategy required by paragraph (1).

(B) ELEMENTS.—The report required by this paragraph shall include the following:

(i) An assessment of the effectiveness of efforts undertaken to date by the United States, Libya, Mauritania, Egypt, Algeria, Tunisia, Mali, Morocco, Niger, Chad, the United Nations, the North Atlantic Treaty Organization, and any other country or entity (as determined by the President) to reduce the threat posed to United States citizens and citizens of allies of the United States from man-portable air-defense systems that were in Libya as of March 19, 2011.

(ii) A timeline for future efforts by the United States, Libya, and neighboring countries to—

(I) secure, remove, or disable any man-portable air-defense systems that remain in Libya;

(II) counter proliferation of man-portable air-defense systems originating from Libya that are in the region; and

(III) disrupt the ability of terrorists, non-state actors, and state sponsors of terrorism to acquire such man-portable air-defense systems.

(iii) A description of any additional funding required to address the threat of man-portable air-defense systems originating from Libya.

(iv) A description of technologies currently available to reduce the susceptibility and vulnerability of civilian aircraft to man-portable air-defense systems, including an assessment of the feasibility of using aircraft-based anti-missile systems to protect United States passenger jets.

(v) Recommendations for the most effective policy measures that can be taken to reduce and mitigate the threat posed to United States citizens and citizens of allies of the United States from man-portable air-defense systems that were in Libya as of March 19, 2011.

(vi) Such recommendations for legislative or administrative action as the President considers appropriate to implement the strategy required by paragraph (1).

(C) FORM.—The report required by this paragraph shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

AMENDMENT NO. 1183, AS MODIFIED

At the end of subtitle G of title X, add the following:

SEC. 1080. REPORTS TO CONGRESS ON THE MODIFICATION OF THE FORCE STRUCTURE FOR THE STRATEGIC NUCLEAR WEAPONS DELIVERY SYSTEMS OF THE UNITED STATES.

(a) FINDINGS.—Congress makes the following findings:

(1) Since the early 1960s, the United States has developed and maintained a triad of strategic nuclear weapons delivery systems.

(2) The triad includes sea-based, land-based, and air-based strategic nuclear weapons delivery systems.

(b) REPORT ON MODIFICATION.—Whenever after the date of the enactment of this Act the President proposes a modification of the force structure for the strategic nuclear weapons delivery systems of the United States, the President shall submit to Congress a report on the modification. The report shall include a description of the manner in which such modification will maintain for the United States a range of strategic nuclear weapons delivery systems appropriate for the current and anticipated threats faced by the United States when compared with the current force structure of strategic nuclear weapons delivery systems.

AMENDMENT NO. 1215, AS MODIFIED

At the end of subtitle B of title XII, add the following:

SEC. 1230. CERTIFICATION REQUIREMENT REGARDING EFFORTS BY GOVERNMENT OF PAKISTAN TO IMPLEMENT A STRATEGY TO COUNTER IMPROVISED EXPLOSIVE DEVICES.

(a) CERTIFICATION REQUIREMENT.—

(1) IN GENERAL.—None of the amounts authorized to be appropriated under this Act for the Pakistan Counterinsurgency Fund or transferred to the Pakistan Counterinsurgency Fund from the Pakistan Counterinsurgency Capability Fund should be made available for the Government of Pakistan until the Secretary of Defense, in consultation with the Secretary of State, certifies to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives that the Government of Pakistan is demonstrating a continuing commitment to and is making significant efforts towards the implementation of a strategy to counter improvised explosive devices (IEDs).

(2) SIGNIFICANT IMPLEMENTATION EFFORTS.—For purposes of this subsection, significant implementation efforts include attacking IED networks, monitoring of known precursors used in IEDs, and the development of a strict protocol for the manufacture of explosive materials, including calcium ammonium nitrate, and accessories and their supply to legitimate end users.

(b) WAIVER.—The Secretary of Defense, in consultation with the Secretary of State, may waive the requirements of subsection (a) if the Secretary determines it is in the national security interest of the United States to do so.

AMENDMENT NO. 1281

(Purpose: To require a plan for normalizing defense cooperation with the Republic of Georgia)

At the end of subtitle C of title XII, add the following:

SEC. 1243. DEFENSE COOPERATION WITH REPUBLIC OF GEORGIA.

(a) PLAN FOR NORMALIZATION.—Not later than 90 days after the date of the enactment of this Act, the President shall develop and submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a plan for the normalization of United States defense cooperation with the Republic of Georgia, including the sale of defensive arms.

(b) OBJECTIVES.—The plan required under subsection (a) shall address the following objectives:

(1) To establish a normalized defense cooperation relationship between the United States and the Republic of Georgia, taking into consideration the progress of the Government of the Republic of Georgia on democratic and economic reforms and the capacity of the Georgian armed forces.

(2) To support the Government of the Republic of Georgia in providing for the defense of its government, people, and sovereign territory, consistent with the continuing commitment of the Government of the Republic of Georgia to its nonuse-of-force pledge and consistent with Article 51 of the Charter of the United Nations.

(3) To provide for the sale by the United States of defense articles and services in support of the efforts of the Government of the Republic of Georgia to provide for its own self-defense consistent with paragraphs (1) and (2).

(4) To continue to enhance the ability of the Government of the Republic of Georgia to participate in coalition operations and meet NATO partnership goals.

(5) To encourage NATO member and candidate countries to restore and enhance their sales of defensive articles and services to the Republic of Georgia as part of a broader NATO effort to deepen its defense relationship and cooperation with the Republic of Georgia.

(6) To ensure maximum transparency in the United States-Georgia defense relationship.

(c) INCLUDED INFORMATION.—The plan required under subsection (a) shall include the following information:

(1) A needs-based assessment, or an update to an existing needs-based assessment, of the defense requirements of the Republic of Georgia, which shall be prepared by the Department of Defense.

(2) A description of each of the requests by the Government of the Republic of Georgia for purchase of defense articles and services during the two-year period ending on the date of the report.

(3) A summary of the defense needs asserted by the Government of the Republic of Georgia as justification for its requests for defensive arms purchases.

(4) A description of the action taken on any defensive arms sale request by the Government of the Republic of Georgia and an explanation for such action.

(d) FORM.—The plan required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

The amendments (Nos. 1122, 1129, 1130, 1143; 1149, as modified; 1162, 1164, 1165, 1166; 1167, as modified; 1178, as modified, 1207, 1227, 1228, 1237, 1240, 1245, 1266, 1276, 1280, 1298, 1301, 1303, 1315, 1317, 1324, 1326, and 1332) were agreed to, as follows:

AMENDMENT NO. 1122

(Purpose: To authorize the acquisition of real property and associated real property interests in the vicinity of Hanover, New Hampshire, as may be needed for the Engineer Research and Development Center laboratory facilities at the Cold Regions Research and Engineering Laboratory)

At the end of subtitle E of title II, add the following:

SEC. 2___. LABORATORY FACILITIES, HANOVER, NEW HAMPSHIRE.

(a) ACQUISITION.—

(1) IN GENERAL.—Subject to paragraph (3), the Secretary of the Army (referred to in this section as the ''Secretary'') may acquire any real property and associated real property interests in the vicinity of Hanover, New Hampshire, described in paragraph (2) as may be needed for the Engineer Research and Development Center laboratory facilities at the Cold Regions Research and Engineering Laboratory.

(2) DESCRIPTION OF REAL PROPERTY.—The real property described in this paragraph is the real property to be acquired under paragraph (1)—

(A) consisting of approximately 18.5 acres, identified as Tracts 101-1 and 101-2, together with all necessary easements located entirely within the Town of Hanover, New Hampshire; and

(B) generally bounded—

(i) to the east by state route 10-Lyme Road;

(ii) to the north by the vacant property of the Trustees of Dartmouth College;

(iii) to the south by Fletcher Circle graduate student housing owned by the Trustees of Dartmouth College; and

(iv) to the west by approximately 9 acres of real property acquired in fee through condemnation in 1981 by the Secretary.

(3) AMOUNT PAID FOR PROPERTY.—The Secretary shall pay not more than fair market value for any real property and associated real property interest acquired under this subsection.

(b) REVOLVING FUND.—The Secretary—

(1) through the Plant Replacement and Improvement Program of the Secretary, may use amounts in the revolving fund established by section 101 of the Civil Functions Appropriations Act, 1954 (33 U.S.C. 576) to acquire the real property and associated real property interests described in subsection (a); and

(2) shall ensure that the revolving fund is appropriately reimbursed from the benefitting appropriations.

(c) RIGHT OF FIRST REFUSAL.—

(1) IN GENERAL.—The Secretary may provide the seller of any real property and associated property interests identified in subsection (a) a right of first refusal—

(A) a right of first refusal to acquire the property, or any portion of the property, in the event the property or portion is no longer needed by the Department of the Army; and

(B) a right of first refusal to acquire any real property or associated real property interests acquired by condemnation in Civil Action No. 81-360-L, in the event the property, or any portion of the property, is no longer needed by the Department of the Army.

(2) NATURE OF RIGHT.—A right of first refusal provided to a seller under this subsection shall not inure to the benefit of any successor or assign of the seller.

(d) CONSIDERATION; FAIR MARKET VALUE.—The purchase of any property by a seller exercising a right of first refusal provided under subsection (c) shall be for—

(1) consideration acceptable to the Secretary; and

(2) not less than fair market value at the time at which the property becomes available for purchase.

(e) DISPOSAL.—The Secretary may dispose of any property or associated real property interests that are subject to the exercise of the right of first refusal under this section.

(f) NO EFFECT ON COMPLIANCE WITH ENVIRONMENTAL LAWS.—Nothing in this section affects or limits the application of or obligation to comply with any environmental law, including section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

AMENDMENT NO. 1129

(Purpose: To redesignate the Mike O'Callaghan Federal Hospital in Nevada as the Mike O'Callaghan Federal Medical Center)

At the end of subtitle D of title XXVIII, add the following:

SEC. 2833. REDESIGNATION OF MIKE O'CALLAGHAN FEDERAL HOSPITAL IN NEVADA AS MIKE O'CALLAGHAN FEDERAL MEDICAL CENTER.

(a) REDESIGNATION.—Section 2867 of the Military Construction Authorization Act for Fiscal Year 1997 (division B of Public Law 104–201; 110 Stat. 2806), as amended by section 8135(a) of the Department of Defense Appropriations Act, 1997 (section 101(b) of division A of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104–208; 110 Stat. 3009–118)), is further amended by striking ''Mike O'Callaghan Federal Hospital'' each place it appears and inserting ''Mike O'Callaghan Federal Medical Center''.

(b) CONFORMING AMENDMENT.—The heading of such section 2867 is amended to read as follows:

''SEC. 2867. MIKE O'CALLAGHAN FEDERAL MEDICAL CENTER.''.

AMENDMENT NO. 1130

(Purpose: To clarify certain provisions of the Clean Air Act relating to fire suppression agents)

At the end of subtitle H of title X, add the following:

SEC. 1088. FIRE SUPPRESSION AGENTS.

Section 605(a) of the Clean Air Act (42 U.S.C. 7671d(a)) is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) is listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 612(c).''.

AMENDMENT NO. 1143

(Purpose: To require the Comptroller General to review medical research and development sponsored by the Department of Defense relating to improved combat casualty care and saving lives on the battlefield)

At the end of subtitle G of title X, add the following:

SEC. 1080. COMPTROLLER GENERAL REVIEW OF MEDICAL RESEARCH AND DEVELOPMENT RELATING TO IMPROVED COMBAT CASUALTY CARE.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a review of Department of Defense programs and organizations related to, and resourcing of, medical research and development in support of improved combat casualty care designed to save lives on the battlefield.

(b) REPORT.—Not later than January 1, 2013, the Comptroller General shall submit to the congressional defense committees a report on the review conducted under subsection (a), including the following elements:

(1) A description of current medical combat casualty care research and development programs throughout the Department of Defense, including basic and applied medical research, technology development, and clinical research.

(2) An identification of organizational elements within the Department that have responsibility for planning and oversight of combat casualty care research and development.

(3) A description of the means by which the Department applies combat casualty care research findings, including development of new medical devices, to improve battlefield care.

(4) An assessment of the adequacy of the coordination by the Department of planning for combat casualty care medical research and development and whether or not the Department has a coordinated combat casualty care research and development strategy.

(5) An assessment of the adequacy of resources provided for combat casualty care research and development across the Department.

(6) An assessment of the programmatic, organizational, and resource challenges and gaps faced by the Department in optimizing investments in combat casualty care medical research and development in order to save lives on the battlefield.

(7) The extent to which the Department utilizes expertise from experts and entities outside the Department with expertise in combat casualty care medical research and development.

(8) An assessment of the challenges faced in rapidly applying research findings and technology developments to improved battlefield care.

(9) Recommendations regarding—

(A) the need for a coordinated combat casualty care medical research and development strategy;

(B) organizational obstacles or realignments to improve effectiveness of combat casualty care medical research and development; and

(C) adequacy of resource support.

AMENDMENT NO. 1149, AS MODIFIED

At the end of subtitle C of title XXVIII, add the following:

SEC. 2823. LAND CONVEYANCE AND EXCHANGE, JOINT BASE ELMENDORF RICHARDSON, ALASKA.

(a) CONVEYANCES AUTHORIZED.—

(1) MUNICIPALITY OF ANCHORAGE.—The Secretary of the Air Force may, in consultation with the Secretary of the Interior, convey to the Municipality of Anchorage (in this section referred to as the ''Municipality'') all right, title, and interest of the United States in and to all or any part of a parcel of real property, including any improvements thereon, consisting of approximately 220 acres at JBER situated to the west of and adjacent to the Anchorage Regional Landfill in Anchorage, Alaska, for solid waste management purposes, including reclamation thereof, and for alternative energy production, and other related activities. This authority may not be exercised unless and until the March 15, 1982, North Anchorage Land Agreement is amended by the parties thereto to specifically permit the conveyance under this subparagraph.

(2) EKLUTNA, INC..—The Secretary of the Air Force may, in consultation with the Secretary of the Interior, upon terms mutually agreeable to the Secretary of the Air Force and Eklutna, Inc., an Alaska Native village corporation organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) (in this section referred to as ''Eklutna''), convey to Eklutna all right, title, and interest of the United States in and to all or any part of a parcel of real property, including any improvements thereon, consisting of approximately 130 acres situated on the northeast corner of the Glenn Highway and Boniface Parkway in Anchorage, Alaska, or such other property as may be identified in consultation with the Secretary of the Interior, for any use compatible with JBER's current and reasonably foreseeable mission as determined by the Secretary of the Air Force.

(3) RIGHT TO WITHHOLD TRANSFER.—The Secretary may withhold transfer of any portion of the real property described in paragraphs (1) and (2) based on public interest or military mission requirements.

(b) CONSIDERATION.—

(1) MUNICIPALITY PROPERTY.—As consideration for the conveyance under subsection (a)(1), the Secretary of the Air Force shall receive in-kind solid waste management services at the Anchorage Regional Landfill or such other consideration as determined satisfactory by the Secretary equal to at least fair market value of the property conveyed.

(2) EKLUTNA PROPERTY.—As consideration for the conveyance under subsection (a)(2), the Secretary of the Air Force is authorized to receive, upon terms mutually agreeable to the Secretary and Eklutna, such interests in the surface estate of real property owned by Eklutna and situated at the northeast boundary of JBER and other consideration as considered satisfactory by the Secretary

equal to at least fair market value of the property conveyed.

(c) PAYMENT OF COSTS OF CONVEYANCE.—

(1) PAYMENT REQUIRED.—The Secretary of the Air Force shall require the Municipality and Eklutna to reimburse the Secretary to cover costs (except costs for environmental remediation of the property) to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsection (a), including survey costs, costs for environmental documentation, and any other administrative costs related to the conveyance.

(2) TREATMENT OF AMOUNTS RECEIVED.—Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover those costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) TREATMENT OF CASH CONSIDERATION RECEIVED.—Any cash payment received by the United States as consideration for the conveyances under subsection (a) shall be deposited in the special account in the Treasury established under subsection (b) of section 572 of title 40, United States Code, and shall be available in accordance with paragraph (5)(B) of such subsection.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary.

(f) OTHER OR ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

AMENDMENT NO. 1162

(Purpose: To provide for the consideration of energy security and reliability in the development and implementation of energy performance goals)

At the end of subtitle B of title III, add the following:

SEC. 316. CONSIDERATION OF ENERGY SECURITY AND RELIABILITY IN DEVELOPMENT AND IMPLEMENTATION OF ENERGY PERFORMANCE GOALS.

Section 2911(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(12) Opportunities to enhance energy security and reliability of defense facilities and missions, including through the ability to operate for extended periods off-grid.''.

AMENDMENT NO. 1164

(Purpose: To promote increased acquisition and procurement exchanges between officials in the Department of Defense and defense officials in India)

At the end of subtitle H of title X, add the following:

SEC. 1088. ACQUISITION AND PROCUREMENT EXCHANGES BETWEEN THE UNITED STATES AND INDIA.

The Secretary of Defense should seek to establish exchanges between acquisition and procurement officials of the Department of Defense and defense officials of the Government of India to increase mutual understanding regarding best practices in defense acquisition.

AMENDMENT NO. 1165

(Purpose: To express the sense of Congress on the use of modeling and simulation in Department of Defense activities)

At the end of subtitle A of title IX, add the following:

SEC. 907. SENSE OF CONGRESS ON USE OF MODELING AND SIMULATION IN DEPARTMENT OF DEFENSE ACTIVITIES.

It is the sense of Congress to encourage the Department of Defense to continue the use and enhancement of modeling and simulation (M&S) across the spectrum of defense activities, including acquisition, analysis, experimentation, intelligence, planning, medical, test and evaluation, and training.

AMENDMENT NO. 1166

(Purpose: To express the sense of Congress on ties between the Joint Warfighting and Coalition Center and the Allied Command Transformation of NATO)

At the end of subtitle A of title IX, add the following:

SEC. 907. SENSE OF CONGRESS ON TIES BETWEEN JOINT WARFIGHTING AND COALITION CENTER AND ALLIED COMMAND TRANSFORMATION OF NATO.

It is the sense of Congress that the successor organization to the United States Joint Forces Command (USJFCOM), the Joint Warfighting and Coalition Center, should establish close ties with the Allied Command Transformation (ACT) command of the North Atlantic Treaty Organization (NATO).

AMENDMENT NO. 1167, AS MODIFIED

At the end of subtitle A of title IX, add the following:

SEC. 907. REPORT ON EFFECTS OF PLANNED REDUCTIONS OF PERSONNEL AT THE JOINT WARFARE ANALYSIS CENTER ON PERSONNEL SKILLS.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report setting forth a description and assessment of the effects of planned reductions of personnel at the Joint Warfare Analysis Center (JWAC) on the personnel skills to be available at the Center after the reductions. The report shall be in unclassified form, but may contain a classified annex.

AMENDMENT NO. 1178, AS MODIFIED

At the end of subtitle C of title VIII, add the following:

SEC. 848. REPORT ON AUTHORITIES AVAILABLE TO THE DEPARTMENT OF DEFENSE FOR MULTIYEAR CONTRACTS FOR THE PURCHASE OF ADVANCED BIOFUELS.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the authorities currently available to the Department of Defense for multiyear contracts for the purchase of advanced biofuels (as defined by section 211(o)(1)(B) of the Clean Air Act (42 U.S.C. 7545(o)(1)(B)). The report shall include a description of such additional authorities, if any, as the Secretary considers appropriate to authorize the Department to enter into contracts for the purchase of advanced biofuels of sufficient length to reduce the impact to the Department of future price or supply shocks in the petroleum market, to benefit taxpayers, and to reduce United States dependence on foreign oil.

AMENDMENT NO. 1207

(Purpose: To require Comptroller General of the United States reports on the major automated information system programs of the Deparment of Defense)

At the end of subtitle G of title X, add the following:

SEC. 1080. COMPTROLLER GENERAL OF THE UNITED STATES REPORTS ON THE MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS OF THE DEPARTMENT OF DEFENSE.

(a) ASSESSMENT REPORTS REQUIRED.—

(1) IN GENERAL.—Not later than March 30 of each year from 2013 through 2018, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report setting forth an assessment of the performance of the major automated information system programs of the Department of Defense.

(2) ELEMENTS.—Each report under subsection (a) shall include the following:

(A) An assessment by the Comptroller General of the cost, schedule, and performance of a representative variety of major automated information system programs selected by the Comptroller General for purposes of such report.

(B) An assessment by the Comptroller General of the level of risk associated with the programs selected under subparagraph (A) for purposes of such report, and a description of the actions taken by the Department to manage or reduce such risk.

(C) An assessment by the Comptroller General of the extent to which the programs selected under subparagraph (A) for purposes of such report employ best practices for the acquisition of information technology systems, as identified by the Comptroller General, the Defense Science Board, and the Department.

(b) PRELIMINARY REPORT.—

(1) IN GENERAL.—Not later than September 30, 2012, the Comptroller General shall submit to the appropriate committees of Congress a report setting forth the following:

(A) The metrics to be used by the Comptroller General for the reports submitted under subsection (a).

(B) A preliminary assessment on the matters set forth under subsection (a)(2).

(2) BRIEFINGS.—In developing metrics for purposes of the report required by paragraph (1)(A), the Comptroller General shall provide the appropriate committees of Congress with periodic briefings on the development of such metrics.

(c) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

(2) The term ''major automated information system program'' has the meaning given that term in section 2445a of title 10, United States Code.

AMENDMENT NO. 1227

(Purpose: To require a Comptroller General report on redundancies, inefficiencies, and gaps in DOD 6.1–6.3 Science and Technology (S&T) programs)

At the end of subtitle G of title X, add the following:

SEC. 1080. COMPTROLLER GENERAL REPORT ON DEPARTMENT OF DEFENSE SCIENCE AND TECHNOLOGY PROGRAMS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on unnecessary redundancies, inefficiencies, and gaps in Department of Defense 6.1-6.3 Science and Technology (S&T) programs. The study shall—

(1) focus on S&T programs within the Army, Navy, and Air Force, as well as programs run by the Office of the Secretary of Defense;

(2) describe options for consolidation and cost-savings, if any;

(3) assess how the military departments and the Office of the Secretary of Defense are aligning their programs with the seven S&T strategic investment priorities identified by the Assistant Secretary of Defense

for Research and Engineering: Data to Decisions, Engineered Resilient Systems, Cyber Science and Technology, Electronic Warfare/Electronic Protection, Counter Weapons of Mass Destruction, Autonomy, and Human Systems; and

(4) assess how the military departments and the Office of the Secretary of Defense are coordinating efforts with respect to duplicative programs, if any.

(b) REPORT.—Not later than January 1, 2013, the Comptroller General shall submit to the congressional defense committees a report on the findings of the study conducted under subsection (a).

AMENDMENT NO. 1228

(Purpose: To require a Comptroller General report on Science, Technology, Engineering, and Math (STEM) initiatives)

At the end of subtitle G of title X, add the following:

SEC. 1080. COMPTROLLER GENERAL REPORT ON SCIENCE, TECHNOLOGY, ENGINEERING, AND MATH (STEM) INITIATIVES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study assessing Science, Technology, Engineering, and Math (STEM) initiatives of the Department of Defense. The study shall—

(1) determine which programs are ineffective, and which are unnecessarily redundant within the Department of Defense;

(2) describe options for consolidation and elimination of programs identified under paragraph (1); and

(3) describe options for how the Department and other Federal departments and agencies can work together on similar initiatives without unnecessary duplication of funding.

(b) REPORT.—Not later than January 1, 2013, the Comptroller General shall submit to the congressional defense committees a report on the findings of the study conducted under subsection (a).

AMENDMENT NO. 1237

(Purpose: To require a Department of Defense assessment of the industrial base for night vision image intensification sensors)

At the end of subtitle E of title VIII, add the following:

SEC. 889. DEPARTMENT OF DEFENSE ASSESSMENT OF INDUSTRIAL BASE FOR NIGHT VISION IMAGE INTENSIFICATION SENSORS.

(a) ASSESSMENT REQUIRED.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall undertake an assessment of the current and long-term availability within the United States and international industrial base of critical equipment, components, subcomponents, and materials (including, but not limited to, lenses, tubes, and electronics) needed to support current and future United States military requirements for night vision image intensification sensors. In carrying out the assessment, the Secretary shall—

(1) identify items in connection with night vision image intensification sensors that the Secretary determines are critical to military readiness, including key components, subcomponents, and materials;

(2) describe and perform a risk assessment of the supply chain for items identified under paragraph (1) and evaluate the extent to which—

(A) the supply chain for such items could be disrupted by a loss of industrial capability in the United States; and

(B) the industrial base obtains such items from foreign sources; and

(3) describe and assess current and future investment, gaps, and vulnerabilities in the ability of the Department to respond to the potential loss of domestic or international sources that provide items identified under paragraph (1); and

(4) identify and assess current strategies to leverage innovative night vision image intensification technologies being pursued in both Department of Defense laboratories and the private sector for the next generation of night vision capabilities, including an assessment of the competitiveness and technological advantages of the United States night vision image intensification industrial base.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report containing the results of the assessment required under subsection (a).

AMENDMENT NO. 1240

(Purpose: To provide for installation energy metering requirements)

At the end of subtitle B of title III, add the following:

SEC. 316. INSTALLATION ENERGY METERING REQUIREMENTS.

The Secretary of Defense shall, to the maximum extent practicable, require that the information generated by the installation energy meters be captured and tracked to determine baseline energy consumption and facilitate efforts to reduce energy consumption.

AMENDMENT NO. 1245

(Purpose: To provide for increased efficiency and a reduction of Federal spending required for data servers and centers)

Beginning on page 573, strike line 10 and all that follows through page 575, line 16, and insert the following:

(iv) A reduction in the investment for capital infrastructure or equipment required to support data centers as measured in cost per megawatt of data storage.

(v) A reduction in the number of commercial and government developed applications running on data servers and within data centers.

(vi) A reduction in the number of government and vendor provided full-time equivalent personnel, and in the cost of labor, associated with the operation of data servers and data centers.

(B) SPECIFICATION OF REQUIRED ELEMENTS.—The Chief Information Officer of the Department shall specify the particular performance standards and measures and implementation elements to be included in the plans submitted under this paragraph, including specific goals and schedules for achieving the matters specified in subparagraph (A).

(2) DEFENSE-WIDE PLAN.—

(A) IN GENERAL.—Not later than April 1, 2012, the Chief Information Officer of the Department shall submit to the congressional defense committees a performance plan for a reduction in the resources required for data centers and information systems technologies Department-wide. The plan shall be based upon and incorporate appropriate elements of the plans submitted under paragraph (1).

(B) ELEMENTS.—The performance plan required under this paragraph shall include the following:

(i) A Department-wide performance plan for achieving the matters specified in paragraph (1)(A), including performance standards and measures for data centers and information systems technologies, goals and schedules for achieving such matters, and an estimate of cost savings anticipated through implementation of the plan.

(ii) A Department-wide strategy for each of the following:

(I) Desktop, laptop, and mobile device virtualization.

(II) Transitioning to cloud computing.

(III) Migration of Defense data and government-provided services from Department-owned and operated data centers to cloud computing services generally available within the private sector that provide a better capability at a lower cost with the same or greater degree of security.

(IV) Utilization of private sector-managed security services for data centers and cloud computing services.

(V) A finite set of metrics to accurately and transparently report on data center infrastructure (space, power and cooling): age, cost, capacity, usage, energy efficiency and utilization, accompanied with the aggregate data for each data center site in use by the Department in excess of 100 kilowatts of information technology power demand.

(VI) Transitioning to just-in-time delivery of Department-owned data center infrastructure (space, power and cooling) through use of modular data center technology and integrated data center infrastructure management software.

AMENDMENT NO. 1266

(Purpose: To establish a training policy for Department of Defense energy managers)

At the end of subtitle B of title III, add the following:

SEC. 316. TRAINING POLICY FOR DEPARTMENT OF DEFENSE ENERGY MANAGERS.

(a) ESTABLISHMENT OF TRAINING POLICY.—The Secretary of Defense shall establish a training policy for Department of Defense energy managers designated for military installations in order to—

(1) improve the knowledge, skills, and abilities of energy managers by ensuring understanding of existing energy laws, regulations, mandates, contracting options, local renewable portfolio standards, current renewable energy technology options, energy auditing, and options to reduce energy consumption;

(2) improve consistency among energy managers throughout the Department in the performance of their responsibilities;

(3) create opportunities and forums for energy managers to exchange ideas and lessons learned within each military department, as well as across the Department of Defense; and

(4) collaborate with the Department of Energy regarding energy manager training.

(b) ISSUANCE OF POLICY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue the training policy for Department of Defense energy managers.

(c) BRIEFING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, or designated representatives of the Secretary, shall brief the Committees on Armed Services of the Senate and House of Representatives regarding the details of the energy manager policy.

AMENDMENT NO. 1276

(Purpose: To require a pilot program on the receipt by members of the Armed Forces of civilian credentialing for skills required of military occupational specialties)

At the end of subtitle D of title V, add the following:

SEC. 547. PILOT PROGRAM ON RECEIPT OF CIVILIAN CREDENTIALING FOR SKILLS REQUIRED FOR MILITARY OCCUPATIONAL SPECIALTIES.

(a) PILOT PROGRAM REQUIRED.—Commencing not later than nine months after the date of the enactment of this Act, the Secretary of Defense shall carry out a pilot program to assess the feasibility and advisability of permitting enlisted members of the Armed Forces to obtain civilian credentialing or licensing for skills required

for military occupational specialties (MOS) or qualification for duty specialty codes.

(b) ELEMENTS.—In carrying out the pilot program, the Secretary shall—

(1) designate not less than three or more than five military occupational specialities or duty speciality codes for coverage under the pilot program; and

(2) permit enlisted members of the Armed Forces to obtain the credentials or licenses required for the specialities or codes so designated through civilian credentialing or licensing entities, institutions, or bodies selected by the Secretary for purposes of the pilot program, whether concurrently with military training, at the completion of military training, or both.

(c) REPORT.—Not later than one year after commencement of the pilot program, the Secretary shall submit to Congress a report on the pilot program. The report shall set forth the following:

(1) The number of enlisted members who participated in the pilot program.

(2) A description of the costs incurred by the Department of Defense in connection with the receipt by members of credentialing or licensing under the pilot program.

(3) A comparison the cost associated with receipt by members of credentialing or licensing under the pilot program with the cost of receipt of similar credentialing or licensing by recently-discharged veterans of the Armed Forces under programs currently operated by the Department of Veterans Affairs and the Department of Labor.

(4) The recommendation of the Secretary as to the feasibility and advisability of expanding the pilot program to additional military occupational specialties or duty specialty codes, and, if such expansion is considered feasible and advisable, a list of the military occupational specialties and duty specialty codes recommended for inclusion the expansion.

AMENDMENT NO. 1280

(Purpose: To require the Secretary of Defense to submit, with the budget justification materials supporting the Department of Defense budget request for fiscal year 2013, information on the implementation of recommendations made by the Government Accountability Office with respect to the acquisition of launch services through the Evolved Expendable Launch Vehicle program)

At the end of subtitle E of title VIII, add the following:

SEC. 889. IMPLEMENTATION OF ACQUISITION STRATEGY FOR EVOLVED EXPENDABLE LAUNCH VEHICLE.

(a) IN GENERAL.—The Secretary of Defense shall submit, with the budget justification materials submitted to Congress in support of the budget of the Department of Defense for fiscal year 2013 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), the following information:

(1) A description of how the strategy of the Department to acquire space launch capability under the Evolved Expendable Launch Vehicle program implements each of the recommendations included in the Report of the Government Accountability Office on the Evolved Expendable Launch Vehicle, dated September 15, 2011 (GAO–11–641).

(2) With respect to any such recommendation that the Department does not implement, an explanation of how the Department is otherwise addressing the deficiencies identified in that report.

(b) ASSESSMENT BY COMPTROLLER GENERAL OF THE UNITED STATES.—Not later than 60 days after the submission of the information required by subsection (a), the Comptroller General of the United States shall submit to the congressional defense committees an assessment of that information and any additional findings or recommendations the Comptroller General considers appropriate.

AMENDMENT NO. 1298

(Purpose: To extend the time limit for submittal of claims under TRICARE for care provided outside the United States)

At the end of subtitle A of title VII, add the following:

SEC. 705. EXTENSION OF TIME LIMIT FOR SUBMITTAL OF CLAIMS UNDER THE TRICARE PROGRAM FOR CARE PROVIDED OUTSIDE THE UNITED STATES.

Section 1106(b) of title 10, United States Code, is amended by striking ''not later than'' and all that follows and inserting the following: ''as follows:

''(1) In the case of services provided outside the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, by not later than three years after the services are provided.

''(2) In the case of any other services, by not later than one year after the services are provided.''.

AMENDMENT NO. 1301

(Purpose: To authorize the award of the Distinguished Service Cross for Captain Fredrick L. Spaulding for acts of valor during the Vietnam War)

At the end of subtitle I of title V, add the following:

SEC. 586. AUTHORIZATION FOR AWARD OF THE DISTINGUISHED SERVICE CROSS FOR CAPTAIN FREDRICK L. SPAULDING FOR ACTS OF VALOR DURING THE VIETNAM WAR.

(a) AUTHORIZATION.—Notwithstanding the time limitations specified in section 3744 of title 10, United States Code, or any other time limitation with respect to the awarding of certain medals to persons who served in the United States Armed Forces, the Secretary of the Army is authorized to award the Distinguished Service Cross under section 3742 of such title to Captain Fredrick L. Spaulding for acts of valor during the Vietnam War described in subsection (b).

(b) ACTS OF VALOR DESCRIBED.—The acts of valor referred to in subsection (a) are the actions of Fredrick L. Spaulding, on July 23, 1970, as a member of the United States Army serving in the grade of Captain in the Republic of Vietnam while assigned with Headquarters and Headquarters Company, 3d Brigade, 101st Airborne Division.

AMENDMENT NO. 1303

(Purpose: To authorize the exchange with the United Kingdom of certain F–35 Lightning II Joint Strike Fighter aircraft)

At the end of subtitle D of title I, add the following:

SEC. 158. AUTHORITY FOR EXCHANGE WITH UNITED KINGDOM OF SPECIFIED F–35 LIGHTNING II JOINT STRIKE FIGHTER AIRCRAFT.

(a) AUTHORITY.—

(1) EXCHANGE AUTHORITY.—In accordance with subsection (c), the Secretary of Defense may transfer to the United Kingdom of Great Britain and Northern Ireland (in this section referred to as the ''United Kingdom'') all right, title, and interest of the United States in and to an aircraft described in paragraph (2) in exchange for the transfer by the United Kingdom to the United States of all right, title, and interest of the United Kingdom in and to an aircraft described in paragraph (3). The Secretary may execute the exchange under this section on behalf of the United States only with the concurrence of the Secretary of State.

(2) AIRCRAFT TO BE EXCHANGED BY UNITED STATES.—The aircraft authorized to be transferred by the United States under this subsection is an F–35 Lightning II aircraft in the Carrier Variant configuration acquired by the United States for the Marine Corps under a future Joint Strike Fighter program contract referred to as the Low-Rate Initial Production 6 contract.

(3) AIRCRAFT TO BE EXCHANGED BY UNITED KINGDOM.—The aircraft for which the exchange under paragraph (1) may be made is an F–35 Lightning II aircraft in the Short-Take Off and Vertical Landing configuration that, as of November 19, 2010, is being acquired on behalf of the United Kingdom under an existing Joint Strike Fighter program contract referred to as the Low-Rate Initial Production 4 contract.

(b) FUNDING FOR PRODUCTION OF AIRCRAFT.—

(1) FUNDING SOURCES FOR AIRCRAFT TO BE EXCHANGED BY UNITED STATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), funds for production of the aircraft to be transferred by the United States (including the propulsion system, long lead-time materials, the production build, and deficiency corrections) may be derived from appropriations for Aircraft Procurement, Navy, for the aircraft under the contract referred to in subsection (a)(2).

(B) EXCEPTION.—Costs for flight test instrumentation of the aircraft to be transferred by the United States and any other non-recurring and recurring costs for that aircraft associated with unique requirements of the United Kingdom may not be borne by the United States.

(2) FUNDING SOURCES FOR AIRCRAFT TO BE EXCHANGED BY UNITED KINGDOM.—Costs for upgrades and modifications of the aircraft to be transferred to the United States that are necessary to bring that aircraft to the Low-Rate Initial Production 6 configuration under the contract referred to in subsection (a)(2) may not be borne by the United States.

(c) IMPLEMENTATION.—The exchange under this section shall be implemented pursuant to the memorandum of understanding titled ''Joint Strike Fighter Production, Sustainment, and Follow-on Development Memorandum of Understanding'', which entered into effect among nine nations including the United States and the United Kingdom on December 31, 2006, consistent with section 27 of the Arms Export Control Act (22 U.S.C. 2767), and as supplemented as necessary by the United States and the United Kingdom.

AMENDMENT NO. 1315

(Purpose: To require the Secretary of Defense to submit to Congress a long-term plan for maintaining a minimal capacity to produce intercontinental ballistic missile solid rocket motors)

At the end of subtitle H of title X, add the following:

SEC. 1088. LONG-TERM PLAN FOR MAINTENANCE OF INTERCONTINENTAL BALLISTIC MISSILE SOLID ROCKET MOTOR PRODUCTION CAPACITY.

The Secretary of Defense shall submit, with the budget justification materials submitted to Congress in support of the budget of the Department of Defense for fiscal year 2013 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), a long-term plan for maintaining a minimal capacity to produce intercontinental ballistic missile solid rocket motors.

AMENDMENT NO. 1317

(Purpose: To require a report on the analytic capabilities of the Department of Defense regarding foreign ballistic missile threats)

At the end of subtitle G of title X, add the following:

SEC. 1080. REPORT ON DEFENSE DEPARTMENT ANALYTIC CAPABILITIES REGARDING FOREIGN BALLISTIC MISSILE THREATS.

(a) REPORT REQUIRED.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the analytic capabilities of the Department of Defense regarding threats from foreign ballistic missiles of all ranges.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) A description of the current capabilities of the Department of Defense to analyze threats from foreign ballistic missiles of all ranges, including the degree of coordination among the relevant analytic elements of the Department.

(2) A description of any current or foreseeable gaps in the analytic capabilities of the Department regarding threats from foreign ballistic missiles of all ranges.

(3) A plan to address any gaps identified pursuant to paragraph (2) during the 5-year period beginning on the date of the report.

(c) FORM.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

AMENDMENT NO. 1324

(Purpose: To extend the authorization for a military construction project for the Air National Guard to relocate a munitions storage complex at Gulfport-Biloxi International Airport, Mississippi)

On page 554, insert after the table relating to Air National Guard the following:

Air National Guard: Extension of 2009 Project Authorization

State	Installation or Location	Project	Amount
Mississippi	Gulfport-Biloxi International Airport	Relocate munitions storage complex	$3,400,000

AMENDMENT NO. 1326

(Purpose: To require exploration of opportunities to increase foreign military training with allies at test and training ranges in the continental United States)

In section 331(b)(2), strike subparagraphs (K) and (L) and insert the following:

(K) identify parcels with no value to future military operations;

(L) propose a list of prioritized projects, easements, acquisitions, or other actions, including estimated costs required to upgrade the test and training range infrastructure, taking into consideration the criteria set forth in this paragraph; and

(M) explore opportunities to increase foreign military training with United States allies at test and training ranges in the continental United States.

AMENDMENT NO. 1332

(Purpose: To require a report on the approval and implementation of the Air Sea Battle Concept)

At the end of subtitle G of title X, add the following:

SEC. 1080. REPORT ON APPROVAL AND IMPLEMENTATION OF AIR SEA BATTLE CONCEPT.

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the approved Air Sea Battle Concept, as required by the 2010 Quadrennial Defense Review Report, and a plan for the implementation of the concept.

(b) ELEMENTS.—The report required by subsection (a) shall include, at a minimum, the following:

(1) The approved Air Sea Battle Concept.

(2) An identification and assessment of risks related to gaps between Air Sea Battle Concept requirements and the current force structure and capabilities of the Department of Defense.

(3) The plan and assessment of the Department on the risks to implementation of the approved concept within the current force structure and capabilities.

(4) A description and assessment of how current research, development, and acquisition priorities in the program of record meet or fail to meet current and future requirements for implementation of the Air Sea Battle Concept.

(5) An identification, in order of priority, of the five most critical force structure or capabilities requiring increased or sustained investment for the implementation of the Air Sea Battle Concept.

(6) An identification, in order of priority, of how the Department will offset the increased costs for force structure and capabilities required by implementation of the Air Sea Battle Concept, including an explanation of what force structure, capabilities, and programs will be reduced and how potentially increased risks based on those reductions will be managed relative to other strategic requirements.

(7) A description and assessment of the estimated incremental increases in costs and savings from implementing the Air Sea Battle Concept, including the most significant reasons for those increased costs and savings.

(8) A description and assessment of the contributions required from allies and other international partners, including the identification and plans for management of related risks, in order to implement the Air Sea Battle Concept.

(9) Such other matters relating to the development and implementation of the Air Sea Battle Concept as the Secretary considers appropriate.

(c) FORM.—The report required by subsection (a) shall be submitted in both unclassified and classified form.

Mr. LEVIN. I thank Senator MCCAIN and our staffs. We are going to continue to work to clear additional amendments following the cloture vote. We are now voting on cloture. We all as leaders and managers, of course, hope that this will pass.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Madam President, I thank my colleagues for allowing this package of these amendments to go through. We will be working on additional amendments that we can agree to.

We are about to vote on cloture, and if cloture is invoked, I want to inform my colleagues, those amendments that are pending and filed will be eligible for votes, and we will be using the chronology of when they were filed. We will be notifying every Member who has an amendment that is filed and pending and germane. We will try to arrange time agreements for those who want votes. We will be looking to also see areas where we could agree and adopt an additional package. It is my understanding that if cloture is invoked, we will have 30 hours, and during that period we wish to get these amendments resolved.

I remind my colleagues that if the 30 hours expires and there are still pending germane filed amendments, there will have to be additional votes taken at some time after the 30 hours. So I would urge my colleagues who have filed, pending, germane amendments that we sit down during the cloture vote or just afterward and try and arrange a schedule of votes that is most convenient for them in keeping with their schedule.

Again, I thank my colleagues for allowing that package to go through. Those are very important amendments which have been agreed to by both sides. I realize we have a long way to go, but this is a significant step forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, the only additional suggestion I would have is that Members who come here who have amendments that are both pending and germane, assuming we get cloture, if they could check with us, either side here, to see where they are on the chronology, they will get a feel as to where they are, because we are going to attempt to move down the chronology as amendments were made pending.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 1867, the National Defense Authorization Act for Fiscal Year 2012.

Harry Reid, Carl Levin, Kent Conrad, Richard Blumenthal, Claire McCaskill, Kay R. Hagan, Joe Manchin III, Kirsten E. Gillibrand, Mary L. Landrieu, Ben Nelson, Joseph I. Lieberman, Bill Nelson, Jim Webb, Jack Reed, Christopher A. Coons, Mark Begich, Jeanne Shaheen.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call is waived.

The question is, is it the sense of the Senate that debate on S. 1867, the National Defense Authorization Act for fiscal year 2012 shall be brought to a close.

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The yeas and nays resulted—yeas 88, nays 12, as follows:

[Rollcall Vote No. 212 Leg.]

YEAS—88

Akaka	Graham	Moran
Alexander	Hagan	Murkowski
Ayotte	Harkin	Murray
Barrasso	Hatch	Nelson (NE)
Baucus	Heller	Nelson (FL)
Begich	Hoeven	Portman
Bennet	Hutchison	Pryor
Bingaman	Inhofe	Reed
Blumenthal	Inouye	Reid
Blunt	Isakson	Roberts
Boozman	Johanns	Rockefeller
Boxer	Johnson (SD)	Sanders
Brown (MA)	Johnson (WI)	Schumer
Brown (OH)	Kerry	Sessions
Cantwell	Kirk	Shaheen
Cardin	Klobuchar	Shelby
Carper	Kohl	Snowe
Casey	Kyl	Stabenow
Chambliss	Landrieu	Tester
Coats	Lautenberg	Thune
Cochran	Leahy	Toomey
Collins	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Coons	Lugar	Vitter
Corker	Manchin	Warner
Durbin	McCain	Webb
Enzi	McCaskill	Whitehouse
Feinstein	McConnell	Wicker
Franken	Menendez	
Gillibrand	Mikulski	

NAYS—12

Burr	DeMint	Paul
Coburn	Grassley	Risch
Cornyn	Lee	Rubio
Crapo	Merkley	Wyden

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 88, the nays are 12. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Nebraska.

Mr. NELSON of Nebraska. Madam President, I want to begin my comments today on this year's National Defense Authorization Act by thanking all the members of the Strategic Forces Subcommittee. I would especially like to thank the subcommittee's ranking member, Senator SESSIONS, for the close working relationship we have shared. It is always a pleasure to work with my friend from Alabama.

The annual National Defense Authorization Act is one of the most important pieces of legislation Congress passes every year, and this year marks what I hope will be the passing of the Defense Authorization Act for the 50th year in a row. I would like to give my colleagues a brief overview of the provisions in the National Defense Authorization Act we are considering today as they relate to the Strategic Forces Subcommittee.

The jurisdiction of the subcommittee includes missile defense, strategic forces, space programs, intelligence programs, cybersecurity, the defense-funded portions of the Department of Energy, and the Defense Nuclear Facilities Safety Board.

In preparing the provisions in the bill that relate to areas of our jurisdiction, the subcommittee held six hearings on defense programs at the Department of Energy, strategic nuclear forces, missile defense, and space programs at the Department of Defense, and implementation of the New START treaty. The subcommittee's provisions were adopted in a bipartisan manner. I again want to thank Senator SESSIONS, our ranking member, and his staff and the professional staff on the Armed Services Committee for the close work we have enjoyed with them working on the hearings and preparing this bill.

Our committee oversees the nuclear strategic forces. As many know, the U.S. Strategic Command—in my home State of Nebraska—is charged with our Nation's nuclear deterrence.

It is important to note that this bill strengthens and improves our Nation's nuclear command and control and all the missions that fall under USSTRATCOM by providing the full authorization of the new command and control complex. Reliable and assured command, control, and communication from the President to the nuclear forces is fundamental to our strategic deterrent, and the new command and control complex at Offutt Air Force Base in Nebraska will provide this mission surety.

In the area of missile defense, we have funded the program at $10.1 billion, including the full $1.2 billion requested for the Ground-Based Midcourse Defense System. We have also included a provision that would set forth the sense of this Congress that it is essential for the Ground-Based Midcourse Defense System to achieve the levels of reliability, availability, sustainability, and operational performance necessary to ensure that the United States remains protected.

The bill also supports the development and deployment of the European Phased Adaptive Approach, EPAA, to missile defense. This is the U.S. Missile Defense Program to defend our military forces and NATO allies in Europe from Iranian missile threats. The Defense Department has nearly completed phase 1 of the EPAA with an Aegis Ballistic Missile Defense, BMD, ship now patrolling the Mediterranean and a missile defense radar now located in Turkey. The United States also successfully negotiated the agreements with Poland and Romania to deploy land-based Aegis BMD Systems in their countries in future phases of the EPAA.

The committee also made a few funding adjustments in the new bill to reflect the fact-of-life changes since the Armed Services Committee's markup of its earlier bill, S. 1253.

For example, the recent flight test failure of the Aegis Ballistic Missile Defense System, with the Standard Missile-3 Block IB interceptor, means the program will have a substantial delay before it can begin procurement. The program will also need additional research and development funds to fix the flight test problems. So the bill adjusts the funding to permit such fixes.

In addition, the Terminal High Altitude Area Defense, or THAAD, System has experienced slower production than expected and will not be able to use all the funds planned and requested in the budget. Consequently, the bill adjusts the funding accordingly.

In mid-2009, Secretary Gates directed U.S. Strategic Command to stand up U.S. Cyber Command as a subunified command. The command reached full operational capability a year ago.

Since that time, the Chairman of the Joint Chiefs of Staff characterized cyber warfare as one of the two ''existential threats'' to America, and a former Director of National Intelligence publicly proclaimed his belief that adversaries could take down the Nation's power grid or devastate the country's financial system. Very damaging intrusions into government, military, and industrial networks are almost a daily occurrence, resulting in the loss of precious and expensive advanced technology—the technology that fuels economic growth and sustains our security.

Over the last 2 years, the Strategic Forces Subcommittee has supported legislation to accelerate the arduous process of developing policies and doctrine to guide our responses to cyber attacks and to govern the use of cyber weapons by our own military forces. The subcommittee has also sponsored legislation to begin to close the gap in cyber defenses by developing new technological approaches in partnership with America's cutting-edge information technology sector.

Moving on to space programs, the bill would provide the Air Force the authority to purchase in a block buy, using a fixed price contract, the next two Advanced Extremely High Frequency satellites—an important part of the nuclear command and control system. This will result in a 20-percent savings.

We have authorized the President's level of funding for the nuclear modernization program at the DOE's National Nuclear Security Administration, but we are fully aware that the Budget Control Act that was passed last summer has reduced the levels that can be appropriated by some $400 million. I would note that even with this reduction, it is still a 5-percent increase over last year's levels. I will be working with my colleagues to carefully evaluate the President's request for fiscal year 2013 in light of the commitments both the Congress and the administration made under the New START treaty for modern nuclearization.

This Congress made commitments for modernization, and moving forward we must honor those commitments. Most importantly, we need to continue to ensure that our stockpile is safe, reliable, and works as intended by the military so that we maintain our strategic deterrent well into the 21st century.

We understand the budget climate that we are in, and it is likely that realistic adjustments must be made as a

result of the mandated reductions to defense spending in the Budget Control Act. But we will work with the Department of Defense and U.S. Strategic Command to ensure that pressing priorities are met and our strategic deterrence are not undercut.

Let me again thank my colleague, Senator SESSIONS, and our staff for the productive and bipartisan relationship we have had on this subcommittee and also all members of the subcommittee. I look forward to working with our colleagues to pass this important legislation.

Madam President, I yield the floor.

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

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

The legislative clerk proceeded to call the roll.

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

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

CUBAN OIL DRILLING

Mr. NELSON of Florida. I want to speak while we are in this pause on the Defense bill about a looming problem that the entire eastern seaboard of the United States has; that is, the Spanish drilling company Repsol is bringing a rig in that has been constructed over in Asia, and sometime early next year they are going to drill in deep water off the north coast of Cuba.

The Spanish drilling company is a very competent company. As a matter of fact, they adhere to safety standards that are required by the United States because they drill in the Gulf of Mexico in American waters. So if there is a responsible party in drilling, then we have one. However, there are other leases the Cuban Government is granting to other countries for drilling that may not adhere to the safe standards that are set that Repsol will agree to abide by, the same safety standards that they use drilling in American waters and have agreed in principle that they will follow a plan of action with the U.S. Secretary of the Interior in the case that there should be a spill.

All of that is well and good, but there are other companies coming down the line drilling in other leases that may not adhere to their standards.

If there were a spill off the north coast of Cuba, guess who is going to be affected because that is where the Gulf Stream comes along, and then flows northeast, parallels the Florida Keys and all those delicate coral reefs, comes in and hugs the east coast of Florida from Miami all the way to Palm Beach, goes off the coast a few miles, hugs the coast all the way up to the middle of the peninsula at Fort Pierce, FL, and then parallels the eastern seaboard all the way up past Georgia, South Carolina, North Carolina, and then leaves, paralleling the eastern seaboard at Cape Hatteras, and goes off across the Atlantic and ends up in the northern part of Europe. Now, if there were a major spill—it doesn't have to be to the magnitude of the Deepwater Horizon spill off of Louisiana. If there were a major spill and all that oil is carried in the Gulf Stream and it comes into the coast at Miami, Fort Lauderdale, and Palm Beach—you know what happened to the tourism industry all along the gulf coast when, in fact, on some of those coasts there was not much oil at all, but people didn't come as tourists because they thought the beaches were covered.

Can you imagine the economic calamity that would occur as a result of a spill? Therefore, my colleague, MARCO RUBIO, and I and other Senators—in particular, Senator MENENDEZ of New Jersey—have filed legislation that will require financial responsibility from a foreign source. If they spill in foreign waters, there would be a cause of action against them if damage is done to the interest of the United States, be it the governments of the United States, be it private individuals, or be it private companies.

If we do not have a cause of action where there is liability as a result of a spill, by whomever, in foreign waters, and if it comes in the scenario that I have laid out, which is real spilling oil off the north coast of Cuba in a major oil disaster that is carried by the Gulf Stream up the eastern seaboard of the United States—if we do not have financial responsibility, then there is no incentive for those foreign oil companies drilling to adhere to safety standards and, if there is a spill, to quickly adhere to a spill cleanup plan.

Talking about the economic disaster that occurred as a result of the gulf oilspill in the Deepwater Horizon, it would pale in comparison to the economic disaster that would occur in such a spill that would be carried by the Gulf Stream. It would not only affect Florida, it would affect Georgia, South Carolina, and North Carolina. If there were any eddy current that would carry it back in, it would take it right on into the Chesapeake on up into Cape May in New Jersey, and you see the particular consequences.

As a matter of fact, the gulf stream goes by Bermuda. It could have devastating effects on that country.

I hope our Senators, coming to this new reality, will realize that we have to remember the terrible consequences as a result of a major oil spill. Remember, this was a company off of Louisiana that was not adhering to the highest safety standards, and look at the disaster that occurred from that. Remember how they tried to hide the amount of oil that was being spilled because it was 5,000 feet below the surface of the water? It was not until we got the streaming video that the scientists could calculate that it wasn't 1,000 barrels a day it was dumping into the gulf, it was 50,000 barrels a day. As a result, before they got that well capped, it ended up being almost 5 million barrels of oil in the Gulf of Mexico.

We don't even know the future consequences because there is a lot of oil out there sloshing around, and there is a lot of it down there deep. We don't know what is happening down there. We don't know what is happening to the critters. We know what is happening to some of the critters in the marshes where the oil has now mixed up into the sediment and the critters are down there digging around, and we are seeing the effect of that when we check the gills of these fish that are being hatched, living off the sediment. The consequences are not good.

It is the responsible thing to do, to make foreign oil companies drilling in foreign waters understand there is going to be an economic consequence if they damage the economic interests of the United States. That is the bill Senator MENENDEZ, Senator MARCO RUBIO, and I have filed. I commend it to the consideration of the Senate.

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

The PRESIDING OFFICER (Mr. FRANKEN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. GILLIBRAND. 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. 1211

Mrs. GILLIBRAND. Mr. President, one of the reasons I came to Congress was to be a voice for our troops and our military families. They answer a call higher than any other, fighting to protect our country, our way of life, our values—all that we hold dear. Our men and women in uniform fight, put their lives on the line every day for us, and our job is to fight for them and ensure that when they come home, they have an opportunity to go to college, find a good-paying job, afford a new home, start a family, have access to quality health care.

After a decade of two wars in Iraq and Afghanistan, we have asked more of our military than ever before, including our National Guard and Reserves. Our Reserve components are deployed in record numbers, including serving in combat zones. While they serve alongside our Active-Duty military, our Guard and Reserve members do not have access to all of the assistance, services, and benefits that the troops they fight shoulder to shoulder with have. Currently, our Guard and National Reserve members are left largely on their own to find and obtain services that they need to recover from combat, rejoin their families, and adjust back to normal civilian life. This needs to change.

I am offering amendment No. 1211, together with my colleague, Senator BLUNT of Missouri, to give our National Guard and Reserve members the services they not only deserve but desperately need. This amendment would expand access to health care, family and financial counseling, and other

services to which the Guard and Reserve members currently do not have full access. My amendment extends nationwide a highly successful program that is existing right now in Vermont. It would set up a system of support of fellow veterans across the country serving as outreach specialists, people our Guard and Reserve members can talk and relate to, and help them get access to the services they need. It would give the Defense Department the additional resources it needs to provide counseling and reintegration services for National Guard and Reserve members.

This amendment has the strong support of the National Guard Association, which said this amendment would help ensure that 448,000 National Guard men and women who have served in Iraq and Afghanistan since 9/11 are provided with the necessary services upon their return from war.

Members of the National Guard and Reserve are the citizen soldiers who step up and accomplish extraordinary acts of valor and bravery for our country. They are veterans. They deserve these services when they return because of the sacrifices they made and continue to make for our great country.

AMENDMENT NO. 1189

I would also like to speak in support of the amendment of Senator MURRAY, amendment No. 1189.

Mental health disorders, substance abuse, and traumatic brain injuries affect nearly 20 percent of all servicemembers who have been deployed to Iraq and Afghanistan—that is one in five. But, unlike Active-Duty servicemembers, Guard and Reserve members do not have direct access to the counseling services they need, putting enormous strain on these veterans and the families who stand by them and who have stood by them.

The amendment of Senator MURRAY would embed mental health professionals in armories and Reserve centers, bringing mental health support within reach for Guard and Reserve members where and when they need it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BARRASSO. 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. BARRASSO. Mr. President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

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

A SECOND OPINION

Mr. BARRASSO. Mr. President, I come to the floor, as I have over the past year and a half, as a physician who has practiced medicine in Wyoming for a quarter of a century. I go home every weekend and visit with my former patients, my former colleagues. As I talk to people around the State of Wyoming about the newly passed health care law, their concerns are those we have heard from around the country and certainly those on the Senate floor. That is why I keep coming back to the Senate floor with a doctor's second opinion about the health care law.

What we know patients would like in terms of health care is that the care they get is the care they need from the doctor they want, at a cost they can afford. For many people across this country, a cost they can afford is a major issue, which is why I think so many people were happy to hear the President say, in his initial talk about what he was proposing for health care in this country, we need to get the cost of health care down. He said: If his bill were to pass and become law, the cost of care would drop about $2,500 per family across the United States. That is what people were looking forward to.

In so many ways, the President overpromised and underdelivered because what people have seen is the cost of their health care has continued to go up as a result of the President's health care law.

The States around the country are now looking at ways to deal with this health care law. Many States have set up committees to deal with it based on their State legislatures, and we have done the same thing in my home State of Wyoming. In Wyoming, we have asked for a study to be done to take a look at what the impacts of the President's health care law would be on health care and the cost of care in our State. A report was authored by a Massachusetts group called Gorman Actuarial. The report examined how the health care reform law passed last year by Congress is going to affect the State of Wyoming specifically. This information is being used in Wyoming by our Health Benefits Exchange Steering Committee. That is the committee which is reviewing various options for a State-run health exchange, and that is what people are looking at: What is the best thing to do for our State.

As they have come upon this work effort, what they are telling us is about the individual market for insurance—people who end up buying insurance individually because they don't get it necessarily through work; purchasing insurance in different ways, but they have to buy their insurance on the individual market. This report says that in Wyoming, as a result of the health care law, the current individual market enrollees will see average premiums increase by 30 to 40 percent based on the components of the law. Some supporters of the law say: Well, they are going to get more insurance than they would otherwise, and that is true because they are going to get a government-mandated amount of insurance which may be a lot more insurance than they want or need. That is one of the fundamental problems of this health care law, government-mandated levels of insurance. Many people in Wyoming feel they don't want that level of care, which is why I believe individuals should be able to opt out of this provision of the health care law. States ought to be able to opt out. States and individuals ought to be able to receive a waiver. But right now, that is not happening. So what we are seeing in Wyoming is a significant increase in the cost—not the decrease the President promised but an increase in the cost of health insurance beyond what it would have gone up had there not been a health care law at all.

I talk to young people around the State—and I met with a number of young people from my State just the other evening—and they ask about this and how it is going to affect the young. What we see is their rates are going to go up quite a bit. A lot has to do with the fact that there is—that the lowest amount they can end up charging someone who is young and then compare that to someone who is older, the ratio is 3 to 1. So for someone who is not very healthy and older, they will only be paying three times what a younger person will be paying based on what passed this House and this Senate. That means that for those younger people, they are going to pay a lot more than they necessarily would based on their own good health, exercise habits, fitness, diet, and in terms of what their real costs ought to be to be insured.

I guess it is not a surprise when we saw the election results coming out of the State of Ohio Tuesday a few weeks ago about the specific individual mandate that said everyone has to buy insurance. On that day, on election day in Ohio, 66 percent of the voters said they didn't want this government mandate, a mandate that people must buy government-approved insurance. They don't want that to apply to them. Two-thirds of the people in Ohio on election day voted against the mandate, which is not unusual to see because we have seen that across the country. We have seen that in Missouri last year on balloting day. We saw it in the new national polls.

This health care law is less popular now than it was the day it was signed. People continue to want to be able to get out from underneath the health care law. That is why I continue to come to the Senate floor week after week with a doctor's second opinion as more information becomes available, just as this study in Wyoming became available. The President's promise, ''If you like what you have you can keep it,'' we are finding out is not true, and the fact that the President promised health care premiums would drop for families by $2,500 per family is not true.

That is why I continue to believe this health care law is bad for patients, it is bad for providers—the nurses and the doctors who take care of those patients—and it is bad for the taxpayers

of this great country. That is why it is time to repeal and replace this broken health care law.

Mr. President, I yield the floor.

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. UDALL of Colorado. Mr. 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. 1125 AND 1126

Mr. UDALL of Colorado. Mr. President, I rise today in support of amendments Nos. 1125 and 1126, which have been offered by the Intelligence Committee chairwoman, Senator FEINSTEIN.

While the Senate did not adopt my amendment that would have instructed the Senate to consider these detainee matters separately from the Defense authorization bill, I believe Senator FEINSTEIN's amendments make important changes and improvements to the bill—improvements that may yet avoid a problem with a Presidential veto.

I thank the Presiding Officer for his comments yesterday on the detainee provisions that are in this proposed legislation. I urge my colleagues to support these amendments. I want to be clear. I intend to support them.

I have serious concerns going forward about the unintended consequences of enacting the detainee provisions in subtitle D of the Defense Authorization Act. These amendments help to alleviate some of my concerns.

I wish to, in the context of the debate we are having, note that in addition to the Secretary of Defense, Leon Panetta; the Director of National Intelligence, General Clapper; and FBI Director Mueller—who all oppose the detainee provisions—CIA Director Petraeus's senior staff has indicated they, too, oppose the detention provisions. The CIA believes it is important to preserve the current U.S. Government's prosecution flexibility that has allowed both the Bush and the Obama administrations to effectively combat those who seek to do us harm.

After the vote yesterday, I had a chance to talk with a number of Members on the other side of the aisle and, frankly, on the other side of the debate, because this had bipartisan support on both sides of the debate. But the folks I talked to told me they did not support my amendment, but they were still interested in making some more targeted changes to the detention provisions. I hope those colleagues will take a close look at what Senator FEINSTEIN is offering here today.

Let me speak to specifically what she would help resolve with her amendments. There are two important shortcomings that still exist in the current bill. One of her amendments would preserve the flexibility of the military, law enforcement, and intelligence agencies to collaborate, without undue limitation, in any investigation, interrogation, and prosecution of suspected terrorists. The other amendment would make it clear that American citizens cannot be held indefinitely in military detention without a trial. Again, I know the Presiding Officer spoke powerfully to that very legitimate and important concern yesterday.

The current language in the bill—which is why I took to the floor yesterday and I know on other occasions to make this point—I believe will disrupt the investigation, interrogation, and prosecution of terror suspects by forcing the military to interrupt FBI, CIA, or other counterterrorism agency operations—against each of these organizations' recommendations, including the military's.

In sum, we are going to create an unworkable bureaucratic process that would take away the intelligence community's and the counterterrorism community's capabilities to make critical and, in some cases, split-second decisions about how best to save Americans' lives.

Further—I cannot emphasize this enough—although my friends on the other side of this debate argue otherwise, the detainee provisions do allow for the indefinite military detention of American citizens who are accused of planning or participating in terror attacks. Simply accused—that cuts directly against values we hold dear: innocent until proven guilty, presumption of innocence. That is why this is such an important debate.

Let me be clear. There are American citizens who have collaborated with our enemies. There are American citizens who have participated in attacks against our soldiers and civilians. Those Americans are traitors. They should be dealt with, and we already have a system for ensuring they are brought to justice and made to pay a very heavy price for their crimes. That system is working. However, even in the darkest hours, we must ensure that our Constitution prevails. We do ourselves a grave disservice by allowing for any citizen to be locked up indefinitely without trial—no matter how serious the charges may be against them. Doing so may be politically expedient, but we risk losing our principles of justice and liberty that have kept our Republic strong, and it does nothing to make us safer. Our national security leadership has even said if we implement these provisions, it could make us less safe.

If I might reflect a bit on what we have learned. At least in three different wars—three wars we all learn about in our history classes: the Civil War, World War I, and World War II—as we look back at those three wars, we made the decision and we drew the conclusion as Americans that we overreached, that we constricted civil liberties. President Lincoln limited habeas corpus in the Civil War. I know the Presiding Officer is familiar with the Palmer Raids during World War I and the aftermath of World War I. Of course, we know all too well the history of the interment of Japanese Americans.

I am not suggesting these provisions, as they are now included in this bill, would result in historians drawing those similar kinds of conclusions 10 or 20 or 30 years from now. But why not be safe? Why not take the time to ensure that we keep faith with those core values that make America what it is? That is all I am asking. I think that is all Senator FEINSTEIN is asking for us to do. That is what the 38 Senators who joined us yesterday to vote for my commonsense approach were saying as well.

In sum, Senator FEINSTEIN has offered some small changes. It would help alleviate some of the justifiable concerns with these provisions. As I have said, I continue to worry that there will be unintended consequences to enacting the detainee provisions altogether. However, we can make some of these small improvements to avoid harming our counterterrorism activities and preventing the loss of rights and freedoms granted to all Americans by our Constitution.

In closing, I urge all of our colleagues to support Senator FEINSTEIN's amendments.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, briefly, while my friend from Colorado is on the floor, he said: Take the time. We have been taking time, I tell the Senator from Colorado, since September 11, 2001, when the United States of America was attacked. We passed the Detainee Treatment Act. We passed other pieces of legislation—the PATRIOT Act, and others. Take the time?

I say, in all due respect, we have taken a lot of time—in fact, hundreds and hundreds of hours of debate, discussion—as to how to address this threat to the United States of America.

If the Senator from Colorado supports the Feinstein amendment, I agree with that. I cannot agree that we have not taken the time. I personally have taken—I cannot tell you—untold hours addressing this issue of how we treat detainees. We may have a fundamental disagreement, but I do reject the argument that we have not taken the time.

I yield the floor.

Mr. UDALL of Colorado. Would the Senator respond to a question?

Mr. MCCAIN. Go ahead.

Mr. UDALL of Colorado. As the Senator from Arizona knows, I have the utmost respect for the time the Senator has spent in this very important area. I think what I have been trying to say is that in regard to this particular set of detainee provisions, I want to ensure that all of the questions the FBI Director, General Clapper, Secretary Panetta, and others have raised about how these provisions would actually be applied—I have no question that the intent is spot on—I just am aware that there have been some concerns raised about how these new provisions would actually be applied. I

think Senator FEINSTEIN's amendments—and I do not know where the Senator from Arizona stands at this point—may provide some greater clarification. I know there have been some conversations on the floor as to how we will deal with these amendments. So I appreciate the Senator's comments.

Mr. MCCAIN. I thank the Senator from Colorado for his clarification, and I think I understand more clearly his rationale for his support of the amendment.

I yield the floor.

Mr. UDALL of Colorado. I yield the floor as well and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

NORTH AMERICAN ENERGY SECURITY ACT OF 2011

Mr. HOEVEN. Mr. President, I rise to speak on behalf of the North American Energy Security Act of 2011. This is legislation I am sponsoring, along with Senator LUGAR, Senator VITTER, Senator JOHANNS, and 37 other cosponsors—we already have 37 cosponsors on this legislation. This is a solutions-oriented bill that addresses concerns along the route of the Keystone Pipeline. The Keystone Pipeline is designed to carry 700,000 barrels a day of oil from Alberta, Canada, from the oil sands area in Canada, to refineries in the United States along the gulf coast, both in Texas and in Louisiana.

This is a $7 billion high-tech pipeline that will make a huge difference for our country, both in terms of energy security and also job creation. This is a project, Keystone Pipeline, that I have been working on for quite some time, formerly as Governor of the State of North Dakota and now as part of this body, the Senate. There already exists a pipeline called the Keystone Pipeline, which was built by TransCanada, that goes from Alberta, Canada, all the way down to our refineries. This pipeline runs through the eastern part of North Dakota and on down to Paducah, IL, and other locations as well, bringing approximately 600,000 barrels a day of Canadian crude into the United States.

The Keystone XL project would also be constructed by TransCanada, and it would come down from the Alberta area in Canada down just along North Dakota's western border in eastern Montana and go on down to Cushing and, as I said, to the refineries along the gulf coast.

In addition to bringing Canadian crude into the United States, it would also pick up crude along the way, crude produced in North Dakota. For example, in my home State of North Dakota, we will add 100,000 barrels a day of light sweet crude produced in the Williston Bay, centered in North Dakota and Montana, into that pipeline.

It is also designed to move our domestic crude to refineries as well. This is an important project that has been in the permitting process for 3 years. It has been going through the NEPA process, seeking an environmental impact statement and approval not only of EPA but of our State Department for 3 years.

We need to get it going because it is not only about reducing our dependance on oil from the Middle East, Venezuela, and other places in the world that are not friendly to the United States, but it is also a huge job creator. This project is a big-time job creator. We are talking about a $7 billion investment to build the pipeline. We are talking about 20,000 construction jobs right away. We are talking about 250,000 jobs over time. We are talking about $600 million in tax revenue to States and other localities.

This is a huge project, and we need to get it going. We particularly need to get it going at a time when we have 9 percent unemployment in our economy and more than 14 million people looking for work. So we need it to get that economic activity going. We need it to get people back to work. We need it for energy security. We need this project to reduce our dependance on oil from the Mideast.

Where is the project right now? The latest issue that has been raised as far as not getting approval for the project from the Department of State was that the State of Nebraska had environmental concerns that the pipeline, this 1,700-mile pipeline running from the oil sands in Canada all the way down to our refineries, that in its route through the State of Nebraska, it was going through an area that was environmentally sensitive and that would create a problem.

It is the High Plains area, the Sand Hills area of Nebraska. The concern was that with the Ogallala aquifer underlying that area and the irrigation for that farming and ranching region, that pipeline was a problem. In fact, there was opposition in the State of Nebraska to the project for that reason.

However, working with the company, TransCanada, and with the State of Nebraska, we have addressed that issue. Recently, the State of Nebraska had a special session. Gov. Dave Heineman called a special session in Nebraska. They held the session, and they came up with a plan, through their Department of Environmental Quality, working with the EPA, to reroute the project in the State of Nebraska.

On the basis of that rerouting and going through the approval process they developed between the State and Federal Government, on that basis, they have now addressed that concern in Nebraska. What this legislation does, it essentially is a solutions-based piece of legislation that says: OK, we are addressing these issues that have been raised. Now we need to move forward to capture the tremendous benefits for our country that this project provides: big-time job creation and reducing our dependance on Middle Eastern oil.

How does the bill work? Specifically, what it provides is that 60 days after its passage, the pipeline is approved so work can commence on the Keystone XL pipeline. That means 20,000 jobs. That means $7 billion in investment starts right away.

Then, as to the Wyoming piece, the State of Wyoming, together with EPA and the Federal Government, works through to reroute in Nebraska, so that a portion of the pipeline is then approved once they have gone through their process and decided on the route that meets the concerns in Nebraska.

In essence, this legislation, again, it is about addressing the concerns, solving the problem, and moving forward. This incorporates the special legislation and the solution that has been put forward by the State of Nebraska. It incorporates it right into the bill and enables us to move forward.

I have referenced the tremendous benefits in terms of energy security, in terms of job creation, in terms of working with our best friend and ally, Canada, in reducing our dependence on oil from places such as the Middle East and Venezuela.

But let me address one other point. Another point that has been brought up in opposition to the pipeline project is that the production of oil in Canada, in the oil sand region, produces CO_2. So that if this pipeline is built, some argue then there will be more CO_2 released because of production in Canada in the oil sands and that product coming into the United States.

But, in fact, without this pipeline, we will produce more CO_2. The point, let me underscore, is that this pipeline project will actually produce less CO_2 than we would otherwise produce without the creation of the pipeline.

Why is that? Let me go through it. If we do not have the pipeline, then instead of bringing that product into the United States, that product will still be produced. The production will still occur in Canada. But the pipeline, instead of coming into the United States, will be rerouted to the western border of Canada, and it will be sent to China.

That means large oil tankers will be hauling the product to refineries in China. The refineries in China produce higher emissions than our refineries. Plus, we have those ships that produce CO_2 as they haul all this product to the Far East. Furthermore, since that supply is not coming to the United States, we have to continue to import product from the Middle East and also from places such as Venezuela, as I mentioned.

In essence, we have supertankers bringing that product to the United States. So not only are we, in essence, now hauling the equivalent of 700,000 barrels a day around the world in supertankers and producing CO_2 emissions there, we are also taking this

product over to the Chinese refineries, where they have higher emissions.

My point is, the oil sands are still produced, are they not, under either scenario? But without this pipeline, we actually have higher CO_2 emissions on a global basis. Again, it is about addressing all the concerns that have been raised with this project, and it does that. At the same time, we create tens of thousands of jobs right off the bat. We create hundreds of millions in revenue for States and localities at a time when they badly need it and, again, we reduce our dependance on oil from parts of the world where it truly is an issue for our country in regards to energy security.

It is about common sense. It is about addressing all the issues that have been raised. I urge my colleagues to join me and the 37 sponsors and cosponsors that we already have on this legislation to pass it and help put people back to work, help get our economy going, and help improve our national energy security.

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. MENENDEZ. 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. 1414

Mr. MENENDEZ. Mr. President, I come to the floor to speak to a bipartisan amendment my colleague from Illinois, Senator KIRK, and I have offered. We believe it is one of the most critical issues facing our country in terms of national defense and global security. We have come together to the floor to speak about it.

One of the greatest threats—if not the greatest—to the security of our Nation and Israel is the concerted effort by the Government of Iran to acquire the technology and materials to create a nuclear weapon that will do two things:

First, we can be sure it will alter the balance of power in the Middle East.

Second, altering the balance of power with a nuclear Iran dedicated to the destruction of the State of Israel would most certainly lead to hostilities—hostilities that could spill over to engulf the entire region and well beyond.

We cannot, we must not, and we will not let that happen. But the clock is ticking. Published reports suggest we may be just a year away from Iran having a nuclear weapon and the ability to deliver that nuclear weapon to a target. To forestall this scenario and, more importantly, to prevent it from happening in the first place, we must use all of the tools of peaceful diplomacy available to us. Simply put, we must do everything in our power to prevent Iran from obtaining a nuclear weapon. I do not believe there is anyone on either side of the aisle who disagrees with that proposition.

We come to the floor today to discuss a bipartisan amendment I have offered with my friend from Illinois, Senator KIRK, to limit Iran's ability to finance its nuclear ambitions by sanctioning the Central Bank of Iran, which has proven to be complicit in Iran's nuclear efforts. This amendment will impose sanctions on those international financial institutions that engage in business activities with the Central Bank of Iran.

This is a timely amendment that follows the administration's own decision last week designating Iran as a jurisdiction of primary money laundering. In fact, the Financial Crimes Enforcement Network of the Department of the Treasury wrote:

> The Central Bank of Iran, which regulates Iranian banks, has assisted designated Iranian banks by transferring billions of dollars to these banks in 2011. In making these transfers, the Central Bank of Iran attempted to evade sanctions by minimizing the direct involvement of large international banks with both the Central Bank of Iran and designated Iranian banks.

The Treasury Under Secretary for Terrorism and Financial Intelligence, David Cohen, has written this:

> Treasury is calling out the entire Iranian banking sector, including the Central Bank of Iran, as posing terrorist financing, proliferation financing, and money laundering risks for the global financial system.

The administration's own decisions clearly show that Iran's conduct threatens the national security of the United States and its allies, and the complicit action of the Central Bank of Iran, based on its facilitation of the activities of the government, its evasion of multilateral sanctions directed against the Government of Iran, its engagement in deceptive financial practices and illicit transactions, and, most importantly, its provision of financial services in support of Iran's effort to acquire the knowledge, materials, and facilities to enrich uranium and to ultimately develop weapons of mass destruction, threatens regional peace and global security.

We recently learned just how far down the nuclear road Iran has come. The International Atomic Energy Agency's report indicates what all of us already suspected—Iran continues to enrich uranium and is seeking to develop as many as 10 new enrichment facilities; that Iran has conducted high-explosives testing and detonator development to set off a nuclear charge, as well as computer modeling of the core of a nuclear warhead; that Iran has engaged in preparatory work for a nuclear weapons test; that an August IAEA inspection revealed that 43.5 pounds of a component used to arm nuclear warheads was unaccounted for in Iran; and that Iran is working on an indigenous design for a nuclear payload small enough to fit on Iran's long-range Shahab-3 missile, a missile capable of reaching the State of Israel.

What more do we need to know before we take the next diplomatic step to address the financial mechanism that is helping make Iran's nuclear ambitions a reality? These revelations, combined with Iran's provocative effort in October to assassinate the Saudi Ambassador to the United States, demonstrate that Iran's aggression has taken a violent turn and that we have every reason to believe that if Iran gets a nuclear weapon, it may very well use it, and use it against our ally, the State of Israel.

This amendment will impose sanctions on any foreign financial institution that engages in significant transactions with the Central Bank of Iran, with the exception of transactions in food, medicine, and medical devices. It recognizes the administration's actions last week pursuant to section 311 of the PATRIOT Act designating the entire Iranian banking sector as a primary money laundering concern. It requires the President to prohibit transactions of Iranian financial institutions that touch U.S. financial institutions.

To ensure that we don't spook the oil market, transactions with Iran's Central Bank in petroleum and petroleum products would only be sanctioned if the President makes a determination that petroleum-producing countries other than Iran can provide sufficient alternative resources for the countries purchasing from Iran and if the country declines to make significant decreases in its purchases of Iranian oil.

This bipartisan amendment has been carefully drafted to ensure the maximum impact on Iran's financial infrastructure and its ability to finance terrorist activities and to minimize the impact on the global economy. Iran has a history of exploiting terrorism against coalition forces in Iraq, in Argentina, Lebanon, and even, in their attempt to assassinate the Saudi Ambassador, in Washington. While Iran's drive to advance its nuclear weapons program has been slowed by U.S. and international sanctions, it clearly remains undeterred.

Today, we take—hopefully today or tomorrow when we vote on this amendment—the next step in isolating Iran politically and financially. I look forward to continuing to work with my colleagues on the other side and with the administration to achieve this goal and to also advance the legislation I introduced earlier this year with many others on both sides of the aisle—the Iran, North Korea, and Syrian Sanctions Consolidation Act, which has 80 bipartisan cosponsors at this point. Our efforts to date have been transformative. But just as Iran has been prepared to adjust to the sanctions and unanticipated loopholes, just as it has been prepared to take advantage of every loophole to circumvent the sanctions and keep moving forward in its effort to achieve a robust nuclear program, we must be equally prepared to adjust and adapt by closing each loophole and stopping the regime's nuclear efforts. By identifying the Central Bank of Iran as the Iranian regime's partner and the financier of its terrorist agenda, we can begin to starve

the regime of the money it needs to achieve its nuclear goals.

I urge my colleagues to support this bipartisan amendment that will go a long way toward closing financial loopholes and helping prevent the Iranian regime from moving its nuclear ambitions to the weapons phase and closer to the warhead of a missile.

We cannot, we must not, and we will not allow Iran to threaten the stability of the region and the peace and security of the world. I appreciate the support of my distinguished colleague from Illinois who is on the floor, who has worked with us in this regard and come to a common view and effort to maximize the effect on Iran and minimize the effect to both us and the global economy, and certainly urge passage of this amendment.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. KIRK. Mr. President, I rise in strong support of the Menendez-Kirk amendment. I particularly thank my partner Senator MENENDEZ, a member of the Banking Committee, who has been a leader regarding Iranian terror, proliferation of weapons of mass destruction, and repression of human rights for 20 or 25 years now.

We are reaching a decisive point now in the relations of Iran to other countries and, most importantly, to the United States. I think this amendment comes at one of the final hours of how peaceful means and economic sanctions can be used to avoid a conflict. That is why it is so important for the Senate to adopt the Menendez-Kirk amendment, with the long-term goal of collapsing the Central Bank of Iran, so that country doesn't produce nuclear weapons that would destabilize the entire Middle East. We launched this effort, along with Senator SCHUMER, particularly in August when we called on our President to sanction the Central Bank of Iran.

In these partisan times in which the two sides are far apart on many issues, we had 92 Senators—all but 8 Senators signed the letter—saying: Collapse the Central Bank of Iran and use this as a tool in our diplomatic war chest to make sure we can remove one of the greatest dangers from the country, from one of the most dangerous regimes.

The record is pretty clear. The International Atomic Energy Agency has ruled on the subject of Iran. We remember the IAEA because they, with regard to Iraq and the Saddam Hussein weapons of mass destruction program, were consistently correct and the Bush administration was wrong. The IAEA said in its intelligence estimate that the threat was overstated in Iraq. So with that level of credibility, we should listen to the IAEA on the subject of Iran. There, they have been extremely clear as well.

They have outlined how Iran has a separate enrichment cycle, going way above the enrichment of uranium necessary to fuel a civilian reactor—5 percent—now toward 20 percent, where there is no civilian use, moving toward the 98 percent needed to power a nuclear weapon.

They talked about undisclosed nuclear facilities, especially a brandnew one, which appears to be the final cascade necessary to enrich uranium to bomb-grade material.

They most ominously talk about a warhead of a particular weight that would equate what would be in a nuclear weapon. Unlike a conventional warhead, which basically has a spark initiator and explosive material, this warhead has an electric generator aboard. That is only used to power and initiate a nuclear explosion.

So it is clear from the statements of the independent United Nations agency that Iran—a signatory on the Nuclear Non-Proliferation Treaty—is violating its obligation and is creating, as fast as it can, a nuclear weapons program.

We also know that Iran has become the first space-bearing nation of the 21st century and that, unlike the North Koreans, who have failed in space launch time after time, Iran was able to orbit the Omid satellite aboard the Safir rocket and is the first nation to be able to accomplish that technological fete in this century. If you can orbit anywhere over the Earth, you can deorbit over the Earth—an ominous sign for the future of Saudi Arabia, Iraq, our allies in Turkey, but especially our friends in Israel, and, in the long term, the United States.

The record of Iran with regard to its own citizens shows the character of its government. Long ago, we knew about 330,000 Baha'i citizens of Iran who have been forced to register their addresses, whose kids have all been kicked out of universities, and whose families are not allowed any contracting with the Government of Iran. The bureaucratic mechanisms of Kirstallnacht have formed. We have seen this movie in a different decade, wearing different uniforms, in a different country, but the ominous signs are that it may turn out in the same way.

Many people on the international committee know about Neda, who was protesting the stealing of an election in Iran, and of her death simply for protesting that stolen election. We know about Hossein Ronaghi, the first blogger, who called for tolerance in Iran, who is now languishing in Evin prison. We know about Nasrin Sotoudeh, age 48, mother of two, whose sole crime was representing Shirin Ebadi, a Nobel laureate, and how she was thrown in jail.

Beyond the nuclear program, beyond the missile program, beyond the repression of human rights in the country, we know about Iran's long record of terror; that Iran is the paymaster for Hezbollah. We have known that for a long time. They have tortured the poor country of Lebanon. But in some sense, there was a symmetry. We understood how this Shiite power would support a Shiite sect in Lebanon even though they spoke Arabic. But then, over the last decade, they jumped the Shiite-Sunni divide, and they also backed a new terror group called Hamas that was trying to surround our allies in Israel with missiles and the terror necessary to extinguish the Jewish people and the Jewish State.

We know how the Iranian regime is now one of the central pillars of the Syrian dictatorship and how, as that dictatorship hangs onto power, it is somewhat on the back of Iranian money and Iranian weapons and expertise that allows them to repress their own people. Most recently, on the back of a bipartisan certification that Iran supports terror from President Reagan, President Bush, President Clinton, President Bush, and President Obama, we have seen a higher level of irresponsibility on behalf of the Iranian regime.

According to our own Attorney General, the head of the Iranian Revolutionary Guard's Quds Force, Suliman, tried to contact and hire a Mexican drug cartel—one of the most dangerous, the Zetas—to assassinate the Saudi Arabian Ambassador to the United States at a Georgetown restaurant. It was only because the incompetent Iranians hired a DEA agent in Mexico that we found out about this. They would have, had they been able to accomplish their goals, lit off a car bomb in Washington, DC, paid for by the Government of Iran and briefed all the way to the top level of their government.

Today, we find—after they had their Basij radical young person's movement overrun the British Embassy, seizing classified documents and holding, for a time, 50 British personnel—shades of the 1979 hostage crisis, when for 440 days Iranian radicals held Americans. Our allies in the United Kingdom have now made the decision to remove all Iranian diplomats from the United Kingdom.

We have seen other calls, brave calls, of allied action. A man I admire greatly, the President of France, President Sarkozy, has called for seizing all purchases of Iranian oil. He has publicly called for the collapse of the Iranian Central Bank.

So it is with this level of irresponsibility—on nuclear technology, on missiles, on the repression of human rights, on the support of terror, on the plot to kill Americans inside Washington, DC, and the overrunning of an embassy of our closest ally in Europe, the United Kingdom—that we come forward with the bipartisan Menendez-Kirk amendment.

What does this amendment do? It basically says, in part, if you do business with the Central Bank of Iran, you cannot do business with the United States of America. It forces financial institutions and other businesses around the world to choose between the small and shrinking $300 billion economy of Iran and the $14 trillion economy of the United States. In that contest, we all

know how just about everyone will choose, and we wish that choice to be made. We seek to break the stable financial intermediary in between Iranian oil contracts and the outside world so that it will just be easier to buy oil from elsewhere and, working with our allies, to make that oil more plentiful.

We realize the concerns with this amendment. Some have said this amendment comes too quickly; that it is too soon. So that is where Senator MENENDEZ and I have agreed, working with the administration, to give time and flexibility. Under this amendment, nothing happens right away. Several weeks and several months go by before any action is required. That is intended as a signal to oil markets that this requirement is coming, that we seek for them, as our allies—for example, in Japan or South Korea or in Turkey—to wind up their current contracts and supplies and meet their needs by other means.

By the way, other means are coming. We are expecting Libyan production to double. We are also expecting Iraqi production to go way up. Of course, we know the swing production of Saudi Arabia—no love lost toward the Iranians after having tried to kill their ambassador here. We will be working with the oil suppliers to make sure that everyone's needs are met while funding to the Iranian regime is slowly choked off.

We also provide two waivers in this amendment—and this is very important—at the request of the administration. We say if there is a temporary restriction of oil supply, this amendment can be suspended for a time. If there is some unforeseen national security disaster, some real problem the President can see, he has that flexibility.

But the general picture is this: The Central Bank of Iran, the heart and financial soul of a web of terror, of nuclear production, of human rights abuse, and the oppression of other people—principally in Syria—is no longer acceptable to the international community, and so this regime should operate without the benefit of funding from the international community.

I think this amendment is one of the last best hopes for peace and to bring effective economic sanctions to bear so that a burden doesn't fall on our friends in Saudi Arabia or our allies in Israel to do the far more tough military work that may be required to remove this common danger.

Many people say we can't convince a country that is on a nuclear weapons course to reverse course. I say, well, we show our ignorance of history because we saw the Argentines give up a nuclear program, the Brazilians, and likely the South Africans detonated a weapon and then decided to give up their program. In Kazakhstan and Ukraine, nuclear weapons were given up. In Libya, nuclear weapons were given up. With effective pressure, my hope is that it can happen here.

We know President Ahmadinejad is not popular. We know the regime in general does not enjoy the support especially of its younger citizens. We know at least half of Iranians, in a stolen election, voted for the other guy who was not allowed to take power.

So this amendment comes forward with a solid bipartisan pedigree. It has been endorsed specifically by Senators LIEBERMAN, SCHUMER, KYL, FEINSTEIN, GILLIBRAND, MANCHIN, NELSON of Florida, NELSON of Nebraska, STABENOW, and HELLER under the leadership of Senator MENENDEZ and myself. For us, it gives time for the oil markets to adjust and unhook from Iran. It gives flexibility to the administration. But, most importantly, it helps us deal in an economic and diplomatic way with one of the greatest dangers to our society.

We think about the future ahead, and some people say this amendment could cause some disruption in oil markets. Yes, we are asking countries to unhook from the terror regime in Iran. But just think about the instability that would come if military conflict broke out between Iran and Israel or worse if nuclear weapons were loosed from Iran in the Middle East. If we do nothing, as soon as 2 years from now we could have a detonation of an Iranian nuclear weapon in the Middle East. If we show weakness and a lack of resolve, then countries in that region will decide they need nuclear weapons programs of their own. We will give birth to the Saudi nuclear weapon program, the Egyptian nuclear weapon program, and others.

This amendment is an attempt to make sure that for young Americans the 21st century is not the most dangerous century they will face, and to use the full economic weight of the United States, working with our allies, to remove what is the greatest emerging danger.

I think Senator MENENDEZ is living in the spirit of those who watched the 1930s and worried about when America slept. Well, we are not asleep. We know exactly what is happening. By decisive bipartisan action of the Senate, we are bringing the best pressure to bear, of nonmilitary means, to make sure our kids inherit a much safer 21st century.

With that, I commend my partner in this effort, and I urge the Senate to adopt the Menendez-Kirk amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, first, I rise in full support of this amendment, and I thank Senator MENENDEZ for his leadership on this issue, which dates from a long time back, and Senator KIRK, who has really lit a flame of concern under this body about this issue, and justifiably so. They have done a great job, and I thank both of them for their strong efforts.

I believe when it comes to Iran we should never take the military option off the table, but I have long argued that economic sanctions should be tried first and could be actually very effective in choking Iran's nuclear ambitions before any military option need be considered. But they have to be done strongly, they have to be done well, and they have to be done toughly.

Earlier this month, the report on Iran's nuclear program by the IAEA was alarming and proved beyond a shadow of a doubt that, despite the lies—and there is no other word to use—by the Iranian Government, they are developing a nuclear weapon. According to recent reports, Iran could have at least one workable nuclear weapon within a year and another maybe 6 months after that.

The new information shows that Iran has been working relentlessly to acquire the capability to produce a nuclear weapon. Additionally, the IAEA report details a highly organized program dedicated to acquiring the skills necessary to produce and test a bomb.

So I say to America and the world: Enough is enough. The extreme and dangerous leader of the Government of Iran, Mahmoud Ahmadinejad, must be held accountable. One of our greatest problems that we will live with for decades is a nuclear Iran. We do not want to look back and say: If we were only a little quicker, a little stronger, a little tougher, we might have prevented it. The Iranians, when they see they might face real economic punishment if they proceed in developing nuclear weapons, have turned back in the past, and they will do that again.

We have begun to impose economic sanctions, and I salute the President, who has worked very hard on this issue. I have talked with him on this issue. I know he believes in it strongly. I know the President knows the danger of a nuclear Iran and is working very hard in that regard. But every time we find ways to impose economic sanctions that have real teeth against Iran, they try to find a way around it. Our job is to move quickly and to plug those loopholes.

We have sanctioned Iranian banks and pretty much prevented them from doing what we don't want them to do. According to all reports, it has had a real effect on the Iranian National Guard and on the economy of Iran itself. But the Iranian Government has now tried to move through the Central Bank of Iran. It has been heavily involved in terrorism and the financing of nuclear and conventional weapons technology. The Central Bank has played a critical role in helping other Iranian banks circumvent our effective financial sanctions.

To close 10 holes but leave 1 open will not achieve our goal, and the last remaining open hole through which financial commerce can flow into Iran for prohibited activities is the Central Bank of Iran. The threat of sanctions against the Central Bank will frighten Iran. It might make them think twice before they proceed in developing this nuclear weapon because they will pay

real economic consequences that will hurt the Iranian regime and its henchmen, above all, and will, unfortunately, hurt the Iranian people as well. But there is no choice in this matter.

So we must strengthen the President's hand as he continues to work to build an international coalition determined to prevent the rise of a nuclear Iran. By giving the administration the capability to impose crippling sanctions on Iran should they continue with their nuclear weapons program, Congress is putting forth a tough and smart plan to address the real threat Iran poses to the United States and our allies and, of course, Israel.

This amendment will do three important things to strangle Iran's ability to continue with its nuclear weapons program. First, it will freeze the assets of Iranian financial institutions that come under U.S. jurisdiction. Second, it would prevent the maintenance in America of correspondence accounts by foreign financial institutions conducting significant petroleum-related transactions with Iran's Central Bank. And lastly, it would urge the President to undertake a diplomatic initiative to wean other nations off Iranian crude.

The amendment supports the administration's actions last week designating the entire Iranian banking system as a threat to government and financial institutions because of Iran's illicit activities, including its pursuit of nuclear weapons and its support of terrorism.

Senators KIRK and MENENDEZ have done an excellent job in crafting a comprehensive plan, a smart plan, a tough plan, to arm the administration with the tools it needs to put a stop to Iran's nuclear rogue program. I have optimism that this will have a real effect and could indeed deter Iran if we move, and move quickly.

I urge my colleagues to support this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARDIN. 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. CARDIN. Mr. President, I rise in support of the amendment offered by our colleagues, Senators MENENDEZ and KIRK, and I thank them for their leadership on this issue. To me, this is an extremely important amendment that I hope will get the support of all the Members of the Senate. It tightens the restrictions we already have against Iran.

I compliment the Obama administration for the work they have done internationally by expanding the sanction against Iran and against Iran's petroleum and petrochemical industries. It has been effective, because we have gotten other countries to follow the leadership of the United States.

I think everyone in this body understands the risks of Iran to the security of not only its region but the entire world. Iran is a very dangerous nation. It has ambitions to spread terrorism in the region and to affect U.S. interests. It is for that reason that we cannot allow Iran to become a nuclear weapons state. Our most effective way to deal with this is to isolate Iran and to make sure the sanctions that are imposed actually will accomplish the objective of penalizing the country but not the individual people of Iran.

The amendment offered by Senator MENENDEZ and Senator KIRK would allow us to expand the sanctions against Iran to the Central Bank of Iran. The amendment requires the President to prohibit all transactions and property and interest in property of the Iranian financial institutions that touch U.S. financial institutions, and to prohibit the maintenance of correspondence or payable-through accounts by foreign banks that have conducted financial transactions with the Central Bank of Iran.

What does that mean? It means we are trying to put the sanctions where they will have the most impact, and that is on the financial system of Iran itself. The Iranian Central Bank depends upon other banks around the world, and this amendment would allow us to have an effective way to isolate the Central Bank of Iran, putting additional focus on the Iranian policies that have violated the United Nations' resolutions.

Iran has violated their commitments. They violated their commitments as they relate to their nuclear programs. They haven't complied with agreements they have entered into. It is important that the international community stand united. This is important for the stability of the region, it is important for the security of Israel, our closest ally in that region, it is important for the Arab states that have talked to us about the danger of Iran, it is important for U.S. interests. So it is important that we get this moving.

Iran's complete disregard for its obligations under the Nuclear Nonproliferation Treaty and its directives of the multiple U.N. Security Council Resolutions belies the government's continued insistence that its nuclear program is one based upon its energy needs. It is not based upon its energy needs. It is trying to become a nuclear weapons state, something we must make sure does not occur.

We need to take all steps we can in order to deny Iran the ability to have international legitimacy while they are violating their international commitments. This amendment continues the U.S. leadership on this issue and follows up on the work our Nation has done in getting international support to make clear to Iran that if they continue along these policies of violating their international commitments, they are going to continue to be isolated and it is going to affect the economy of their nation.

I urge my colleagues to support the amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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. I would ask that I be notified after 10 minutes.

The PRESIDING OFFICER. The Chair will do so.

AMENDMENT NO. 1274

Mr. SESSIONS. Mr. President, I have offered an amendment that clarifies—although that is not exactly the right word—the fact that an unlawful combatant or a combatant who is held by the U.S. military for being an enemy of the United States, a combatant against the United States, or an unlawful combatant, is not therefore entitled to be released if the U.S. military or the civilian courts choose to prosecute him and he is acquitted or after he serves his sentence but before hostilities have ended. These are entirely different matters.

There are two questions: Are you an enemy combatant of the United States? These are the kinds of prisoners of war in World War II, Germans, for example, who were kept in Aliceville, AL. They stayed in a prisoner-of-war camp until the war was over, and they went home. They didn't violate the rules of war; they weren't prosecuted for any crimes. They simply were not released so that they could go and rejoin the battle in an attempt to kill more American service men and women. But they were lawful. They wore uniforms, they complied with the rules of war, and they were not able to be prosecuted.

But when a person sneaks into the country with an intent to murder women and children and innocent noncombatants, does not wear a uniform, and violates other provisions of the rules of war, then they can be not only held as a combatant but they can be held and tried for commission of crimes against the United States. That is the classic standard of the law of war.

I believe it is clear that if a person is captured and tried for a crime and, let's say, acquitted—whether in a civilian court or a military commission—they are not entitled to be released. To that end, I would quote a number of statements to that effect. But I believe the legal system would be a lot better off if we spoke clearly on that matter today so there is no doubt whatsoever.

President Obama, on May 21, 2009, said this:

> But even when [the prosecution] process is complete, there may be a number of people who could not be prosecuted for past crimes, but who nonetheless pose a threat to the security of the United States.

In other words, they remain prisoners of war who are likely to join the enemy if they are released. He goes on to say:

These are people who, in effect, remain at war with the United States. As I said, I am not going to release individuals who endanger the American people.

I think that is consistent with all rules of war, and I think the President was right in that statement.

Attorney General Eric Holder, in November of 2009, before the Judiciary Committee, said:

I personally think that we should involve Congress in [ensuring that the Executive Branch has the authority to make that decision], that we should interact with . . . this committee in crafting a law of war detention process or program.

In other words, he was calling on us to work with them in developing statutes. But, historically, I think the law is clear at any rate.

Jeh Johnson, General Counsel to the Department of Defense, who came from the New York Times as general counsel for the New York Times—not a career Department of Justice defense attorney—said this before the Senate Armed Services Committee:

The question of what happens if there's an acquittal is an interesting question . . . I think that as a matter of legal authority, if you have the authority under the laws of war to detain someone, and the Hamdi decision said that in 2004, that is true irrespective of what happens on the prosecution side . . . as a matter of legal authority, I think we have law-of-war authority, pursuant to the authority Congress granted us with AUMF, as the Supreme Court interpreted it, to hold that person provided they continue to be a security threat, and we have the authority in the first place.

So, again, he is saying if they are not convicted, they can still be held if they continue to be a threat.

Secretary of State Hillary Clinton on ''Meet the Press'' November of last year:

MR. GREGORY: But my question is, are we committed with these terror suspects that if they are acquitted in civilian courts, they should be released?

SECRETARY CLINTON: Well, no. . . .

Senator JACK REED, our West Point graduate and a member of the Armed Services Committee—I am proud to serve with my Democratic colleague—this is what he said the November before last:

There are no guarantees [of conviction], but under basic principles of international law, as long as these individuals pose a threat, they can be detained, and they will. . . . I do not believe they will be released . . . under the principle of preventive detention, which is recognized during hostilities.

I believe this is legislation that would do nothing more but, importantly, will affirm the classical understanding of our laws of war, and as a result, the people who are charged can be tried, and if they are not convicted of a crime, they can still be detained.

I would note that an individual American soldier or German soldier or Japanese soldier who is lawful and released has a duty to report back to their military unit and commence hostilities until the war is over.

Senator GRAHAM is here, a current JAG officer in the U.S. Air Force who has studied these matters very closely and has been engaged in this debate so eloquently. I am delighted to have him here and to have his support on this amendment. Perhaps he has some comments?

Mr. GRAHAM. Perhaps the Senator will yield for a question?

Mr. SESSIONS. I will be pleased to.

Mr. GRAHAM. As I understand the purpose of this amendment, it is basically to have the Congress on record for the concept that once you are determined to be an enemy combatant, a part of the enemy force, there is no requirement to let you go at any certain time because in war it would be silly to let an enemy prisoner go back to the fight for no good reason.

As the Senator has indicated, in the law of war, you can be prosecuted for a war crime. You could be taken to a Federal court and prosecuted for an act of terrorism, but if you are acquitted, that is not an event that would require us to release you if the evidence still exists that you are a threat to the country and part of the enemy forces; is that correct?

Mr. SESSIONS. That is correct.

Mr. GRAHAM. What I would like my colleagues to understand is that no German prisoner in World War II had the ability to go to a Federal judge and say: Let me go.

If you had brought up the concept in World War II that an American citizen who was collaborating with the Nazis could not be held as an enemy combatant, you would have been run out of town.

Does the Senator agree with me that in every war we have fought since the beginning of our Nation, unfortunately, there have been episodes where American citizens side with the enemy?

Mr. SESSIONS. That is certainly true.

Mr. GRAHAM. Does the Senator agree with me that our Supreme Court, as recently as about 3 to 4 years ago, affirmed the fact that we can hold our own as enemy combatants when the evidence suggests they have joined forces with the enemy? That is the law?

Mr. SESSIONS. That is the law as I understand it.

Mr. GRAHAM. Does my colleague agree with me that makes perfect sense, that an American who helps the Nazis has committed an act of war, not a common crime?

Mr. SESSIONS. That is correct.

Mr. GRAHAM. Does he agree with me that our courts understand that when an American citizen collaborates with an enemy of our Nation, that is an act of war by that citizen against his own country and the law of war applies, not domestic criminal law?

Mr. SESSIONS. I certainly agree with the Senator that an American citizen can join in a war against the United States.

Mr. GRAHAM. And they can be treated as an enemy combatant in accordance with our laws?

Mr. SESSIONS. That is correct.

Mr. GRAHAM. And the law of war allows the following: trial or detention or both. Is that correct?

Mr. SESSIONS. That is correct.

Mr. GRAHAM. You can be held as an enemy combatant without trial?

Mr. SESSIONS. That is correct.

Mr. GRAHAM. There is no requirement in international law to prosecute an enemy prisoner for a crime?

Mr. SESSIONS. Absolutely. It is up to the detaining authority whether they believe a person has committed a crime.

Mr. GRAHAM. Does the Senator agree with me that we do not want to start the practice in the United States that everybody we capture as an enemy prisoner is automatically a war criminal because that could come back to haunt our own people in future wars?

Mr. SESSIONS. Absolutely.

Mr. GRAHAM. That we should reserve prosecution for a limited class of persons among enemy prisoners?

Mr. SESSIONS. That is correct.

The PRESIDING OFFICER (Mr. CARDIN). The Senator has consumed 10 minutes.

Mr. GRAHAM. I ask unanimous consent to have 1 more minute.

The PRESIDING OFFICER. The Chair was informing the Senator that 10 minutes has elapsed.

Mr. SESSIONS. I asked to be informed at 10. I see Senator SANDERS is here.

Mr. GRAHAM. Let's just logically walk through this. In every war in which America has been involved, American citizens unfortunately have chosen at times to side with the enemy. Our courts say the executive branch can hold them as enemy combatants, and the purpose is to gather intelligence. Does the Senator agree with that?

Mr. SESSIONS. That is a very important purpose of that.

Mr. GRAHAM. The Senator has been a U.S. attorney; is that correct?

Mr. SESSIONS. That is correct.

Mr. GRAHAM. Does criminal law focus on intelligence gathering?

Mr. SESSIONS. Absolutely not. It focuses on punishment for a crime already committed, normally.

Mr. GRAHAM. Does the Senator agree that holding an enemy prisoner—one of the benefits of capturing someone is gathering intelligence?

Mr. SESSIONS. Absolutely.

Mr. GRAHAM. Does the Senator agree that our criminal system is not focused on that?

Mr. SESSIONS. Absolutely. In fact, we specifically tell people arrested that they have a right not to provide any intelligence, and it indicates it is clearly not the primary function.

Mr. GRAHAM. Does the Senator agree with me that if this Congress

chose to change the law and say that an American citizen who has associated himself with al-Qaida cannot be interrogated for intelligence-gathering purposes, we would be less safe?

Mr. SESSIONS. Absolutely.

Mr. GRAHAM. And that would be a change in the law as it exists today.

Mr. SESSIONS. Absolutely.

Mr. GRAHAM. Does the Senator agree with me that his amendment that says you can be acquitted but still be held as an enemy prisoner is consistent with the law today?

Mr. SESSIONS. I certainly believe it is.

Mr. GRAHAM. I thank the Senator for offering this amendment.

To my colleagues, we are trying to fight a war, not a crime, within the value systems of being the United States, being the champion of the free world. I do not believe in torturing people, but I do believe—does the Senator agree with me that when it comes to interrogating people, sometimes the best tool is time?

Mr. SESSIONS. Absolutely. Someone may not be willing to talk today, but as time goes by they might be willing to completely change and be forthcoming.

Mr. GRAHAM. Does the Senator agree with me that we gathered good intelligence over time from people held at Guantanamo Bay?

Mr. SESSIONS. That is certainly true.

Mr. GRAHAM. Without water boarding them?

Mr. SESSIONS. Absolutely.

Mr. GRAHAM. My point to my colleagues—and I enjoyed this discussion—is that if you take the ability to hold someone as an enemy combatant off the table, you cannot interrogate them for intelligence-gathering purposes, and if you put a time limit on how long you can hold them, you defeat the purpose of gathering intelligence. Does the Senator agree with that?

Mr. SESSIONS. Absolutely. That would undermine one of the functions of the U.S. military in dealing with enemies of the state.

Mr. GRAHAM. Does my colleague also agree that in this war, we provide a due process unlike any other war in the past?

Mr. SESSIONS. There is no doubt. No war has ever been lawyered to the degree this has.

Mr. GRAHAM. Does the Senator agree with me that every enemy combatant, citizen other otherwise, held at Guantanamo Bay or captured in the United States has their day in Federal court through habeas proceedings?

Mr. SESSIONS. They do, and to a large degree that is different from any other war in our history.

Mr. GRAHAM. We never had, in the history of other wars, a Federal judge determining whether the military has the ability to determine whether someone is an enemy combatant, but we have that in this war. Does the Senator agree with that?

Mr. SESSIONS. Absolutely.

Mr. GRAHAM. Does the Senator agree that the government has to prove to an independent judge by a preponderance of the evidence that the person is a member of al-Qaida involved in hostilities?

Mr. SESSIONS. Yes.

Mr. GRAHAM. So everybody held after judicial review for the first time in the history of warfare.

Does the Senator agree with me that the annual review process that we have created by this law, this bill, the Defense Authorization Act, is something we have not done in other wars?

Mr. SESSIONS. We have not done that before, yes.

Mr. GRAHAM. Every detainee not only gets their day in Federal court, the government must prove they have a solid case to hold them as an enemy combatant, and everyone gets a yearly review as to whether they are a continuing threat?

Mr. SESSIONS. I believe so, yes, consistent with the language in the recent Supreme Court opinions—recent opinions—and perhaps it even goes further than what the Supreme Court requires.

Mr. GRAHAM. Is the Senator familiar with competency hearings in the civilian court?

Mr. SESSIONS. Yes.

Mr. GRAHAM. In our civilian law, we can hold people who are a danger to themselves or others without a trial but with judicial oversight; is that correct?

Mr. SESSIONS. That is done every day, yes, with judicial oversight.

Mr. GRAHAM. Would the Senator agree with me that it is very smart to evaluate whether we should allow someone to be let go and intelligence professionals should be able to make that decision as to whether the individual is a military threat, that that is a logical process?

Mr. SESSIONS. Absolutely it is. And just for the fact of my amendment, it does not require people to be held. It only gives the government the authority to do so if they deem it appropriate for the defense of America.

Mr. GRAHAM. Does my colleague agree with me that the recidivism rate of people we are releasing from Guantanamo Bay has gone up?

Mr. SESSIONS. Yes. It is extraordinarily disappointing, actually, and against projections of many of those advocating for early release.

Mr. GRAHAM. Some of these people have gone back to fighting and killed American soldiers?

Mr. SESSIONS. They certainly have.

Mr. GRAHAM. Does the Senator agree with me that the dangers our Nation faces do not justify changing existing law, denying this country the ability to gather intelligence even against an American citizen joined with al-Qaida, that that would be an unwise decision given the dangers we're facing?

Mr. SESSIONS. Yes.

Mr. GRAHAM. Does he agree with me that we need a legal system that understands the difference between fighting a war and fighting a crime?

Mr. SESSIONS. So well said. I agree.

Mr. GRAHAM. I thank the Senator.

Mr. SESSIONS. Mr. President, with regard to the question of citizenship, I would just say to my colleague that this in no way deals with that. Whatever the courts, whatever the bill and other laws say about citizenship will apply here. It does not change that status at all. I do believe the legislation is clearly consistent with the statements and testimony of President Obama; Attorney General Eric Holder; Jeh Johnson, counsel of the Secretary of Defense; Secretary of State Clinton, and others.

I urge acceptance of my amendment and yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 1073 WITHDRAWN

Mr. LEVIN. Mr. President, I ask unanimous consent that the Cardin amendment, No. 1073, be withdrawn. That has the approval of the sponsor of the amendment.

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

Mr. SANDERS. Mr. President, I want to say a word about two amendments I have offered, both of which I think are important and both of which should be agreed to.

As I think you know, this country has a recordbreaking deficit and a $15 trillion national debt. What many people do not know is that one of the reasons our deficit is as high as it is is because there is a significant amount of fraud from defense contractors who sell their products to the Department of Defense.

I think the American people are very clear that when we pay one dollar for a product that goes to our military, we want to get one dollar's worth of value; that we do not want to see the taxpayers of this country or the Department of Defense ripped off because of fraudulent contractors. Unfortunately, fraud within the DOD in terms of private contractors is widespread.

During the last number of years, we have seen company after company engaged in fraud, including some of the largest defense contractors in the United States. For example, Lockheed Martin, the largest defense contractor in our country, in 2008 paid $10.5 million to settle charges that it defrauded the government by submitting false invoices on a multibillion-dollar contract connected to the Titan IV space-launch vehicle program. That did not seem to sour the relationship between Lockheed and the DOD, which gave Lockheed $30.2 billion in contracts in fiscal year 2009—more than ever before. One of the patterns we see is that a company gets convicted or reaches a settlement with regard to charges of fraud, but next year they continue to get very significant contracts.

In another case regarding one of the very large defense contractors, Northrop Grumman paid $62 million in 2005

to settle charges that ''it engaged in a fraud scheme by routinely submitting false contract proposals'' and ''concealed basic problems in its handling of inventory, scrap and attrition.'' Despite that serious charge of pervasive and repeated fraud, Northrop Grumman received $12.9 billion in contracts the following year, 16 percent more than the year before.

It seems clear to me that we need to do a much better job in terms of attacking fraud within the Department of Defense. Several years ago, I offered an amendment—which was passed—which provided that the DOD list virtually all of the fraud committed within the DOD. We have that report, and it is rather astounding. People should read it. Right now what this amendment does is it says to the DOD: Get your act together, hire the necessary well-trained staff so they are monitoring the contracts and making sure we do not continue to see the pervasive amount of fraud committed against the taxpayers of this country or the Defense Department. I would hope very much that amendment gets widespread support and that we see it passed.

There is another amendment we have offered, which I think is equally important, and that deals with making sure the Department of Defense—which turns out to be the largest single consumer of energy in the United States of America. Obviously, the Department of Defense has huge resources, controls huge numbers of buildings, has enormous aircraft, and so forth and so on. It is by far the single largest consumer of energy in the United States, accounting for approximately 90 percent of Federal energy consumption, with an annual energy cost of up to $18 billion. So the Department of Defense spends $18 billion on energy costs alone. I think, in recent years, the Department of Defense has understood the importance of trying to move toward energy efficiency in terms of saving energy, but we have a long way to go.

The major program to help cut energy consumption and costs at our military bases is called the Energy Conservation Investment Program. This is a very important program, although a relatively small program. This program has operated for more than 10 years, helping to invest in programs for more energy-efficient lighting, for example, at an Air Force base in Alaska, geothermal heating at Fort Knox Army Base in Kentucky, wind turbines for an Army base in Arizona, and solar power for the Air Force in Colorado.

Historically, according to the Department of Defense, every $1 used by the Energy Conservation Investment Program yields $2 in savings. We invest in energy efficiency; we invest in sustainable energy. For every $1 invested, we save $2. This makes it a very positive program for the DOD. Some projects, such as energy efficiency improvements at a Navy base in California, achieve greater than $15 in savings for every $1 invested.

The Department itself, the DOD, has stated this program achieves ''long-term public benefits by investing in technologies that increase economic efficiency and health benefits, build new sources of renewable energy, enhance job creation/retention, improve military facilities, and improve the quality of life for our troops and their families.''

Unfortunately, the authorization for this program in the current Defense authorization bill is $135 million, a relatively small amount of money for a Department of Defense which spends about $18 billion every year on energy. I think what we want to see is, A, the DOD save money through energy efficiency and sustainable energy and, secondly, become a model for the country as we attempt to break our dependence on fossil fuel, foreign oil, and we attempt to cut back on greenhouse gas emissions.

I can tell you that in the State of Vermont, we have our National Guard base, where we have worked with them to install a major solar installation which will pay a significant part of their electric bill. Frankly, I would like to see this done on National Guard bases all over the country and to the Active-Duty structures as well.

The bottom line is, we are currently spending about $135 million, a relatively small amount of money compared to the $18 billion energy bill run up by the DOD. What this amendment would do is increase the authorization for the Energy Conservation Investment Program to $200 million, up from $135 million—not anywhere near as much as I think we should be doing, but it is a step forward in helping the Department of Defense save money on their energy bill, break our dependence on foreign oil, and help us cut greenhouse gas emissions.

We know there remain many worthy projects at our military bases that have not yet been funded at today's funding levels that could be funded if my amendment were to pass. The amendment is fully offset and paid for by reducing expenditures on construction at overseas' bases, while still leaving nearly $300 million in funding for that purpose. I think that is a decent offset.

I applaud the Department of Defense and the military for the strides they have made so far in investing in energy efficiency and renewable energy. There are some wonderful projects going on all over this country—in fact, all over the world—under the DOD, and they deserve credit for that. They can and should be a leader for our country, but we still have a very long way to go.

I would ask for support from my colleagues for this amendment, which will save the Department of Defense money, will help break our dependency on foreign oil, move us to energy independence, and cut greenhouse gas emissions.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Arizona.

AMENDMENT NO. 1230, AS MODIFIED, WITHDRAWN

Mr. MCCAIN. I ask unanimous consent to withdraw McCain amendment No. 1230, as modified.

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

Mr. MCCAIN. 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. CORKER. 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. 1172, AS MODIFIED

Mr. CORKER. Mr. President, I ask unanimous consent that a modification to amendment No. 1172 be accepted.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 1172), as modified, is as follows:

(Purpose: To require a report assessing the reimbursements from the Coalition Support Fund to the Government of Pakistan for operations conducted in support of Operation Enduring Freedom)

At the end of subtitle B of title XII, add the following:

SEC. 1230. REPORT ON COALITION SUPPORT FUND REIMBURSEMENTS TO THE GOVERNMENT OF PAKISTAN FOR OPERATIONS CONDUCTED IN SUPPORT OF OPERATION ENDURING FREEDOM.

(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, shall submit a report to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives assessing the effectiveness of the Coalition Support Fund reimbursements to the Government of Pakistan for operations conducted in support of Operation Enduring Freedom.

(b) ELEMENTS.—The report required under subsection (a) shall include the following elements:

(1) A description of the types of reimbursements requested by the Government of Pakistan.

(2) The total amount reimbursed to the Government of Pakistan since the beginning of Operation Enduring Freedom, in the aggregate and by fiscal year.

(3) The percentage and types of reimbursement requests made by the Government of Pakistan for which the United States Government has deferred or not provided payment.

(4) An assessment of the effectiveness of Coalition Support Fund reimbursements in supporting operations conducted by the Government of Pakistan in support of Operation

Enduring Freedom and of the impact of those operations in containing the ability of terrorist organizations to threaten the stability of Afghanistan and Pakistan and to impede the operations of the United States in Afghanistan.

(5) Recommendations if any, relative to potential alternatives to or termination of reimbursements from the Coalition Support Fund to the Government of Pakistan, taking into account the transition plan for Afghanistan.

(c) FORM.—The report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

Mr. CORKER. Mr. President, I wish to speak briefly about this amendment. I think most people in this body understand we are reimbursing the Pakistani military for efforts they are putting forth on behalf of what we are doing in Afghanistan in Enduring Freedom. We have crafted an amendment that asks for certain reporting to take place from the Pentagon and for them to look at ways of diminishing this reimbursement over time as we wind down our operations in Afghanistan.

This amendment has been drafted in such a way as to not further escalate tensions between us and the Government of Pakistan. This is a good-government type of amendment that asks the Pentagon to begin looking at ways of decreasing the support we are giving to the Pakistani military on our behalf regarding Afghanistan as we wind down our operations there simultaneously.

It is my understanding that both the chairman and ranking member of the Armed Services Committee have accepted this, there is no hold from the majority on the Foreign Relations Committee, and I hope we will have an opportunity to vote and pass this by voice vote very soon.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I support the amendment, as modified, by the Senator from Tennessee, Mr. CORKER, who has devoted a great deal of time and effort and thought to this issue, and the result is this amendment. I point out that it would require the Secretary of Defense to prepare a report on the effectiveness of coalition support fund reimbursements made to Pakistan in support of coalition military operations in Afghanistan.

Before I proceed, let me once again express my deep condolences to the families of the Pakistani soldiers who were killed this weekend in a cross-border air action. All Americans are deeply saddened by this tragedy, and I fully support NATO and the U.S. military in their commitment to conduct a thorough and expeditious investigation.

As my colleagues will recall—this is an important aspect of Senator CORKER's amendment—Congress has authorized and appropriated funding for coalition support fund reimbursements to Pakistan since we began our military operations in Afghanistan. At the time, Pakistan made a strategic decision to support the U.S. war effort against the Taliban government in Afghanistan and their al-Qaida terrorist allies. In response, Congress and the Bush administration agreed to reimburse the Pakistani Government for military activities that support our mission in Afghanistan.

Over the past decade, Congress has provided billions of dollars worth of these reimbursements to Pakistan, and we should acknowledge that much good has come of it. Over the past few years in particular, Pakistan has shifted tens of thousands of their soldiers from the eastern border of their country opposite India to the tribal areas in western Pakistan. Pakistani troops have been deployed and engaged in military operations in their western provinces and tribal areas for more than 2 years straight. They have paid a heavy price in this prolonged fighting.

Hundreds of Pakistani troops have given their lives to fight our mutual terrorist enemies in their country, and thousands of Pakistani civilians have been tragically murdered in the same time by these militant groups who show no compunction about attacking weddings and funerals and mosques. We honor the sacrifice of Pakistan's soldiers, and we mourn the loss of innocent Pakistani civilians.

It must be noted, however, that certain deeply troubling realities exist within Pakistan. It must be noted that elements in Pakistan's army and intelligence service continue to support the Haqqani Network and other terrorist groups that are killing U.S. troops in Afghanistan, as well as innocent civilians in Afghanistan, India, and Pakistan. It must also be noted that the vast majority of the materials for improvised explosive devices that are maiming and killing U.S. troops in Afghanistan originate within Pakistan. These are facts. We cannot deny them. Any effective strategy for Pakistan and Afghanistan must proceed from this realistic basis.

It is for this reason that I believe this amendment and this report would be extremely useful. Already, in response to recent Pakistani activities, the administration has chosen to withhold coalition support fund reimbursements to Pakistan. Over the past two quarters, that withheld money amounts to roughly $600 million. I can imagine that, amid the current tensions, further administration requests to Congress for reimbursement of coalition support funds for Pakistan will not be forthcoming.

The report requested in this amendment would seek additional information on the amounts, types, and effectiveness of coalition support fund reimbursements to the Government of Pakistan. It also would seek recommendations as to the future disposition of this program, including potential alternatives to it or the possible termination of it altogether. That option cannot be ruled out. This is valuable information and recommendations to have as Congress continues to discuss and debate not just the future of the coalition support fund reimbursements to Pakistan but the future of our relationship with Pakistan more broadly. I strongly support this amendment.

Again, I don't want to spend too much time stating the facts. This is a terrible dilemma. The fact is that Pakistan is a nuclear nation. They have a significant nuclear inventory. The fact is that for 10 years we and Pakistan had virtually no relations. We found that not to be a productive exercise. But at the same time, when there exists—as my colleague from Tennessee agrees—two fertilizer factories from which come the majority of the materials used for the majority of IEDs manufactured and that are killing young Americans, it is not tolerable. I understand, as I have said earlier in my comments, the tragedy that resulted from the deaths of these young Pakistani soldiers. I also understand, as every one of us does, what it is like to call a family member of a young man or woman who has lost their life in Afghanistan, which has happened many times, as a result of an IED.

In a hearing of the Armed Services Committee, the then-Chairman of the Joint Chiefs of Staff ADM Mike Mullen, stated:

The fact remains that the Quetta Shura and the Haqqani Network operate from Pakistan with impunity.

I wish to repeat, these are the words of the former Chairman of the Joint Chiefs of Staff.

Extremist organizations serving as proxies of the government of Pakistan are attacking Afghan troops and civilians as well as U.S. soldiers. For example, we believe the Haqqani Network—which has long enjoyed the support and protection of the Pakistani government and is, in many ways, a strategic arm of Pakistan's Inter-Services Intelligence Agency—is responsible for the September 13th attacks against the U.S. embassy in Kabul.

He goes on to say:

This is ample evidence confirming that the Haqqanis were behind the June 28th attack against the Inter-Continental Hotel in Kabul and the September 10th truck bomb attack that killed five Afghans and injured another 96 individuals, 77 of whom were U.S. soldiers . . .

Finally, another comment by Admiral Mullen who, by the way, worked very hard for a long period of time to develop a close working relationship with General Kayani and other military leaders in Pakistan. He went on to say:

The Quetta Shura and the Haqqani Network are hampering efforts to improve security in Afghanistan, spoiling possibilities for broader reconciliation, and frustrating U.S.-Pakistan relations. The actions by the Pakistani government to support them—actively and passively—represents a growing problem that is undermining U.S. interests and may violate international norms, potentially warranting sanction. In supporting these groups, the government of Pakistan, particularly the Pakistani Army, continues to jeopardize

Pakistan's opportunity to be a respected and prosperous Nation with genuine regional and international influence.

Finally, I wish to say again this is an incredibly difficult challenge for U.S. security policy. We have a country on which we are dependent in many respects for supplies, for cooperation, for, hopefully, not to be a sanctuary, although it is not the case, for Taliban and al-Qaida elements. We have a country that is a nuclear power, and we have a country that has a government that I will say charitably is very weak.

It seems to me the Corker amendment is important for the American people to know exactly where we are, what policy we are going to formulate, and what measures need to be taken, because we have, as I mentioned earlier, spent billions of U.S. taxpayers' dollars. That doesn't play very well in States such as mine where we have 9 percent unemployment and more than half—or just less than half the homes underwater. So the Corker amendment isn't all we need. In fact, we need to have a national debate and discussion about the whole issue of our relations with Pakistan. But I believe the Corker amendment is a very important measure so we can assure the American people that not only are their tax dollars wisely spent but that actions are being taken to prevent needless wounding and death of our brave young men and women who are serving in the military.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I support the amendment of the Senator from Tennessee. It is a balanced amendment which deals with a very complex situation. What Senator CORKER is doing is pointing out very important facts. One is that Pakistan has received a lot of funds from the United States for this particular purpose which is aimed at helping the success of our operations in Afghanistan. The whole purpose of the coalition support fund is to reimburse Pakistan for the support they provide—for instance, in providing security for trucks and other equipment that is going through Pakistan that have oil, fuel, food going into Afghanistan to support the effort in Afghanistan. That is the purpose of these funds. It is a good purpose. This is not a foreign aid deal; this is a reimbursement deal.

The problem is that while on the one hand the Pakistanis are assisting us, on the other hand they are assisting our enemy and the enemy of mankind and the enemy of the Afghan people and the enemy of the coalition forces in Afghanistan. That is the problem. That is the dilemma which we all face and which this amendment seeks to address. Again, it does so in a way which doesn't prejudge the outcome of the assessment, but it makes a very important point, which is, as is now stated in the amended final paragraph, that we need recommendations given this ''on the one hand they are with us, on the other hand they are against us'' situation. We need recommendations from the administration, if any, relating to potential alternatives to or termination of reimbursements for the coalition support fund, the Government of Pakistan, taking into account the transition plan for Afghanistan.

I agree with my friend from Arizona that we send condolences to the families of troops in Pakistan who have recently lost their lives. We also have to understand that Pakistan has paid a huge price for terrorism in their country against their people. They have paid a massive price. But what is unacceptable to us is that they are making us pay a price by providing a safe haven for the Haqqanis and for the Quetta Shura. Our troops, our families, coalition troops, coalition families, Afghan troops, and Afghan families are paying a heavy price because of the Pakistan support through their ISI for the insurgency in Afghanistan.

Admiral Mullen, a former Chairman of the Joint Chiefs of Staff, put it very succinctly. He said the Haqqani Network is a veritable arm of the Pakistan intelligence service. When he was pressed on that formulation, he said he meant every word of it.

So we have to send an important message to Pakistan, and the message is that we want a normal relationship if we can have one, but we cannot have a normal relationship if you are, on the one hand, supporting the very people who are attacking us in Afghanistan and, on the other hand, purporting to help us through the protection of supplies going through Pakistan, helping us succeed in Afghanistan.

We cannot have it both ways. They cannot have it both ways. This amendment sends a very significant and important message, I believe, to the Pakistanis and to our coalition allies and to our Afghan partners that what is going on inside Pakistan has to come to an end. I believe this will help bring that important result about. So I very much support the amendment of Mr. CORKER, the Senator from Tennessee, and hope we can adopt it.

If there is no further debate about it—there may be others who do want to debate, so I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, because of the tremendous cooperation of the Senator from Michigan and the Senator from Arizona—obviously, my goal is to call for this amendment to be adopted—I did not provide a lot of context because I know they both support this amendment. But I want to thank them both for their comments.

I do not think there are two Senators who can better articulate the issue we face in Afghanistan with Pakistan, which is both a friend and a foe on many occasions. None of us who have traveled to Afghanistan—I know these two Senators have probably more than most, but all of us who have been there have heard our generals talking about the fact that they are fighting a war in Afghanistan that is really being led and directed out of Pakistan.

So basically we have an issue here. I think the two Senators have articulated the issue very well. The fact is, we need to know, first of all, if what we are doing in support of the Pakistan military is effective for us, and the two Senators have outlined that is a big issue.

The second piece is how we are actually reimbursing. If you talk with folks at the State Department, we literally are going through reams of invoices and documents, looking at how many bullets they have used, how much food has been supplied to the military, what is going to be counted, what is not going to be counted. We are spending more time, in many ways, accounting for this than we are really looking at how effective the aid is.

This amendment would deal with both of those issues. I thank the Senators for putting this in the proper context, and I do hope, with the Senators' support and the support of the chairman of the Foreign Relations Committee, that this is an amendment we can voice vote. I thank both Senators for their leadership on this issue but also for putting this in the appropriate context.

I yield the floor.

Mr. MCCAIN. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment, as modified, is agreed to.

The amendment (No. 1172), as modified, was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I believe Senator CANTWELL will want to be recognized.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll of the Senate.

The legislative clerk proceeded to call the roll.

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

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

Ms. CANTWELL. Mr. President, we continue to make progress on the Defense authorization bill. Hopefully somewhere in the Halls of Congress, we are also making progress on the FAA authorization bill and, maybe before the end of the year, getting that to a final resolve.

I know my colleagues on both sides of the aisle are working very hard, but I had to come to the Senate floor at this moment to say that Christmas came early in the Northwest today when a major deal between the Boeing Company and aerospace workers, machinists, resolved what had been a conflict in the past on how to work together.

A new relationship of working together on incentives and efficiency and performance has resulted in the Boeing Company making a decision to build the next-generation 737 MAX plane in the Pacific Northwest. That is great news for aerospace workers in Puget Sound. It means there is going to be a skill set for building fuel-efficient planes for many years to come. But it is a great testament to both the company and the workers who—a year ago you probably heard more about the NLRB issue, and now what you are hearing about is an agreement on a multiyear contract that is going to get these workers jobs in building planes with the next-generation technology.

This is very big and important news not just for the Pacific Northwest but for the country because it means we can come together to resolve differences. I would hope the Senate might apply some of the same things because the dispute as to where these two organizations were about how to proceed to the future obviously had a lot of discussion, even here on the Senate floor, and yet now today we see them coming together in a huge milestone agreement that means more planes are going to be built, in an agreement where workers and the company are working together to improve performance and deliver these planes, which many people want because they are so fuel-efficient, on time.

So for the Northwest to have this kind of boost, this shot in the arm, at this point in time is really important. I expect that as this agreement and the agreement details are seen by many people, they will see this really is a way forward for the Northwest to continue to be at the top of the aerospace game. That is important because the United States needs to be at the top of the aerospace game. We are facing tough competition from many countries such as China and Europe and others that are trying to lure the manufacturing base away from the United States.

What we see in the Northwest is that not only do you have a company such as Boeing, but you have a chain of many suppliers that are also working to make aerospace manufacturing in the United States one of the key industries in which the United States is world premier.

So I say congratulations to both the company and to the machinists and to Machinists International for their hard work on inking this deal. I hope it will bring much benefit and economic growth not just to Puget Sound—certainly to there—but to the rest of the country as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 1126

Mr. KIRK. Mr. President, I rise in support of the Feinstein amendment with regard to section 1031 of this legislation. I am particularly worried because, unlike the authorized use of force original doctrine and legislation passed by the Congress, we limited the authority of the President and the U.S. military to those connected directly to the September 11 mass murder of Americans. I think, in times of emergency, I understand that. But the legislation would be the first congressional authorization to go far beyond that, to say that any ''person who . . . substantially supported al-Qaeda, the Taliban, or associated forces''—undefined—'' . . . including any person who has committed a belligerent act'' would be allowed to be picked up by U.S. military authorities and held in U.S. military detention.

While I am in favor of robust and flexible U.S. military action overseas, including action against American citizens waging war against the United States, such as Anwar Al-Awlaki, I think we all should agree on a special zone of protection inside the jurisdiction of the United States on behalf of U.S. citizens.

I say this in support of the Feinstein amendment because I took the time—as we all should from time to time, serving in this body—to re-read the Constitution of the United States yesterday. The Constitution says quite clearly: In the trial of all crimes—no exception—there shall be a jury, and the trial shall be held in the State where said crimes have been committed. Clearly, the Founding Fathers were talking about a civilian court, of which the U.S. person is brought before in its jurisdiction.

They talk about treason against the United States, including war in the United States. The Constitution says it ''shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.

The following sentence is instructive:

No person—

''No person,'' it says—

shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

I would say that pretty clearly, ''open court'' is likely to be civilian court.

Further, the Constitution goes on, that when a person is charged with treason, a felony, or other crime, that person shall be ''removed to the State having Jurisdiction of the Crime''—once again contemplating civilian, State court and not the U.S. military.

As everyone knows, we have amended the Constitution many times. The fourth amendment of the Constitution is instructive here. It says:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures—

Including, by the way, the seizure of the person

shall not be violated, and no Warrants shall issue, [except] upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Now, in section 1031(b)(2), I do not see the requirement for a civilian judge to issue a warrant. So it appears this legislation directly violates the fourth amendment of the Constitution with regard to those rights which are inalienable, according to the Declaration of Independence, and should be inviolate as your birth right as an American citizen.

Recall the fifth amendment, which says:

No person—

By the way, remember, ''no person''; there is not an exception here.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment—

Hear the words—

of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War—

Meaning there is a separate jurisdiction for U.S. citizens who are in the uniformed service of the United States. But unless you are in the service of the United States, you are one of those ''no persons'' who shall be answerable for a ''capital'' or ''infamous crime,'' except on ''indictment of a Grand Jury.''

The sixth amendment says:

In all criminal prosecutions—

Not some, not by exception; in all criminal prosecutions—

the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . .

I go on to these because I regard all of these rights as inherent to U.S. citizens, granted to them by their birth in the United States.

If we go on through the Constitution's amendments, we find in the fourteenth amendment that it says:

No State shall make or enforce any law—

Any law—

which shall abridge the privileges or immunities of citizens of the United States. . . .

I realize these powers have been defined by courts. But we would recall that even Abraham Lincoln ex post facto lost his ability to suspend the writ of habeas corpus pursuant to a Supreme Court decision; that in the case of Hamdi v. Rumsfeld, the Court did recognize that under the 2001 statute, the President is authorized to detain persons captured while fighting U.S. forces in Afghanistan. But I will recall—and, by the way, this included American citizens—I will recall that was in Afghanistan.

Clearly, we see in the case where an American citizen has gone to a foreign jurisdiction, joined a terrorist organization or foreign military, and is waging war on the United States, they can be held as a detainee of the U.S. military. Why didn't this legislation say that? Why did it not restrict its purview to those provisions? In Padilla v. Hanft, the Fourth Circuit did allow the capture of a U.S. citizen, Padilla—by the way, arrested at O'Hare Airport, a U.S. citizen and held in military detention. The Fourth Circuit said because he had foreign training and a foreign connection that it was legal to hold him.

But, remember, very soon thereafter the Bush administration surrendered this case. I think the Bush administration realized they were about to lose in the Supreme Court on the subject of whether the U.S. military could arrest and detain a U.S. citizen and to deprive them of their rights and subject them only to review under a petition of habeas corpus. I think they realized they had to kick Padilla into the civilian court system, and therefore they did. It is only in that context that we should read the Padilla decision.

I think the bottom line is this: We funded a multihundred-billion-dollar Department of Defense, in the words of the movie, to put men on that wall, that we need on that wall, to defend us against foreign threats, and they must do hard and difficult things, including sometimes to U.S. citizens, such as Anwar al-Awlaki, who are waging war on the United States from a terrorist base in Yemen.

But the whole purpose of this exercise and this institution is to defend the rights of the United States and U.S. citizens inside their own country. One of the first things a person does when they join the U.S. military is not to swear allegiance to a President or to a foreign leader but actually swear allegiance to the Constitution of the United States and to its rights.

What is the whole purpose of the Constitution? It is to defend our rights against the government because we are one of those unique governments that ''posits'' a limited government and which rights are reserved according to the 10th amendment to the States or the individuals; that our rights supersede the government's. So we cannot say for an individual, for example, in Wisconsin, who has never been abroad, who may or may not have committed an act or may or may not have one association, that suddenly the U.S. military can roll in on that person, seize him or her, hold them in military detention, and only subject review of that case by one habeas corpus petition.

I would argue, then, that all of our rights as American citizens hang on the decision of the President of the United States; that if the President of the United States decides a person is substantially part of al-Qaida, the Taliban, or associated forces engaged in hostilities against the United States or they have committed a belligerent act or supported such hostilities in aid of such forces, all of their rights as an American citizen are now forfeited. Clearly, that is not the case.

The Founding Fathers understood the power of the state run amok under a distant king who did not regard the rights of the individual as worth much. We founded a republic and then wrote a constitution to defend those rights. While we face a very difficult and dangerous world overseas and have to do difficult and dangerous things, which I support, we should make sure there is a place for peace and justice and rights inside the United States.

So for us, in looking at this provision, the Feinstein amendment clearly limits the scope of this legislation in an appropriate way—that we do the difficult things overseas. But the whole purpose of the Department of Defense is to defend the United States and those rights inside our country, but that we as U.S. citizens, especially when we are inside this country, have inalienable rights which cannot be separated from us by any executive action; that we can only be held, incarcerated, that we can only have our liberties taken away from us on indictment of a grand jury, before a civilian court, and with a presumption beyond a reasonable doubt by unanimous vote of that jury.

That is the essence of who we are as Americans, and it is a historic decision that we would make if we allow this power to go forward. I think that is why Senator PAUL and I were the only two Republicans to vote against this. That is why so many e-mails and letters that I have received in the last few hours support this decision.

I understand that others have a different view. They describe the United States as a battlefield. I would say that is on overly harsh determination of how cheaply our rights can be held; that we have a multihundred-billion-dollar Defense Department; that we have a substantial and capable FBI; that we have enormous State and city and local police establishments, all with the capabilities to investigate and prosecute crimes, but under the Constitution of the United States; and that if we hold U.S. citizens as capable of losing their rights on an executive branch decision, that not beyond the shadow of a doubt but on a lower standard of care, that in the executive branch's view a person is connected to one of those things, then our rights are not worth very much.

I would say the whole purpose of the Constitution is to hold our rights higher than the government and subject only to review by a civilian court. That review, as described in the Constitution of the United States, is far more than a habeas corpus review. The text of the Constitution specifically refers to grand jury indictment.

For those who have questions, I would urge them, first, take a moment to reread the Constitution, that first document which, as a member of the U.S. military or as an elected Member of this body, we have to swear allegiance to, and then make up their minds. I think when they do, they will support the Feinstein amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. TESTER). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I must admit that I have heard some bizarre arguments in my time as a Member of this body in referencing the Constitution of the United States as a basis for the argument. Now, it is my understanding my friend from South Carolina—I ask unanimous consent to enter into a colloquy with the Senator from South Carolina.

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

Mr. MCCAIN. It is my understanding that under the Constitution, it is the Supreme Court of the United States that gives the interpretation of the Constitution as to various laws and challenges to the Constitution. It is their responsibility. Is that a correct assumption?

Mr. GRAHAM. Yes, it is.

Mr. MCCAIN. So our colleague from Illinois who continues to quote from the Constitution of the United States fails to quote from the specific addressing of this issue by the U.S. Supreme Court, specifically the Hamdan decision. Is that correct?

Mr. GRAHAM. That is correct.

Mr. MCCAIN. Is it not true that according to that decision, the U.S. Supreme Court, whom we ask to interpret the Constitution of the United States—they have made many interpretations over the years—says there is no bar to this Nation's holding one of its own citizens as an enemy combatant.

Now, one would think to the casual observer that is exactly what the U.S. Supreme Court meant. It is fairly plain language, not really complicated. I am not a lawyer, but how the Senator from Illinois, quoting from inalienable rights, can somehow totally disregard in every way what the U.S. Supreme Court says—they go on to say we hold that ''citizens who associate themselves with the military arm of the enemy government''—and I believe, in the view of most, they would view that as a member of al-Qaida, which this legislation specifically addresses. We hold that ''citizens who associate themselves with the military arm of the enemy government and with its aid, guidance and direction,'' which is exactly, basically, the language of our legislation, ''aid, guidance and direction enter this country,'' enter this country, ''bent on hostile acts are enemy belligerents within the meaning of the law of war.''

How can anything be more clear to the Senator from Illinois? I mean, it is beyond belief. It is beyond belief.

They then go on and talk about the Civil War, the U.S. Supreme Court does. They talk about the Civil War. They talk about a code binding the Union Army during the Civil War that captured rebels would be treated as prisoners of war. So a citizen, no less than an alien, can ''be part of or supporting forces hostile to the United States or coalition partners and engaged in an armed conflict against the United States.''

Now, after 9/11, we declared that we were at war with al-Qaida. Is that correct?

Mr. GRAHAM. Yes.

Mr. MCCAIN. So we are at war. We have American citizens who are enemy combatants. Yet the Senator from Illinois, in the most bizarre fashion that I have heard, says, therefore, they are

guaranteed the protections of—as he said—a trial.

I mean, I do not get it. Maybe the Senator from South Carolina can explain.

Mr. GRAHAM. I will be glad to yield to my friend from Illinois. Let me just try to set the stage the best I can. And I would love to have Senator LEVIN weigh in and anyone else.

The law, as it exists today, to my good friend from Illinois, has long held that when an American citizen collaborates with the enemy, that is an act of war, not a common crime. The constitutional review provided by the Supreme Court in cases involving American citizens collaborating with the enemy has said that we view that as an act of war and we apply the law of war. So our Supreme Court, in the Hamdi case just a few years ago, upheld the ruling in the In re Quirin case, which went back to World War II.

In that case, we had American citizens assisting Nazi saboteurs. The Supreme Court ruled that citizenship status does not prevent someone from being treated as part of the enemy force when they choose to join the enemy.

Why is this important? My good friend from Illinois is an intel officer. Intelligence gathering is part of war. An enemy combatant can be interrogated by our military intelligence community without Miranda rights. They can be held for an indefinite period of time to be questioned about past, present, and future attacks. The Supreme Court has legitimized that process because the individual in question was an American citizen captured in Afghanistan.

He pled to the Court: You cannot hold me as an enemy combatant because I am an American citizen.

The Court said: No, there is a long history in this country of having American citizens who collaborate with the enemy to be held as an enemy combatant.

Unfortunately, in every war we have engaged in, American citizens have provided aid and comfort to the enemy. In World War II we had American citizens assisting Nazi saboteurs.

Mr. MCCAIN. Was not one of the most famous cases a woman whose name was Tokyo Rose, who propagandized—she was an American citizen. She propagandized on behalf of the Japanese when we were in the war. Afterwards she was given a military trial.

Mr. GRAHAM. Yes. The point is——

Mr. MCCAIN. Not a civilian trial, not given her Miranda rights, but tried by military tribunal.

Mr. GRAHAM. Right. What we have done in the Military Commissions Act in 2009, civilians, American citizens cannot be tried in military commissions. It can only go to Federal court. But the point we are trying to make is it has been long held in this country that when an American citizen abroad or on the homeland decides to help the enemy, we have the right to hold them, not under a criminal theory but under the law of war because their effort to help the enemy, I say to my good friend from Illinois, is an act of war against their fellow citizens.

This is so important. If we deny our country the ability to hold and interrogate an American citizen who has joined forces with al-Qaida, we lose the ability to find out the intelligence they may have to keep us safe. If the choice is that an American citizen who chooses to collaborate with al-Qaida must be put in the criminal justice system, meaning they will have criminalized the war, the Congress will have restricted executive branch power.

To make it clear—please understand, I say to Senator FEINSTEIN—the courts of the United States have acknowledged that the executive branch can hold an American citizen as an enemy combatant when they engage and assist the enemy. The courts of the United States recognize the power of the executive to do that as Commander in Chief.

The question for us is, Do we want to be the first Congress in the history of the Nation to say to the executive branch that they no longer have that power given to them by the courts, inherent with being Commander in Chief, to protect us against enemies foreign and domestic.

I argue to my colleagues, given the threats we face from homegrown terrorism, from al-Qaida groups and their affiliates, that now is not the time to change the law preventing our military intelligence community from holding an American citizen who is helping the enemy on the homeland and prevent them from gathering intelligence.

I argue that the reason no other Congress has done this in past wars is because it didn't make a lot of sense. I argue that if a Senator came to the floor of the Senate during World War II and suggested that an American citizen who sided with the Nazis to sabotage American interests here could not be held as an enemy combatant, they would have been run out of town because most citizens would say anybody who helps the enemy—citizen or not—is a threat to our country.

Unlike other wars, we do have due process that exists today that never existed before. No Nazi soldier was able to go to a Federal court and say: Judge, let me go. The reason I have agreed, and the courts have applied habeas review to enemy combatant determination, is this is a war without end.

How does one become an enemy combatant? The executive branch makes the accusation. They have to follow the statutory criteria. This is a limited group of people in a limited classification. American citizen or not, if someone falls into this group, they can be held as an enemy combatant. But the executive branch has to prove to an independent judiciary that the case is sufficient, and under the law the judge has to agree with the military; we have an independent judiciary looking over the shoulder of the military in this war, unlike at any other time. So the government has to prove to a Federal judge, by a preponderance of the evidence, that this person is, in fact, an enemy combatant. If the judge disagrees, they are let go. If the judge agrees, we hold the enemy combatant, and they get an annual review process as to whether future detention is warranted. So we have robust due process.

But please understand what the Feinstein amendment is about. It is about the Congress of the United States, the Senate of the United States, for the first time in American history, restricting the ability of the executive branch to hold an American citizen who is collaborating with the enemy and question them under the law of war. If we do that to ourselves, we will regret it. I don't want to be in the first Congress, in the times in which we live, to change the law to deny our intelligence community and the Department of Defense the ability to deal with American citizens who have decided on their own to become part of al-Qaida. The day one decides they are going to side with al-Qaida, they have committed an act of war against the rest of us, and the courts acknowledge they can be held as an enemy combatant, not a common criminal.

The question for the Congress is, Do we want to undo that in the times in which we live? I plead with everybody in this body, get yourself educated about what the law is today. I ask Senator LEVIN, we have done nothing to change the law in this bill; is that correct?

Mr. LEVIN. Not only does 1031, the overall section, not change the law, it incorporates it, according to the administration's own statement of policy on what the current law is. The Senator is right. There is nothing in here which in any way affects habeas corpus, nor should we seek to do so. Habeas corpus remains exactly as it is. We could not change it if we wanted to, and we don't want to.

While the Senator asked me a question, I wish to answer a question with a question to him. Is it not true that for the first time, we provide that where there is going to be an unprivileged enemy belligerent who could be held in long-term detention under the law of war—for the first time we provide a judge and a lawyer to that person; is that right?

Mr. GRAHAM. That is correct, and we have been working on that together for 5 years. To respond, if I may, because I think it is a very good discussion, does the Senator agree with me that under the law that exists today, in terms of the Supreme Court rulings, an American citizen can be held as an enemy combatant?

Mr. LEVIN. I read this yesterday, and I will read it again now. The Senator is right. I don't know how anybody reading this can reach any other conclusion but what the Supreme

Court says, not because they are right or wrong but because of the Supreme Court: ''There is no bar to this Nation's holding one of its own citizens as an enemy combatant.''

By the way, nor should there be, in my judgment.

Mr. GRAHAM. Does the Senator agree that in past wars American citizens, unfortunately, have collaborated with the enemy?

Mr. LEVIN. They have, and they have been treated as enemy combatants.

Mr. GRAHAM. Does he agree with me that in World War II some American citizens agreed to assist the Nazis and were held as enemy combatants?

Mr. LEVIN. I agree.

Mr. GRAHAM. Does the Senator agree it is good policy to hold and interrogate someone who is helping al-Qaida to find out what they know?

Mr. LEVIN. It is good policy. If they decline, under the procedures under our language, the person should be first interrogated for whatever length of time those procedures provide—by the FBI, local police or anybody else. They have the right to do that.

Mr. GRAHAM. Does the Senator agree that the criminal justice system is not set up to gather military intelligence?

Mr. LEVIN. Yes.

Mr. MCCAIN. To interrupt, briefly, I wonder—in the interpretation of the Senator from Illinois of the Constitution of the United States—if it is an American citizen, say, somewhere over in Pakistan, who is plotting and seeking to destroy American citizens, it is OK for us to send a predator and fire and kill that person, but according to the interpretation of the Senator from Illinois, if that person were apprehended in Charleston planning to blow up Shaw Air Force Base, then that person would be given his Miranda rights, how in the world does that fit?

Again, this is one of the more bizarre discussions I have had in the 20-some years I have been a Member of this body.

Mr. GRAHAM. Under the law as it exists today, an American citizen can be held as an enemy combatant. The question we are debating on the floor—Senator FEINSTEIN is saying that in the future an American citizen who is deemed to have collaborated with al-Qaida or the Taliban or others could no longer be held as an enemy combatant for an indefinite period, which means we cannot gather military intelligence as to what they know about past, present, and future attacks.

I argue we would be the first Congress in history to bring about that result and that now would be the worst time in American history to do that. If we cannot hold a citizen who is suspected of assisting al-Qaida under the law of war, the only option is to put them in the criminal justice system. Then we cannot hold them indefinitely, and we cannot ask about present, past or future attacks because now we are investigating a crime, nor should we be allowed to do that under criminal law.

The point is that when a person assists the enemy, whether at home or abroad, they have committed an act of war against our citizens, and the Supreme Court has acknowledged that the executive branch has the power to hold them as an enemy combatant. The question is, Are we going to change that and say in the 21st century, in 2011, every American citizen who chooses to cooperate with al-Qaida can no longer be interrogated for intelligence-gathering purposes by our Department of Defense and our intelligence community; that they have to go into the criminal justice system right off the bat, where they are given a lawyer and are read their Miranda rights? If we do that, we are going to deny ourselves valuable intelligence. We would be saying to our citizens that we no longer treat helping al-Qaida as an act of war against the rest of us.

If one suggested during World War II that someone who collaborated with the Nazis should be viewed as a common criminal, most Americans would have said: No, they turned on their fellow citizens and they are now part of the enemy.

All I want to do is keep the law as it is because we need it now more than ever. I am sensitive to due process. There is more due process in this war. Every enemy combatant being held at Guantanamo Bay, captured in the United States, has to go before a Federal judge. The military has to prove their case to a Federal judge. There is an annual review process. That makes sense to me. What doesn't make sense to me is for this country and this Senate to overturn a power that makes eminent sense when we need it the most. It doesn't make sense to set aside a Supreme Court case that acknowledges that when an American citizen affiliates with al-Qaida, that is an act of war against the rest of us and to criminalize that conduct, denying us the ability to gather intelligence. If we go down that road, we have weakened ourselves as a people, without any higher purpose.

To those American citizens thinking about helping al-Qaida, please know what will come your way: death, detention, prosecution. If you are thinking about plotting with the enemy inside our country to do the rest of us harm, please understand what is coming your way: the full force of the law.

The law I am talking about is the law of armed conflict. You subject yourself to being held as an enemy of the people of the United States, interrogated about what you know and why you did what you did or planned to do, and you subject yourself to imprisonment and death. The reason you subject yourself to that regime is because your decision to turn on the rest of us and help a group of people who would destroy our way of life is not something we idly accept. It is not a common, everyday crime. It is a decision by you to commit an act of aggression against the rest of us.

I hope and pray this Senate will not, for the first time in American history, deny our ability to interrogate and find intelligence from those citizens who choose to associate with the enemy on our soil, because if we do that, it will be a deviation from the law that has existed at a time when we need that law the most.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. KIRK. Mr. President, I will yield to Senator FEINSTEIN in a minute. I appreciate the debate with my friends and mentors. The three of us who were just debating were all military officers, but we have different views. We are dangerously close to being similar to the House of Representatives, where they have face-to-face debate. I appreciate that.

The law that should not be changed is the Constitution of the United States, and we realize the regulations of the United States have force, that the statutes of the United States have greater force, and the Supreme Court decisions have even greater force. But no document is above the actual words of the Constitution. I will say those words are our birthright as American citizens.

The sixth amendment says you shall be secure in your person and that shall not be violated and no warrant shall issue except upon probable cause—meaning that a court has made that decision. Your first amendment rights say that no person—and there is no exception in the Constitution—shall be held to answer for capital or otherwise infamous crimes, unless presentment or indictment of a grand jury.

By the way, I am talking specifically about a U.S. person inside the jurisdiction of the United States. Our sixth amendment right says that in all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial. Our fourteenth amendment right says no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States. These are, without question, for U.S. citizens. There is a balancing act between the threats we perceive. We know the threats from foreign enemies and terrorists. That is well known to us, especially the new generation of Americans who witnessed the mass murders of September 11.

The Founding Fathers were also wrestling with another threat—the threat of the state, the government itself, against its own individuals and the abuse of power. We would forget the lesson of history, unless we understood that is a threat as well. We are told there will be no intelligence benefit if a U.S. citizen who is arrested can't be interrogated by Homeland Defense or FBI people. And yet, I would say, as a member of the intelligence community, the FBI and the Department of Homeland Security are part of the intelligence community and feed

information into the intelligence community and can be used.

One of the key ideas behind our American government is it is not what we do, it is how we do it. One of the things missing in section 1031 is who is the decider. The decider in this case is the suspicion of being part of the al-Qaida, the Taliban, or committing that belligerent act, but we have no court making the decision. As an American, you no longer have a right to the civilian court system, and those rights are inherent to you and are your birthright as an American citizen.

We should make sure that what we do here and now is that we understand your rights; that as an American citizen you can only be incarcerated on indictment by a grand jury, which is by a preponderance of evidence; and then conviction is beyond the shadow of a doubt. Under this language, if you are accused of being part of al-Qaida or the Taliban, or of committing an act, you can be held subject to only one habeas review on a preponderance of evidence.

Most Americans think you can only be convicted of a crime in the United States beyond the shadow of a doubt by a jury of your peers. But if this is passed, that is no longer true. We want to make sure the decider always is a civilian article III court. We are talking about a very specific definition here inside the jurisdiction of the United States among American citizens.

I agree we can kill Anwar al-Awlaki, who is making war on the United States from a foreign jurisdiction. But when we are inside the United States, the whole point of the U.S. military and our establishment is to defend our rights, and those rights cannot be taken away from us by any executive action. They can only be taken away from us by action of a civilian court, by a jury of our peers and by their decision beyond a shadow of a doubt.

With that, I yield for the Senator from California, whose amendment I so strongly support.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I want one quick moment to respond and then I will propound a unanimous consent request.

We couldn't change the Constitution here if we wanted to, and nobody does want to. And that includes the right of habeas corpus. All the constitutional rights which the Senator from Illinois talked about are constitutional rights. They are there. They are guaranteed. They couldn't be changed by the Congress if we wanted to, and I hope nobody wants to change those rights.

But what the Senator ignores, and what has been ignored generally here, is that there is another path, and the Supreme Court has approved this path so that if any American citizen joins a foreign army in attacking us, that person may be treated as an enemy combatant. That is not me speaking. That is the Supreme Court in Hamdi.

There is no bar to this Nation's holding one of its own citizens as an enemy combatant.

If you join an army and attack us, you can be treated as an enemy combatant. The Supreme Court has said so more than once.

My unanimous consent request is the following: that the Senator from California be recognized first for whatever comments she wishes to make, then the senior Senator from Illinois be recognized to speak on whatever subject he wishes—on the amendment of the Senator from California or whatever—and then Senator MERKLEY's amendment be in order to be called up by Senator MERKLEY.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from California.

Mrs. FEINSTEIN. I thank the distinguished manager of the bill, and I say to the distinguished senior Senator from Illinois, who is here, I will try to be relatively brief. But I would also say that seldom do we get an opportunity on the floor of the Senate to debate what is fundamental to this American democracy. In a sense, I am pleased this issue has now been aired publicly because I think we can address it directly.

Senator DURBIN, I also want to thank your colleague, the junior Senator from Illinois, Senator KIRK, for his cosponsorship of this amendment.

The fact of the matter is, the original draft of this defense bill had this language in it:

> The authority to detain a person under this section does not extend to the detention of citizens or lawful resident aliens of the United States on the basis of conduct taking place in the United States except to the extent permitted by the Constitution of the United States.

That was removed from the bill. Essentially, what we are trying to do is put back in that you cannot indefinitely detain a citizen—just a citizen—of the United States without trial. Due process is a basic right of this democracy. It is given to us because we are citizens of the United States. And due process requires that we not authorize indefinite detention of our citizens.

Where I profoundly disagree with the very distinguished chairman and ranking member of the Armed Services Committee is by saying that Ex parte Quirin established the law for U.S. citizens in this area that still holds. It does not. I went to the Hamdi opinion, and I wish to read some of the plurality opinion as written by Justice O'Connor. This first quote is from page 23 of her opinion.

> As critical as the government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.

Continuing on page 24:

> We reaffirm today the fundamental nature of a citizen's right to be free from involuntary confinement by his own government without due process of law, and we weigh the opposing governmental interests against the curtailment of liberty that such confinement entails.

It then goes on, referring to the Hamdi case, on page 26:

> We therefore hold that a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the government's factual assertions before a neutral decision-maker.

Then to quote from Justice Scalia's opinion, which is important commentary on the 1942 case Ex parte Quirin, he says:

> The government argues that our more recent jurisprudence ratifies its indefinite imprisonment of a citizen within the territorial jurisdiction of Federal courts. It places primary reliance on Ex parte Quirin, a World War II case upholding the trial by military commission of eight German saboteurs, one of whom, Hans Haupt, was a U.S. citizen.

Justice Scalia concludes:

> This case was not this Court's finest hour.

Mr. President, the difference today is that we as a Congress are being asked, for the first time certainly since I have been in this body—and I believe since the senior Senator from Illinois has been in this body—to affirmatively authorize that an American citizen can be picked up and held indefinitely without being charged or tried. That is a very big deal, because in 1971 we passed a law that said you cannot do this. This was after the internment of Japanese-American citizens in World War II. It took that long, until 1971, when Richard Nixon signed the Non-Detention Act, and that law has never been violated.

The Quirin case was not about whether a U.S. citizen captured during wartime could be held indefinitely, but rather whether such an individual could be held in detention pending trial by military commission. The recent case of an American put into military custody, of course, was Jose Padilla, and there was a good deal of controversy over the years about his case. He was ultimately transferred out of military custody, tried and convicted in a civilian court.

What we are talking about here—and I am very pleased Senator KIRK and Senator LEE have joined us as cosponsors in this—is the right of our government, as specifically authorized in a law by Congress, to say that a citizen of the United States can be arrested and essentially held without trial forever.

The hypothetical example that has been offered by the Senator from Arizona, the ranking member of the committee, is: Would we want someone who is an American—who is planning to kill our people, bomb our buildings—not to be held indefinitely under the laws of war? I believe it is a different situation when it comes to American citizens. What if it is an innocent

American we are talking about? What if it is someone who was in the wrong place at the wrong time? The beauty of our Constitution and our law is it gives every citizen the right of review—review by a court, and this is what the Hamdi decision is all about. The defense bill on the floor, as written, would take us a step backward. The bill, as written, would say an American citizen can be picked up, can be held for the length of hostilities—is that 5 years, 10 years, 15 years, 20 years, 25 years, 30 years—without a trial. I say that is wrong. I say that is not the way this democracy was set up. And I also say that is totally unnecessary because our federal courts work well to prosecute terrorists. We can go back to the Shoe Bomber, as a case in point. We can go back to Abdulmutallab as a case in point. We can go back to the record of the Federal courts prosecuting over 400 terrorists since 9/11.

I want to thank Senator DURBIN for his interest in this issue and his cosponsorship of this amendment. It is very much appreciated. I don't know whether we can win this, but I think it is very important that we try and I know we are getting more and more support as people learn more about what this bill does. I think it is very important that we build a record in this body, because I have no doubt this is going to be litigated. I hope we are successful with this amendment. I hope we can protect the rights of Americans.

Mr. President, as we have occasion to look at people in Guantanamo, we know there are people there who were in the wrong place at the wrong time. If they are going to be held forever, that is a mistake, and we don't want the same thing to happen to American citizens in this country.

This is another example of how we are over-militarizing things that aren't broken. As I have said previously here on the floor, I don't see a need for the military to go around arresting Americans. The national security division of the FBI now has some 10,000 people. They have 56 field local offices with special agents who are well equipped to arrest terrorists and also interrogate them. Certainly the Justice Department is equipped to prosecute terrorists in Federal criminal court. The conviction rate and the long sentences achieved shows their success.

I am hopeful we will be able to pass this amendment and change the bill to reflect that Americans are protected from permanent detention without trial. That is all we are trying to do.

I thank the Senator from Illinois, I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, let me say at the outset what an extraordinary job my colleague from California has done. There was a time in American history, before law schools, when people read the law and practiced the law. The Senator from California has not only read the law, she has written many laws, and her competence in advocating this important constitutional question has been proven over and over. So I thank her for having the determination and courage to stand up for her convictions against some who would be critical of anyone who broaches the subject.

This is a controversial subject. We are talking about the security of Americans. We are talking about terrorism. We all remember a few years ago when our lives were interrupted—a time we will never forget—when terrorists attacked the United States and killed 3,000 innocent American people on 9/11. We came together in this Congress, Democrats and Republicans, and said we need to keep this country safe; that we never want that to happen again. So we passed new laws, suggested by President George W. Bush, and enacted by Democrats and Republicans in Congress.

We created new agencies, such as the TSA security agency at airports and we empowered our intelligence branches—which Senator FEINSTEIN has a particular responsibility for as chairman of the Senate Intelligence Committee—by giving them more people, more technology, and more authority, and we said to them, keep us safe.

We said to our military: We want you to be the best in the world and continue to be, and we will provide the resources for that to happen. Then we turned, as Senator FEINSTEIN has noted, to the Federal Bureau of Investigation and said: We are going to dramatically increase your numbers and give you the technology you need to keep us safe.

Here we are some 10 years later, and what can we say? We can say thanks to the leadership of President George W. Bush and Barack Obama, 9/11 was not repeated—and we never want it repeated.

We can also say, with very few exceptions, in the 10 years since 9/11 that we have done all these things consistent with America's values and principles. Other countries—and we see them even today—faced with uncertainty and insecurity throw out all of the rules of human conduct even to the point of killing their own people in the streets to maintain order. Thank God that never has occurred in the United States, and I pray it never will. Those of us who are elected to represent our States in the Senate take an oath, an oath that we are going to uphold and defend the Constitution with its values and principles. We understand that taking that oath may mean that we are accepting due process, and due process says a fair day in court for someone accused of a crime. Other countries dispense with that. They don't need a trial. They find someone suspected of a crime, whatever it might be, that person is given summary execution, and that is the end of the story. No questions asked.

We don't do it that way in America. We establish standards of conduct and justice, and particularly as it relates to the people who live in America, our citizens and legal residents who are in the United States. That is what this debate is about.

This is an important bill, S. 1867. It comes up every year in a variety of different forms, and we are lucky to have Senator CARL LEVIN and Senator JOHN MCCAIN who put more hours into it than we can imagine to write the bill to authorize the Department of Defense to do its job. It is the best military in the world, and their hard work makes certain that it stays in that position.

But this provision they have added in this bill is a serious mistake—serious. It is serious enough for me to support Senator FEINSTEIN in her efforts to change and remove the language. Why?

First, we know the law enforcement officials in the United States of America, the Attorney General's Office, the FBI have done a good job in keeping America safe. They have arrested over 300 suspected terrorists in the United States—over 300 of them—and they have tried them in the criminal courts of America, on trial, in public, for the world to see that these people will be held to the standards of trial as an American citizen. Of those 300, they have successfully prosecuted over 300 alleged terrorists, then incarcerated them in the prisons of America, including Marion, IL, in my home State, where they are safely and humanely incarcerated.

The message to the world is: We are going to keep America safe, but we are going to do it by playing by the rules that make us America. Due process is one of those rules, and it has worked. It has worked under two administrations.

Now comes this bill and a suggestion that we need to change the rules. The suggestion is, in this measure, that we will do something that has not been done in America before. Section 1031 of this bill, for the first time in the history of America, will authorize the indefinite detention of American citizens in the United States. This is unprecedented. In my view, as chair of the Constitution Subcommittee of Senate Judiciary, it raises serious constitutional concerns.

Senator LEVIN and Senator MCCAIN disagree. In an op-ed piece for the Washington Post, they recently wrote:

> No provision in the legislation expands the authority under which detainees can be held in military custody.

But look at the plain language of section 1031. There is no exclusion for U.S. citizens. So the question is, If we believe an American citizen is guilty or will be guilty of acts of terrorism, can we detain them indefinitely? Can we ignore their constitutional rights and hold them indefinitely, without warning them of their right to remain silent, without advising them of their right to counsel, without giving them the basic protections of our Constitution? I don't believe that should be the standard.

I listened to Senator MCCAIN. He makes a pretty compelling argument: Wait a minute. You are telling me that if you have someone in front of you who you think is a terrorist who could repeat 9/11, you are going to read their Miranda rights to them?

Well, as an American citizen, yes, I would. I would say to Senator MCCAIN the same argument would apply if that person in front of me was not a suspected terrorist but a suspected serial killer, a suspected sexual predator; we read them their Miranda rights. We believe our system of justice can work with those rights being read.

Do you remember the case about 2 years ago of the person who was on the airplane, the Underwear Bomber, Abdulmutallab? He was coming to the United States to blow up that airplane and kill all the people onboard, and thank God he failed. He tried to ignite a bomb and his clothing caught on fire, and the other passengers jumped on him, subdued him, and he was arrested. This man, not an American citizen, was taken off the plane and interrogated by the Federal Bureau of Investigation. After he stopped talking voluntarily, they read him his Miranda rights. We all know them from the crime shows that we watch on TV: the right to remain silent, everything you say can be used against you, the right to retain counsel. He was read all those things, and he shut. But that wasn't the end of the story.

By the next day, they were back interrogating him and they had contacted his parents, brought his parents to this country. He met with his parents and turned and said: I will cooperate. I will tell you everything I know. He started talking, and he didn't stop.

At the end of the day, he was charged with terrible, serious crimes, brought to trial in Detroit, and pled guilty under our criminal system. Now, he wasn't an American citizen, but even playing by the rules for American citizens we successfully prosecuted this would-be bomber and terrorist.

What is the message behind that? The message behind that is we will stand by our principles and values and still keep America safe. We will trust the Federal Bureau of Investigation and the Department of Justice to successfully prosecute suspected and alleged terrorists. We will not surrender our principles even as we fight terrorism every single day.

Now, this bill changes, unfortunately, a fundamental aspect of that. It says if an American citizen is detained and suspected to be involved in terrorism with al-Qaida or other groups, they can be held indefinitely without being given their constitutional rights.

I appreciate that Senator LEVIN and Senator MCCAIN have said they are willing to consider excluding U.S. persons, but section 1031 doesn't. I hope they do.

I want to address a couple statements that have been made by my Republican colleagues. I like them and respect them.

I would say to Senator GRAHAM, my colleague and friend from South Carolina, I listened to Senator LEVIN tell us privately and publicly over and over again: What we have here doesn't change the law. Then I listened to your arguments on the floor saying: Well, the law needs to be changed. That is why we are doing this. So I am struggling to figure out if Senator LEVIN and Senator GRAHAM have reconciled.

Mr. GRAHAM. May I respond?

Mr. DURBIN. I want the Senator to respond, but I want to ask point blank, is there an exclusion currently in the law for U.S. citizens under section 1031 and whether or not under 1031 American citizens can be detained indefinitely?

Mr. GRAHAM. No. And there should not be. Could I finish my thought?

Mr. DURBIN. Of course.

Mr. GRAHAM. Now, we are good friends, and we are going to stay that way. But you keep saying something, Senator DURBIN, that is not true. The law of the land is that an American citizen can be held as an enemy combatant. It is the Hamdi decision, and I quote:

> There is no bar to this Nation's holding one of its own citizens as an enemy combatant.

Hamdi was an American citizen captured in Afghanistan fighting for the Taliban. Justice O'Connor specifically recognized that Hamdi's detention could last for the rest of his life because law of war detention can last for the duration of the relevant conflict.

The Padilla case involves an American citizen captured in the United States, held for 5 years as an enemy combatant, and the Fourth Circuit reviewed his case and said that we could hold an American citizen as an enemy combatant.

To my good friend from Illinois, throughout the history of this country American citizens in every conflict have, unfortunately, decided to side with the enemy at times. In re Quirin is a 1942–1943 case that involved American citizens assisting German saboteurs. They were held under the law of war because the act of collaborating with the enemy was considered an act of war, not a common crime.

So the law of the land by the courts is that an American citizen can be held as an enemy combatant. That has been the law for decades.

What Senator FEINSTEIN would do is change that. The Congress would be saying we cannot hold an American citizen as an American combatant.

I do appreciate the time. Now, let me tell you why I think that is important.

The Senator is a very good lawyer. Under the domestic criminal law, we cannot hold someone indefinitely and question them about enemy activity: What do you know about the enemy? What is coming? What were you doing? Where did you train? Under domestic criminal law, we can't question somebody in a way that would put them in jeopardy.

Under military intelligence gathering we can question an enemy prisoner without them having a lawyer to be able to find out how to defend America. If we can't hold this person as an enemy combatant, the only way we can hold them is under domestic criminal law. When the interview starts and the guy says: I want my lawyer; I don't want to talk to you anymore—under the criminal justice model there is a very limited time we can hold them or question them without reading them their rights or giving them a lawyer.

Under intelligence gathering our Department of Defense, the FBI, and the CIA can tell the individual: You are not entitled to a lawyer. You have to sit here and talk with us because we want to know what you know about present, past, and future attacks.

If we can't hold an American citizen who has decided to collaborate with al-Qaida as an enemy combatant, we lose that ability to gather intelligence. That is the change that Senator FEINSTEIN is proposing; that the law be changed by the Congress to say enemy combatant status can never be applied to an American citizen if they collaborate with al-Qaida. That would be a huge loss of intelligence gathering, it would be a substantial change in the law, and it would be the first time any Congress has ever suggested that an American citizen can collaborate with the enemy and not be considered a threat to the United States from the military point of view. I don't want to go down that road because I think that is a very bad choice in the times in which we live.

So to my good friend, the law is clear we can hold an American citizen as an enemy combatant. The Congress is contemplating changing that, and I think it would be a very bad decision in the times in which we live to deny our ability to hold an American citizen and question them about what they know and why they decided to join al-Qaida.

Mr. MCCAIN. Mr. President, I ask for the regular order. What is the regular order?

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

Mr. GRAHAM. Simply stated, if a person decides to collaborate with al-Qaida in a very limited way, can we hold them? They have to be a member of al-Qaida or affiliated with it or be involved in a hostile act. But if they do those things, historically, American citizens who chose to side with the Nazis—in this case, al-Qaida—have been viewed by the rest of us not as a common criminal but as a military threat.

Now is not the time to change that. We need that ability to question that person: Why did you join al-Qaida? Where did you train? What do you know about what is coming next? And the only way we can get that information is to hold them as an enemy combatant and take all the time we need to protect this Nation and interrogate.

Mr. DURBIN. I would like to reclaim the floor.

Mr. GRAHAM. Yes, sir. I appreciate the exchange.

Mr. DURBIN. And would the Senator end that with a question mark?

Mr. GRAHAM. And, was I right?

Mr. DURBIN. I thank my colleague from South Carolina.

What the Senator concluded with, though, I think is critical to this conversation. He said the only way to get to the bottom of whether there is an al-Qaida connection that could threaten the United States is military detention. Well, the Abdulmutallab case argues just the opposite. It was the Federal Bureau of Investigation that he sat before and told all of the information that the Senator has just discussed.

Mr. GRAHAM. May I respond and say the Senator is right.

I am an all-of-the-above guy. I believe that military and civilian courts should be used.

When an American citizen is involved, does the Senator agree with me that military commissions are off the table?

Mr. DURBIN. So the Senator is arguing that every President should have all the options, criminal courts as well as military commissions and tribunals?

Mr. GRAHAM. Absolutely.

Mr. DURBIN. Well, what is the difference, then, with what the Senator is standing for and what is the current situation? From my point of view, our Presidents—President Bush and President Obama—since 9/11, have used both, with more success on the criminal courts side—dramatically more success on the criminal courts side.

The obvious question that Senator FEINSTEIN poses is, if the system isn't broken, if the system is keeping us safe, if we have successfully prosecuted over 300 alleged terrorists in our criminal courts and 6 in military commissions, why do we want to change it?

Mr. GRAHAM. Here is the point I am trying to make.

Mr. DURBIN. Retaining the floor.

Mr. GRAHAM. Thank you. And this is a very good exchange.

My view is that when we capture somebody at home and the belief is that they are now part of al-Qaida, that if we want to read them their Miranda rights and put them in Federal court, we have the ability to do that. This legislation doesn't prevent that from happening.

Does it, I ask Senator LEVIN?

Mr. LEVIN. It does not.

Mr. GRAHAM. But what Senator FEINSTEIN is proposing is that no longer do we have the option of holding the American citizen as an enemy combatant to gather intelligence, and we don't have the ability to hold them for a period of time to interrogate them under the law of war.

What I would suggest to the Senator is that the information we receive from Guantanamo Bay detainees has been invaluable to this Nation's defense. To those who believe it was because of waterboarding, I couldn't disagree more. The chief reason we have been able to gather good intelligence at Guantanamo Bay is because of time.

The detainee is being humanely treated, but there is no requirement under military law to let the enemy prisoner go at a certain period of time.

If you take away the ability to hold an American citizen who has associated himself with al-Qaida to be held as an enemy combatant, you can no longer use the technique of interrogating him over time to find out what he knows about the enemy.

You are worried about prosecuting them. I am worried about finding out what they know about future attacks. They are not consistent. You can prosecute somebody. That is part of the law. What the Senator is taking away from us is the ability to gather intelligence. Our criminal justice system is not set up to gather intelligence.

Mr. DURBIN. I want to reclaim the floor. I know Senator MCCAIN is anxious for me to conclude and there is something he is anxious to do quickly, but I will try to do this in appropriate time for the gravity of the issue before us.

But to suggest the only way we can get information about a terrorist attack on the United States by al-Qaida and other sources is to turn to the military commissions and tribunals and not use the FBI and not use the Department of Justice defies logic and experience. Abdulmutallab, the Underwear Bomber, a member of al-Qaida, failed in his attempt to bring down that plane, interrogated successfully by the FBI, basically told them everything he knew over a period of time. It worked. To argue that you cannot do this defies the experience with Abdulmutallab.

I want to say a word about the Hamdi case. I listened as Senator FEINSTEIN read the Supreme Court decision. I do not think the Supreme Court decision stands for what was said by the Senator from South Carolina. I think what he said was inaccurate. I do not believe Justice O'Connor went to the extent of saying you can hold an American citizen indefinitely.

Let me also say when it comes to the Hamdi case, Hamdi was captured in Afghanistan. He was captured on the battlefield in Afghanistan, not the United States. And Justice O'Connor, in that opinion, was very careful to say the Hamdi decision was limited to ''individuals who fought against the United States in Afghanistan as part of the Taliban.'' She was not talking about American citizens and their rights. She was talking about this specific situation.

Now let's go to the case of Jose Padilla. Jose Padilla, some will argue, is a precedent for the indefinite detention of American citizens. But look at what happened in the case of Padilla, a U.S. citizen placed in military custody in the United States. The Fourth Circuit Court of Appeals, one of the most conservative courts in our Nation, upheld Padilla's military detention.

Then, before the Supreme Court had the chance to review the Fourth Circuit's decision, the Bush administration transferred Padilla out of military custody and prosecuted him in an article III criminal court.

I do not think that Hamdi or Padilla makes the case that has been made on this floor.

I want to say I think Senator FEINSTEIN is proper in raising this amendment. I think the fact is that Hamdi is a U.S. citizen, but it does not stand for the indefinite detention of U.S. citizens as this new law would allow.

It troubles me that as good, as professional, as careful as our government has been to keep America safe, we now have in a Defense authorization bill an attempt to change some of the most fundamental, constitutional principles in America. This bill went through a great committee, our Armed Services Committee, but not through the Judiciary Committee which has specific subject matter jurisdiction over our Constitution. It did not go through the Intelligence Committee. And for the record, the provisions in this bill—which some have said are not that significant, that much of a change—are opposed by this administration, opposed by the Secretary of Defense, Leon Panetta, who received a 100-to-nothing vote of confidence from the U.S. Senate when he was appointed, opposed by our Director of National Intelligence, who says these provisions will not make America safer but make it more difficult to protect America, and opposed by the Federal Bureau of Investigation.

I entered a letter from Director Muller in the RECORD yesterday, as well as the Department of Justice.

You have to ask yourself, if all of these agencies of government, which work day in, day out, 24–7 to keep us safe, tell us not to pass these provisions because it does not make America safer, it jeopardizes our security, why are we doing it?

Senator FEINSTEIN has the right approach: Let us try to preserve some of the basic constitutional values here. I think we can. I hope my colleagues will take care before they vote against Feinstein. Despite the respect, which I share, that they have for our Armed Services Committee and its leadership—this is a matter of constitutional importance and gravity. It is important for us to take care and not to change our basic values in the course of debating a Defense authorization bill. Let's keep America safe but let's also respect the basic principle that American citizens are entitled to constitutional rights. The indefinite detention of an American citizen accused—not convicted, accused of terrorist activity—the indefinite detention runs counter to the basic principles of the Constitution we have sworn to uphold.

I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Michigan.

Mr. LEVIN. I wonder if the Senator will yield for a question. Would the Senator agree that the majority opinion in Hamdi said the following:

There is no bar to this Nation's holding one of its own citizens as an enemy combatant.

Mr. DURBIN. I would respond by saying Justice O'Connor in that decision said:

[A]s critical as the Government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat. . . .

We therefore hold that a citizen-detainee, seeking to challenge his classification as enemy combatant, must receive notification of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decision-maker.

Mr. LEVIN. Would the Senator agree that specifically referred to there is that a citizen being held as an enemy combatant is—excuse me. Would the Senator agree that what he read refers to the exact statement of the Justice that a citizen who is held as an enemy combatant is entitled to certain rights? Would the Senator agree that that, by its own terms, says that a citizen can be held as an enemy combatant?

Mr. DURBIN. In the particular case of Hamdi, captured in Afghanistan as part of the Taliban.

Mr. LEVIN. She did not say that. She said ''a citizen.'' I know what the facts of the case are. She did not limit it to the facts of the case.

Mr. DURBIN. I am sorry but she did. The quote:

. . . individuals who fought against the United States in Afghanistan as part of the Taliban.

Mr. LEVIN. She did not limit it to that. She described the facts of that case.

Mr. DURBIN. She limits it to that case. If I could make one response and then I will give the floor to the Senator. This is clearly an important constitutional question and one where there is real disagreement among the Members on the floor. I think it is one that frankly we should not be taking up in a Defense authorization bill but ought to be considered in a much broader context because it engages us at many levels in terms of constitutional protections.

Mr. LEVIN. I agree with the Senator that Justice O'Connor said what the Senator said she said. Would the Senator agree with me that Justice O'Connor said:

There is no bar to this Nation's holding one of its own citizens as an enemy combatant.

Would the Senator agree that she said that?

Mr. DURBIN. As it related to Hamdi captured in Afghanistan.

Mr. LEVIN. Would the Senator agree she said that, however?

Mr. DURBIN. As it related to Hamdi, of course.

Mr. LEVIN. I am giving the Senator an exact quote. I know the facts of the case.

Mr. DURBIN. I can read the whole paragraph rather than the sentence.

Mr. LEVIN. You already have. Given the facts of the case. I understand the facts of the case, that it was somebody captured in Afghanistan. My question is, of the Senator: Would he agree that Justice O'Connor said—she is talking about this case, of course——

Mr. DURBIN. Yes.

Mr. LEVIN. ''There is no bar to this Nation holding one of its own citizens''?

Mr. DURBIN. Captured on the field of battle in Afghanistan.

Mr. LEVIN. Would the Senator agree that the Justice said the following, that a citizen, no less than an alien, can be ''part of or supporting forces hostile to the United States or coalition partners'' and ''engaged in an armed conflict against the United States,'' and would pose the same threat of returning to the front during the ongoing conflict? Would the Senator agree that she said that?

Mr. DURBIN. Of course.

Mr. LEVIN. Would the Senator agree that she quoted from the Quirin case, in which an American citizen was captured on Long Island?

Mr. DURBIN. She did make reference to the Quirin case.

Mr. LEVIN. Did she cite that with approval?

Mr. DURBIN. I would say there was some reservation in citing it. I say to the Senator, our difficulty and disagreement is the fact we are dealing with a specific individual captured on the field of battle in Afghanistan with the Taliban.

Mr. LEVIN. I understand.

Mr. DURBIN. We are not talking about American citizens being arrested and detained within the United States and being held indefinitely without constitutional rights.

Mr. LEVIN. My question, though—my question is: Did Justice O'Connor say that, in Quirin, that one of the detainees alleged that he was a naturalized United States citizen, we held that—these are her exact words:

Citizens who associate themselves with the military arm of the enemy government, and with its aid, guidance and direction enter this country bent on hostile acts, are enemy belligerents within the meaning of . . . the law of war.

Did she say that?

Mr. DURBIN. I can tell the Senator there were references in there to the case, but the Supreme Court has never ruled on the specific matter of law which the Senator continues to read. Until it rules, we will make the decision in this Department of Defense authorization bill, and it is not an affirmation of current law because there has been no ruling.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Isn't it true that Justice O'Connor was specifically referring to a case of a person who was captured on Long Island? Last I checked, Long Island was part—albeit sometimes regrettably—part of the United States of America.

Mr. LEVIN. She is quoting with approval from the Quirin case in which one of the detainees was——

Mr. MCCAIN. Captured in the United States of America.

Those are the facts of the case.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. MCCAIN. Madam President, I am afraid we have to move to the amendment of Senator MERKLEY, who has been very patient.

Mr. LEVIN. According to a unanimous consent agreement which was entered into——

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I understand Senator MERKLEY was going to be recognized next to offer his amendment. That was according to the unanimous consent agreement. I understand the Senator from New Hampshire, I don't know for how long, needed to make a unanimous consent request. Am I correct? No? I am incorrect.

According to the existing unanimous consent agreement, which was entered into——

Mr. MCCAIN. Can I ask the indulgence——

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Could I ask the indulgence of my friend from Oregon, that the Senator from South Carolina be allowed 2 minutes, and the Senator from New Hampshire be allowed 5 minutes? Would that be all right with the Senator from Oregon?

Mr. MERKLEY. Yes.

Mr. MCCAIN. I thank him for his courtesy too. I say to the Senator from Illinois, this is an important debate and discussion. I appreciate his presentation. I think a lot of people are getting a lot of good information, on what is a very complex and very central issue. I thank the Senator from Illinois.

I yield.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Please understand what you are about to do if you pass the Feinstein amendment. You will be saying as a Congress, for the first time in American history, an American citizen who allies himself with an enemy force can no longer be held as an enemy combatant. The In Re Quirin decision was about American citizens aiding Nazi saboteurs, and the Supreme Court held then that they could be held as enemy combatants. So as much respect as I have for Senator DURBIN, it has been the law of the United States for decades that an American citizen on our soil who collaborates with the enemy has committed an act of war and will be held under the law of war,

not domestic criminal law. That is the law back then. That is the law now.

Hamdi said that an American citizen—a noncitizen has a habeas right under law of war detention because this is a war without end. The holding of that case was not that you cannot hold an American citizen, it is that you have a habeas right to go to a Federal judge and the Federal judge will determine whether the military has made a proper case. It has nothing to do with an enemy combatant being held as an American citizen. What this amendment would do is it would bar the United States in the future from holding an American citizen who decides to associate with al-Qaida.

In World War II it was perfectly proper to hold an American citizen as an enemy combatant who helped the Nazis. But we believe, somehow, in 2011, that is no longer fair. That would be wrong. My God, what are we doing in 2011? Do you not think al-Qaida is trying to recruit people here at home? Is the homeland the battlefield? You better believe it is the battlefield.

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

Mr. GRAHAM. Madam President, I ask unanimous consent for 1 more minute.

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

Mr. GRAHAM. That is the point. Why would you say that if you are in Afghanistan, we can blow you up, put you in jail forever, but if you make it here, all of a sudden we cannot even talk to you about being part of al-Qaida. What a perverse outcome, to say if you make it to America, you are home free; you cannot be interrogated by our military or our CIA; you get a lawyer. And that is the end of the discussion. That is what you would be doing. That is crazy. No Congress has ever decided to do that in other wars. If we do that here, we are changing the law in a way that makes us less safe. That is not going to be on my resume.

It is not unfair to make an American citizen account for the fact that they decided to help al-Qaida to kill us all and hold them as long as it takes to find intelligence about what may be coming next. And when they say ''I want my lawyer,'' you tell them ''Shut up. You don't get a lawyer.''

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

Mr. GRAHAM. ''You are an enemy combatant, and we are going to talk to you about why you joined al-Qaida.''

The PRESIDING OFFICER. The Senator from New Hampshire.

Ms. AYOTTE. Madam President, I also rise in opposition to the amendment offered by Senator FEINSTEIN, and I certainly appreciate the comments of my colleague from South Carolina. It would lead to an absurd result that if we were in a situation where an American citizen became a member of al-Qaida and from within our country attacked Americans and we could not gather the maximum amount of information from them to make sure we could prevent future attacks against our country—that is what is at issue here.

I would like to point out a couple of issues that have not been addressed with respect to Senator FEINSTEIN's amendment.

If you look at the language of that amendment, she says that the authority described in this section for the Armed Forces of the United States to detain a person does not include the authority to detain a citizen of the United States without trial until the end of hostilities. I think this provision is going to create some real problems for the executive branch. If I were they, I would be in here raising these issues because it does not distinguish—the language—between an American citizen who is captured overseas versus an American citizen captured in the United States of America.

Let's use the example of Anwar al-Awlaki. Mr. al-Awlaki, a member of al-Qaida, was actually killed by us overseas. So it would lead to the absurd result that we could not detain him to gather intelligence, but we believe that we are authorized—by the way, I agreed with the administration taking that step to take out Mr. al-Awlaki, who was a great danger to our country overseas. So the language as written would lead to that absurd result that would tie the administration's hands, that they can actually kill these individuals, but they can't detain them under military custody and interrogate them to make sure we can find out what they do know and what other attacks are being planned against the United States of America.

Also with respect to the language in this amendment, the language itself is a defense lawyer's dream. You can't hold a U.S. citizen until the end of hostilities. Well, how long can you hold them? I mean, it is not clear. There is no language in that. This is going to be litigated to heaven, and this is an area where our intelligence professionals need clarity. This is going to create more issues for the executive branch in an area that needs clarity and where there needs to be some identified rules and they have to be focused on gathering intelligence to protect Americans.

Senator DURBIN has cited the Abdulmutallab case on numerous occasions as a way—as a great case as an example of how we can gather intelligence from enemy combatants to protect America. Let's review the facts of that case again. Fifty minutes into the interrogation, he was told: You have the right to remain silent. He exercised that right because he was given Miranda warnings, and it was only 5 weeks later that we were actually able to get through the Miranda warnings after we went to his parents. Is that the type of system we want? What happened in that 5 weeks? What did we lose in terms of information that could have protected America?

If we can't hold an American citizen who has chosen to be a member of al-Qaida and has participated in a belligerent act against our country to ask them what other attacks they are planning and whom they are working with, how are we going to get information to make sure that—God forbid—we can prevent another 9/11 on our soil, because that is why they want to come to the United States of America. Also, how do we deal with this issue of homegrown radicals?

Unfortunately, this amendment, in my view, is going to be a situation where we are opening the welcome mat. If you get to America and you can recruit one of our citizens to be a member of al-Qaida, then you don't have to worry about them being held in military custody. You don't have to worry about us using our maximum tools to gather intelligence to protect Americans.

I think this amendment is very misguided. I again would point out that the administration should be concerned about the language in this amendment. It does not distinguish between an American citizen who is captured on our soil who is trying to attack us and one overseas. But either way, if an American citizen has joined al-Qaida and is trying to kill us from within our own country, they have become part of our enemy and are at war with us.

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

Ms. AYOTTE. Thank you, Madam President.

I urge my colleagues to oppose the Feinstein amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I believe it is now in order for Senator MERKLEY to offer amendment No. 1257, as amended, with the amendment at the desk. The amendment at the desk has four words added to the printed amendment, and those words are ''NATO and coalition allies''; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. LEVIN. I thank the Presiding Officer.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 1257, AS MODIFIED

Mr. MERKLEY. Madam President, I call up amendment No. 1257, as modified, under the unanimous consent agreement and rise to speak to it.

The PRESIDING OFFICER. Under the previous order, the amendment No. 1257, as modified, is now the pending question.

The amendment (No. 1257) as modified, is as follows:

On page 484, strike line 22 through 24 and insert the following:

(c) TRANSITION PLAN.—The President shall devise a plan based on inputs from military commanders, NATO and Coalition allies, the diplomatic missions in the region, and appropriate members of the Cabinet, along with the consultation of Congress, for expediting the drawdown of United States combat troops in Afghanistan and accelerating

the transfer of security authority to Afghan authorities.

(d) SUBMITTAL TO CONGRESS.—The President shall include the most current set of benchmarks established pursuant to subsection (b) and the plan pursuant to subsection (c) with each report on progress.

Mr. MERKLEY. Madam President, this amendment requires the President of the United States to develop a plan to expedite the reduction of U.S. combat troops in Afghanistan and to accelerate the transfer of responsibility for military and security operations to the Government of Afghanistan. Before I speak to some of the details, I want to thank the original cosponsors who have worked hard on this amendment: Senator MIKE LEE, Senator TOM UDALL of New Mexico, Senator RAND PAUL, and Senator SHERROD BROWN.

The United States went to Afghanistan with two main goals that were laid out by President Bush: to destroy al-Qaida training camps and to hunt down those responsible for 9/11. Our very capable American troops and their NATO partners have aggressively pursued these objectives. There are very few al-Qaida operating in Afghanistan. Secretary of Defense Leon Panetta said in June 2010 that there were at most only 50 to 100 al-Qaida members in Afghanistan. Afghanistan is no longer and has not been for some time a central arena for al-Qaida activity.

American forces have also effectively pursued the second objective, which is capturing or killing those who attacked America on 9/11. In recent years, America has captured or killed two dozen high-level al-Qaida operatives, including Khalid Shaikh Mohammed, the alleged operational mastermind of the September 11 attacks, who was captured in a raid on a house in the Pakistani garrison city of Rawalpindi near the capital, Islamabad; Ramzi bin al-Shibh, described as a key facilitator of the September 11 attacks; Sheikh Sa'id Masri, an Egyptian believed to have acted as the operational leader of al-Qaida, who was killed in a U.S. drone strike. Most importantly, our exceptional intelligence teams and armed services have tracked down and killed Osama bin Laden, the founder and head of al-Qaida.

Citizens may fairly ask—and they do ask—given that we have successfully pursued our original two missions, isn't it time to bring our sons and daughters home? Our citizens remind us that the United States has been at war in Afghanistan for over 10 years, the longest war in American history. Our citizens recognize that the war in Afghanistan has come at a terrible price. More than 1,200 Americans have died from snipers, from improvised explosive devices, and other deadly weapons of war. More than 6,700 Americans have been wounded by those same weapons. Thousands of our soldiers have suffered from—and will suffer for years, decades to come—traumatic brain injuries and post-traumatic stress disorder. Our soldiers have paid a huge price. Their families have paid a huge price.

In addition, the war in Afghanistan has consumed and is consuming an enormous share of our national resources. According to the Congressional Research Service, by the end of this year—just over a month from now—we will have spent the better part of $½ trillion or approximately $444 billion. In 2011 alone, we will spend about $120 billion.

So what is the answer to our citizens who ask, given our success in destroying al-Qaida training camps and given our success in pursuing those responsible for 9/11, why we haven't brought our troops and our tax dollars home. The official answer is that America has expanded its mission in Afghanistan from the narrow two original objectives of destroying al-Qaida and hunting down those responsible for 9/11 to the broad mission of nation building.

Destroying al-Qaida—our original mission—and building a modern nation state where one has never existed are two entirely different things. The expanded mission of nation building in Afghanistan goes way beyond those original two military objectives. This expanded nation-building mission involves creating a strong central government. It involves creating an election process for a functioning democracy. It involves building infrastructure—roads and bridges and schools. It involves a major mission to create a sizable national police force and a sizable and effective national army.

We have spent a lot on this mission, but the success is limited. Over 10 years, as I mentioned, we have spent $444 billion. Now, that is in a nation that had a prewar gross domestic product, or economy, of about $10 billion a year. So we have spent an amount equal to 44 times the economy of Afghanistan. One would think the result is we would have rebuilt the infrastructure of Afghanistan 10 times over or 20 times over. But the reality is there is very little to show for this nation-building mission. Why is that the case? Most simply, this nation-building mission is systematically stymied by multiple forces. One is high illiteracy.

On my recent trip to Afghanistan, I was told that among those recruited for the national police, the literacy rate at a first grade level is only about 16 percent—first grade level, 16 percent. The goal is to be able to raise that literacy rate so that soldiers can read the serial numbers on their rifles. That is a very different world from the world we live in.

The second huge factor is vast corruption. Just after my first trip to Afghanistan, the newspapers were full of stories about the family members and the associates of the President of Afghanistan building massive mansions in Dubai. Well, sending our money to Afghanistan so the elite can send it to Dubai to build mansions does not serve our national security.

The efforts in nation building are stymied by deeply felt, ancient tribal and ethnic divisions. Moreover, there is a strong national aversion to the very mission of building a strong central government. I had an interesting experience where I met with six Pashtun tribal leaders in Kabul, the capital. They came in to share their stories and each one of them said that some form of the government you are trying to build is an affliction to our people. Please do not build a stronger government that exploits and afflicts our people. I said to them, help me understand this, because building a government means a force that can help with education, that can help with health care, that can help build transportation infrastructure, that can help provide security for businesses to prosper. They spoke to me and said—one of them summed it up and said, Senator, you don't understand. All of the government positions here are sold. The people who buy them do not buy them to serve our people. They buy them to exploit our people. And when you build a strong central government, which we oppose, the exploitation increases.

So this nation-building mission is systematically stymied by high illiteracy, vast corruption, extensive and deep tribal and ethnic divisions, and a historic national aversion to a strong central government.

We have been in Afghanistan for more than 10 years. It is time to change course. Our President recognizes this. He has worked out an agreement with the NATO partners to remove the remaining combat troops by the end of 2014. That is just over 3 years from now. But what happens during this next 3 years? This amendment says: Mr. President, during these next 3 years, seize the opportunity to diminish the combat role of American soldiers and increase the responsibility placed with the Afghanistan Government and the Afghanistan forces. Seize that opportunity.

I say to my colleagues today, this is incredibly important for our success in transferring responsibility. If we do not provide the opportunity and the necessity for the Afghanistan institutions to take responsibility for their own security, they will not be prepared to exercise that responsibility down the road.

The United States is facing a global terrorist threat. We will be well served by using U.S. troops and resources in a counterterrorism strategy against terrorist forces wherever in the world they may locate and train. That strategy was highlighted by the pursuit of Osama bin Laden in Pakistan or more recently our successful pursuit of Anwar Awlaki in Yemen. Our intelligence and our military, the best in the world, have proven without a doubt that they excel at this strategy. Thus, it makes sense to expedite the reduction of U.S. combat troops in Afghanistan and accelerate the responsibility for military and security operations to the Government of Afghanistan. That is what this amendment does.

The amendment specifically requires the President to prepare a plan for the

expedited reduction of troops and accelerate transfer responsibility based on inputs from military commanders, from NATO and coalition allies, from diplomatic missions in the region, from appropriate members of the Cabinet, and from consultation with Congress. What this amendment does not do is it does not limit our ability to identify an attack by al-Qaida or terrorist forces wherever they may be in the world. It does not limit our ability to destroy al-Qaida or associated terrorist training camps wherever they may be, wherever they are in the world. It does not restrict funding for supplies and equipment needed by our troops deployed in the field.

If our national security is well served by taking the fight to al-Qaida wherever they are, if our nation-building strategy in Afghanistan is confounded by illiteracy and corruption and cultural opposition and tribal and ethnic conflicts, if our national resources are needed in that global antiterrorism strategy and are needed as well for nation building here at home, if our men and women have suffered enough on Afghan soil, then we should encourage our President to seize every opportunity over these next 3 years to reduce our forces in Afghanistan and to transfer security responsibilities to the Afghan Government.

That is what this amendment does, and I encourage every colleague to support it.

Thank you, Madam President. I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

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

Mr. McCAIN. Madam President, I oppose this amendment for one simple reason. It requires the President to submit a plan to Congress for an accelerated drawdown from Afghanistan—an accelerated withdrawal; not just the withdrawal that is already planned, not the withdrawal that has already been accelerated on several occasions, but a new accelerated drawdown.

The President is supposed to submit a plan to Congress for an accelerated drawdown from Afghanistan. Does that mean the Congress of the United States could see a plan for an accelerated withdrawal from Afghanistan? Is it required that it be implemented by Congress or is it a nice informational, notional kind of thing: Here is a plan. Hey, let's get together. I have a plan. And the President's drawdown plan, our senior military commanders have stated, is already—already—more accelerated than they are comfortable with.

First of all, I don't get the point of the Senator's amendment, which is to submit a plan. It doesn't require that the plan be acted on, just a plan. I can submit a plan for him if it is plans he is interested in. But the fact is we are accelerating our withdrawal from Afghanistan at great risk, as our military commanders have testified—much greater risk. So I guess another accelerated plan would obviously have the result of even greater risk to the men and women in the military.

I understand the opposition of the Senator from Oregon to the war. That is fine. I respect that. But an amendment that a plan is to be submitted without any requirement that it be implemented—a plan which would already accelerate more what has already been accelerated—I guess is some kind of statement.

The plan as required by this amendment would be based on inputs from our military commanders. I can tell the Senator from Oregon what our military commanders in Afghanistan have said in testimony before the Senate Armed Services Committee, which is that more acceleration would mean greater risk. The acceleration that is already taking place means greater risk. But the Senator from Oregon wants a more accelerated plan, I guess.

Then-chairman of the Joint Chiefs of Staff, ADM Mike Mullen, testified before the House Armed Services Committee on June 23—this is the Chairman of the Joint Chiefs of Staff—that the President's drawdown plan would be—that is the present plan, not an accelerated plan such as the amendment proposes—''more aggressive and incur more risks than I was originally prepared to accept.''

I wonder if the Senator from Oregon heard that. The present plan is ''more aggressive and would incur more risks'' than the Chairman of the Joint Chiefs of Staff would have been prepared to accept. So with this amendment, we accelerate even more.

On the same day, in testimony before the Senate Select Committee on Intelligence, GEN David Petraeus stated that no military commander recommended what the President ultimately decided. That is the present plan.

Their concerns were well grounded. Our commanders had wanted to keep the remaining surge forces in Afghanistan until the conclusion of next year's fighting season, which roughly occurs with the onset of the colder months. That was their recommendation to the President. So now the President shall devise a plan based on inputs from military commanders. I can tell the Senator from Oregon what the input from the military commanders is. It is the same input he got with the first accelerated withdrawal. All we have to do is pick up the phone and ask them. We don't have to have an amendment. That was their recommendation to the President. However, the President chose to disregard that advice and announce that all U.S. forces would be withdrawn from Afghanistan by the end of next summer. That guarantees that just as the fighting season next year is at its peak, U.S. surge forces will be leaving Afghanistan. In my view, that is a huge and unnecessary risk to our mission. But the decision has been made. I think there will be great long-term consequences to it.

A story was related to me recently by a former member of the previous administration, high ranking, in a meeting with one of the highest ranking members of the Government of Pakistan. He said to this high-ranking government official: What do you think the chances for peace with the Taliban are? That individual laughed and said, Why should they make peace? You are leaving.

Those are fundamental facts. The primary reason for maintaining all of our surge forces in Afghanistan through next year's fighting season is because of another time the President chose to disregard the advice of his military commanders. It is well known that our military leaders had wanted a surge to be 40,000 U.S. troops, but the President only gave them 33,000. So rather than being able to prioritize the south and east of Afghanistan at the same time, as they had planned, our commanders had to focus first in the south, which they did last year and this year, and then concentrate on eastern Afghanistan next year, all because they didn't have enough troops.

That is not my opinion; that is the sworn testimony of military leaders before the Senate Armed Services Committee.

The President's decision made the war longer and now our commanders will not have the forces they said they wanted and needed to finish the job in eastern Afghanistan.

Before we mandate a plan to further accelerate the drawdown of U.S. forces from Afghanistan, I suggest we review the facts and consider the potential consequences of the overly accelerated drawdown we already have.

Before we base such a plan on the views of our military commanders, I certainly recommend that my colleagues travel to Afghanistan and speak with those commanders who can explain far better than I can why further accelerating our drawdown is reckless and wrong.

So I do not get the amendment. I do not understand why the title of it is ''To require a plan for the expedited transition of responsibility for military and security operations in Afghanistan to the Government of Afghanistan.''

As I said, in case the Senator from Oregon missed it, we have already accelerated, and in the view of our military commanders, unanimously, it is a far greater risk.

It says:

> The President shall devise a plan based on inputs from military commanders, NATO and Coalition allies, the diplomatic missions in the region, and appropriate members of the Cabinet, along with the consultation of Congress, for expediting the drawdown of United States combat troops in Afghanistan and accelerating the transfer of security authority. . . .

Apparently, the Senator from Oregon is not satisfied with the President's already accelerated plan for withdrawal from Afghanistan beginning in the fall of—well, it has already begun—but the serious withdrawal in the fall, September 2012.

I can assure—I can assure—the Senator from Oregon that if our withdrawal, which I greatly fear now, will have long-term consequences, a further accelerated withdrawal will absolutely guarantee that Afghanistan becomes a cockpit—a cockpit—of competing interests from Iran, from India, from Pakistan, and from other countries in the region. I think the people of Afghanistan deserve better.

So I will, obviously, oppose this amendment.

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

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

Mr. LEE. Madam President, I ask unanimous consent that the current amendment be set aside so I might speak briefly regarding amendment No. 1126.

Mr. LEVIN. Madam President, reserving the right to object, I wonder if the Senator would just seek the right to—the Senator has a right to speak on another amendment without setting aside this amendment. So I ask that the Senator not set aside the pending amendment but just simply speak on whatever amendment he wishes to speak.

Mr. LEE. Wonderful. The second request is withdrawn.

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

AMENDMENT NO. 1126

Mr. LEE. Madam President, I rise today to speak in support of amendment No. 1126 to the current pending legislation. The purpose of this amendment is to make clear that the United States shall not detain for an indefinite period U.S. citizens in military custody.

I understand this has been the subject of a lot of debate. I also understand this would be a break not only with the current pending legislation but also with current practice, based on Supreme Court precedent and lower court precedent that some have interpreted to deem this a constitutionally permissible practice.

It has often been suggested by several of my colleagues that it is the province of the Supreme Court to interpret the Constitution, and that statement is absolutely correct as far as it goes. But it is not the beginning of the analysis and the end of the analysis.

We, as Senators, independently have an obligation, consistent with and required by our oath to the Constitution—which I took just a few months ago just a few feet from where I stand now—to uphold the Constitution of the United States. That means doing more than simply the full extent of whatever the courts will tolerate.

In this instance, what we are talking about is the right of the U.S. military to detain indefinitely, without trial, a U.S. citizen, simply on the basis that person has been deemed an enemy combatant.

Now, there is a real slippery slope problem here, and it is the very kind of slippery slope problem for which we have protections such as the fifth amendment and the sixth amendment. You see, under the fifth amendment, a person cannot be held for an infamous crime unless they have been subjected to a process whereby a grand jury indictment has been issued. A person cannot be held and tried for a crime without having counsel made available to them and without the opportunity for a speedy trial in front of a jury of the peers of the accused.

We can scarcely afford as Americans to surrender these fundamental civil liberties for which wars have been fought, for which the founding era, the founding generation fought so nobly against our mother country to establish and thereafter to protect. We have to support these liberties. I think at a bare minimum, that means we will not allow U.S. military personnel to arrest and indefinitely detain U.S. citizens, regardless of what label we happen to apply to them. These people, as U.S. citizens, are entitled to a grand jury indictment to the extent they are being held for an infamous crime. They are also entitled to a jury trial in front of their peers and to counsel.

We cannot, for the sake of convenience, surrender these important liberties. I am not willing to do that. That is why I support this amendment, amendment No. 1126, to the pending legislation. I encourage each of my colleagues to do so.

I want to point out that yesterday I voted against what became known as the Udall amendment. I did so in part because I do not believe that fixed the problem I am talking about. The Udall amendment did not even purport to address current practice or the policies as they have been established in recent years: that this kind of detention is in some circumstances acceptable. It called for a study and it eliminated certain provisions in the proposed legislation, but it did not fix the underlying problem.

This Feinstein amendment, amendment No. 1126, does fix that. That is why I support it. I encourage each of my colleagues to do the same.

When we take an oath to the U.S. Constitution—to uphold it, to support it, to protect it, to defend it—we are doing more than simply agreeing to do whatever the courts will tolerate. We are taking an oath to the principles embodied in this 224-year-old document that has fostered the greatest civilization the world has ever known.

Thank you, Madam President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1257, AS MODIFIED

Mr. LEVIN. Mr. President, let me just ask Senator MERKLEY a question, and then I think we can proceed from there.

It is my understanding that the original language in this and related amendments had the dates 2012 and 2014 in them, and it could have been interpreted that the Senator was trying to press those dates forward rather than address—as I interpret the Senator's current amendment—the pace of reductions after consultation with the people the Senator has identified. Am I correct?

Mr. MERKLEY. The Senator is correct. The amendment is designed to encourage, to increase the pace of the reduction of U.S. forces and the transfer of responsibility to Afghanistan's forces.

Mr. LEVIN. Mr. President, unless there is someone else here who wants to speak, I yield the floor.

Mr. MCCAIN. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 1257), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I understand the Senator from New Hampshire——

Mr. MCCAIN. Mr. President, the Senator from New Hampshire had intended to talk about her amendment and withdraw it, and she may be coming. I have not had a chance to notify her, so there may be a couple-minute delay.

So 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. MCCAIN. 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. MCCAIN. Mr. President, in an exchange I had on the floor, I mentioned the people on wonderful Long Island. I made a joke. I am sorry there is at least one of my colleagues who cannot take a joke. So I apologize if I offended him and hope that someday he will have a sense of humor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I have been working for some time to wrestle with this question of the right number of military forces we need in Europe. It is an issue that has given me some pause. I thought we had an agreement several years ago to make some noticeable changes in that force structure. Some changes have indeed been made and others were in the works and they apparently have been put on hold and altered.

So I just wished to share some thoughts about it. I thank Senator LEVIN and Senator MCCAIN for working with me to develop an amendment to this bill that helps call attention to this problem with the Department of Defense.

We have had a long and historic relationship with Europe and our European allies. They remain the best allies we have in the world. We have large numbers of troops still in Europe. But there are not nearly as many as there have been in the past. But the numbers are still extraordinary. We have, at this time, 80,000 U.S. troops in Europe, and I do not believe military threats justify that large a troop presence. Our historic even larger number was based on the Soviet threat, the Fulda Gap, the weakness of our European allies after World War II and their lack of strength and the bond that NATO meant. We stuck together and transformed the entire North Atlantic region in a positive way.

A book called ''Paradise and Power'' has been written about where we are today. It is a pretty significant book, frankly. The essence of it is that the Europeans are in a paradise protected by American power, and they do not feel any need to substantially burden themselves with national defense because the United States is there.

We have a nuclear presence, we have 80,000 troops, and we have the fabulously trained, highly skilled military with the lift capability of moving to a troubled and dangerous spot at any time. I do think it is fair to say they have become a bit complacent.

As part of a CODEL I led in 2004, we visited Europe, because the United States was going through a BRAC, a reduction of U.S. basing, and we did not have the same type policy with regard to international bases. We visited—Senator CHAMBLISS and Senator ENZI and I—bases in Europe, particularly bases we felt would be enduring, such as Rota, Spain, Sigonella and Vicenza and other bases—and Ramstein in Germany.

But there are others, lots of others. So part of the NATO commitment is that each nation in Europe would invest and spend 2 percent of their GDP on defense. We have been 4 percent—sometimes over that recently—in recent years. So our NATO members, however, are falling below that. Germany, the strongest economy in Europe, is at 1.2 percent of GDP on defense, and they spend a large portion of that on short-term, less than 1 year, military training of young people in Germany.

The fact is, a 9-month trainee is not someone in the modern world we can send into combat. They are just not sufficiently trained. Many military experts believe this is a waste of money. So even the money they are spending, in many ways, is not effectively and wisely spent to create the kind of modern military they have to have to be successful in a serious manner.

We do, though, believe Europe is not facing the kind of threats we had. I think it is appropriate for us to talk to our European allies and say we want to proceed with a drawdown, where possible. This Nation is borrowing 40 cents of every $1 we spend. The Defense Department, under the sequester that will occur as a result of the failure of the committee of 12 to reach an agreement, will be facing dramatic cuts in spending, over $1 trillion based on President Obama's projected budget over 10 years. We need to look for every reasonable savings we can.

The Defense Department is taking too heavy a cut in my opinion, far more than any other department of government. However, we cannot sustain that. I do not support that large a cut, but it will be reducing spending by a significant amount. So I believe we should think about our foreign deployments. The National Defense Authorization Act represents a vision for defense spending. We are now down from $548 billion spent on the Defense Department last year, $527 billion this year, an actual reduction in noninflation dollars of over $20 billion.

As a matter of fact, the Budget Control Act agreement calls for a reduction of total spending in the discretionary account this year of $7 billion; whereas, the Defense Department is taking $20 billion. Other departments therefore are receiving increases to get the net 7 that is claimed. Unfortunately, that is not an accurate number because we do not achieve even the $7 billion promised.

Since 2004, the Defense Department had a plan to transfer two of its four highly trained combat brigades in Europe back to the United States as part of the larger post-world war realignment. However, in April of this year, the Department of Defense announced it would maintain three combat brigades and not bring the fourth one home until 2015.

I have asked the Chairman of the Joint Chiefs of Staff, General Dempsey, at the Armed Services hearing, and I asked Admiral Stavridis, our European EUCOM commander, and they had no good explanation for why we are altering the plan that has been in place.

So my amendment has been agreed to on both sides and would require three things from the Department of Defense: No. 1, assessment of the April 2011 decision to station three Army brigade combat teams in Europe; No. 2, an analysis of the fiscal and strategic costs and benefits of reducing the number of forward-based military personnel in Europe to that recommended by the 2004 Global Posture Review; and, No. 3, to describe the methodology used by the Defense Department to estimate the current and future cost of U.S. force posture in Europe.

So is Europe more threatened today than before? I do not think so. The United States has a tougher financial condition today than before? Yes. I believe we need to look at this carefully. I thank Senator MCCAIN and Senator LEVIN for working with me to recommend an amendment they believe is consistent with the goals I am seeking without micromanaging the Department of Defense.

I thank the Chair. I am pleased this amendment will be considered, and perhaps we can make some progress to analyzing more properly the deployment of forces in Europe. Finally, I would say there is no doubt in my mind that the economy of the United States is benefited if a brigade is housed in the United States, and the costs of support and family are in the United States strengthening our economy rather than transferring the wealth of our Nation to a foreign area.

I hope we will consider that as we deal with this issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 1229

Mr. MCCAIN. Mr. President, I call up amendment No. 1229 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment is already pending.

Mr. MCCAIN. I note the presence of my colleague, Senator LIEBERMAN, on the floor, the chairman of the Homeland Security Committee.

I thank my friend from Connecticut for his support of this amendment and the importance, with the full realization of the key role the chairman of the Homeland Security Committee plays in the issue of cyber security, which is the most—in many respects, one of the most looming threats to our Nation's security.

Mr. LIEBERMAN. Mr. President, I thank my friend from Arizona. I appreciate this amendment he has offered. I believe I am now listed as a cosponsor. If not, I ask unanimous consent that I be so listed.

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

Mr. LIEBERMAN. This amendment essentially codifies a very important memorandum of understanding between the Department of Homeland Security and the NSA, the National Security Agency. This is a perfect balance and exactly the kind of overcoming of stovepipes we need to see in our government.

Under existing law, the Department of Homeland Security has responsibility for protecting nondefense government, Federal Government cyberspace—cyber networks—and the privately owned and operated cyberspace,

which actually amounts to some of the most critical cyber infrastructure in our country is privately owned.

Today, as Senator MCCAIN suggested, a target of attack by an enemy wanting to do us harm could be, for instance, our transit systems, financial systems, electric grid, and the like. What is embodied in this memorandum of understanding between DHS and NSA—which we will, by this amendment, codify into law—is to maintain the quite appropriate interface of the Department of Homeland Security with the privately owned cyber-infrastructure and those who own and operate it, yet utilizing the unsurpassed capabilities of NSA.

I appreciate that in this colloquy Senator MCCAIN and I are entering into, we both make clear—and I appreciate that his intention here in offering this amendment is not to circumvent the need for broader legislation to protect our American cyberspace from theft, exploitation, and attack. It happens that the current occupant of the chair, the junior Senator from Rhode Island, has been a leader in this Chamber in pushing us to deal with these kinds of problems.

Senator REID has announced that he will bring a comprehensive cyber-security bill to the floor of the Senate in the first work period of 2012. That is very good news for our security. As Senator MCCAIN said, I don't know that we today have a more serious threat to our security than that represented by those who would do us harm by attacking our cyber-systems, both public and private. This colloquy makes clear that this is a very significant first step, and that we need to do something more comprehensive and look forward to doing it on a bipartisan basis in the first work period in 2012.

Mr. MCCAIN. I thank the Senator from Connecticut, my dear friend. The amendment establishes a statutory basis for the memorandum of agreement between the Department of Defense and Homeland Security on cooperative cyber-security support. Nobody should have any doubt about how serious this issue is. Secretary of Defense Panetta said this in June:

> The next ''Pearl Harbor'' we confront could very well be a cyber attack.

ADM Mike Mullen at a hearing on 9/22 referred to the cyber-threat as an existential threat to our country. This is a serious issue and one that, as the Senator from Connecticut pointed out, is of utmost importance to our Nation's security.

Mr. LIEBERMAN. Mr. President, I would like to thank my friend Senator MCCAIN for introducing an amendment codifying an existing memorandum of agreement between the Department of Homeland Security and the Department of Defense that formalizes their cooperation on cybersecurity work. Our Nation needs to confront the growing threats we face in cyberspace; as Secretary of Defense Leon Panetta testified in June, the ''next Pearl Harbor we confront could very well be a cyber-attack.''

Mr. MCCAIN. I thank my friend for cosponsoring my amendment, and share his concern about the threat our Nation faces. In a hearing before the Armed Services Committee just two months ago, former Chairman of the Joint Chiefs of Staff Admiral Mike Mullen called the cyber threat an ''existential'' threat to our country.

The purpose of my amendment is to codify the current memorandum of agreement, and to ensure that the relationship between DoD and DHS endures. This growing partnership demonstrates that the best government-wide cybersecurity approach is one where DHS leverages, not duplicates, DoD efforts and expertise. This is just one of the many issues we need to address on cyber legislation, and does not diminish the need for a comprehensive bill addressing our Nation's cybersecurity. But our work together on this should serve as an example of where consensus can and should exist moving forward.

Mr. LIEBERMAN. I agree wholeheartedly. The approach embodied by the memorandum of agreement—and this amendment—exemplifies the potential for DoD and DHS to leverage each other's expertise, to make efficient use of existing government resources, and to avoid unnecessary growth of government. That is the approach we must follow as we continue down the path toward comprehensive cybersecurity legislation.

Mr. MCCAIN. I agree, and I again thank my colleague for supporting my amendment. While at the end of the day we may not agree on all of the provisions of a bill, I look forward to working together early in the coming year to address these issues under a process that allows for full debate of the issues on which we may differ.

Mr. MCCAIN. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1229) was agreed to.

The PRESIDING OFFICER. The Senator from New Hampshire.

Ms. AYOTTE. Mr. President, I ask unanimous consent that Senator LIEBERMAN and I be allowed to engage in a colloquy.

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

AMENDMENT NO. 1068

Ms. AYOTTE. Mr. President, obtaining intelligence from high-value terrorist detainees is an urgent national security priority that is essential to protecting Americans. Unfortunately, under current law, terrorists need look no further than the Internet to find out everything they need to know about our interrogation practices and how they can circumvent them. Under President Obama's 2009 Executive Order 13491, all U.S. Government interrogators are limited to the interrogation techniques that are available online and described in the Army Field Manual. As a result, all members of the intelligence community, including the non-Department of Defense intelligence professionals who support the high-value detainees interrogation group, must conform to the procedures in the Army Field Manual, which was written by the U.S. Army for the U.S. Army; that is, there is little flexibility permitted under these rules, and they are easy for those who want to harm us to circumvent them and to know exactly what techniques we will use to gather information to protect our country if they are detained as an enemy combatant.

Mr. LIEBERMAN. Would the Senator yield for a question?

Ms. AYOTTE. Yes, I will.

Mr. LIEBERMAN. Let me thank my friend, Senator AYOTTE, for playing such a leading role in our debates on this critical issue of how our country handles detainees and gathers intelligence in our war on terrorism. I share her concerns about the potential damage to our intelligence collection efforts inflicted by adherence to the existing restrictions on interrogations. That is why I am pleased to be, with others, a cosponsor of the amendment introduced, amendment No. 1068.

I will say that I am also disturbed about the amount of misinformation that seems to be circulating about this amendment and similar efforts in the past that I have supported.

I ask the Senator from New Hampshire, does amendment No. 1068 authorize torture?

Ms. AYOTTE. I thank my friend, the Senator from Connecticut, first, for his leadership in this body on national security. We both had the privilege of serving our States as attorneys general.

The answer is no. This is an amendment, I point out, that not only is Senator LIEBERMAN sponsoring—and I appreciate his experience and leadership on this most important national security issue—but Senator CHAMBLISS, vice chairman of the Intelligence Committee, as well as Senator GRAHAM and Senator CORNYN, who are both members of the Armed Services Committee, as well as the Judiciary Committee. It is very important to be clear about what this amendment would and would not do.

This proposal takes every possible measure to put into place intelligence-gathering practices that honor our American values and laws. Our amendment in no way condones or authorizes torture. There have been many groups trying to misrepresent what is in this amendment. Any new interrogation techniques that are developed would be required to comply with the U.N. Convention Against Torture, the Military Commissions Act, the Detainee Treatment Act, as well as section 2441 of Title 18 U.S. Code that relates to war crimes.

Mr. LIEBERMAN. I thank my friend for that clarification. It is very important. It is very critical—particularly for those who misunderstood this amendment—to understand the host of protections that the amendment puts in, both compelling compliance with the international convention against torture, as well as explicit prohibition in American law against interrogation that amounts to torture.

I want to ask my friend another question. Right now, all Federal Government interrogators, whether in the military or in the civilian intelligence community, are limited to using the Army Field Manual. So why does the Senator think it is so critical to give interrogators the ability—limited ability—to go beyond the Army Field Manual?

Ms. AYOTTE. I appreciate the question from my friend and colleague. The decision by President Obama to limit interrogators to the Army Field Manual was based, in part, on the horrible abuses that happened at Abu Ghraib prison in Iraq. Undoubtedly, the abuses at Abu Ghraib failed to reflect American values, tarnished America's reputation, and certainly damaged our interests. However, responding to these abuses by reflexively applying an Army Field Manual—which, to be clear, terrorists can go online and get and know exactly which techniques they will be subject to if captured—to all Federal Government interrogators doesn't reflect the severity of the threat to our country and the importance of providing our nonmilitary intelligence collectors all of the lawful tools they need to gather intelligence to prevent nuclear attacks and protect our country.

Mr. LIEBERMAN. I thank the Senator for that answer. I completely agree with her. It is important to step back and perhaps state the obvious. Why do we capture enemy combatants? Why do we take prisoners of war? Two reasons, really. The obvious one is to get them off the battlefield against us so they can no longer attempt to kill Americans in uniform and, in the case of the war we are in with Islamist terrorists, to kill civilians. That is first—get them off the battlefield.

The second purpose—and this has been the traditional purpose of taking prisoners of war as long as there has been warfare in human history, and all the more so now—is to gather intelligence from them that will assist us in defeating the enemy and protecting our goals and protecting the lives of our men and women in uniform. That traditional purpose for taking prisoners of war is all the more critical in the unconventional war we are in against a brutal enemy that doesn't strike from battleships or tactical air fighters or military tanks or even in uniform; they strike us from the shadows, and they strike civilians as well.

It is very important to approach this amendment understanding that we are trying to increase, in a reasonable way, the capacity of those who work for us to protect our security and freedom to interrogate detainees that we have captured in the war against terrorism. One of the purposes is to gather intelligence, which will help us protect the lives of Americans and of our allies.

The preface to the Army Field Manual says it applies to the active Army, the Army National Guard, and the U.S. Army Reserve, unless otherwise stated. So as to the field manual, recognizing that these words create limited applicability of the manual outside the Army, the Army Training and Doctrine Command authors had the wisdom to warn that this manual was ''Army doctrine,'' and it would have to be adapted, altered to apply to other ''military departments'' or other military service. If the interrogation techniques in this manual are not ideally suited for military services other than the U.S. Army, why should civilian interrogation professionals in the intelligence community, and particularly those who are in support of a high-value detainee interrogation, those who get the most powerful and influential and dangerous prisoners of war, be forced to comply with a document written for a defined military unit, which is the U.S. Army? I ask my friend from New Hampshire that question.

Ms. AYOTTE. I appreciate the question from the Senator from Connecticut. Absolutely, as the Senator pointed out, the Army Field Manual was not created for this purpose. As he mentioned, the high-value detainee interrogation group is a group consisting of the CIA, FBI, and Defense Intelligence Agency, designed to interrogate the worst terrorists, who are likely to have valuable information about future attacks and information we need to protect our country. To address this problem, we drafted the amendment through this authorization that would allow members of the intelligence community, who are assigned to or in support of the high-value interrogation group, to utilize interrogation techniques that are consistent with our laws and values. Our amendment would ask the Secretary of Defense, working with the Director of National Intelligence and the Attorney General, to develop a classified annex to the Army Field Manual that terrorists could not see. Unfortunately, now they can go on the Internet and look at the techniques. It classifies that the Army Field Manual would provide interrogation techniques that would be used by that important select group of intelligence-gathering professionals, to allow them to have for their use the techniques they need to gather information and protect our country.

Mr. LIEBERMAN. Again, I thank my friend from New Hampshire, but I want to go back to something I said earlier. We have described the purpose of this amendment—what I call the due process we have put into it, the mandate that it comply with existing international norms and treaties, and, obviously, to comply with our law. I want to say to my colleague that it is certainly not my intention—and I ask my colleague is it her intention—that any of the measures we are authorizing—the interrogation tactics for the worst of the terrorist detainees—should or could equal what is conventionally known as torture? In other words, we are not attempting to legalize torture with this amendment.

Ms. AYOTTE. I thank the Senator for the question. The answer is, no; we are not. We believe torture violates our laws and runs counter to American values. That is what I believe. That is why we specifically require the techniques developed by the Secretary of Defense, the Director of National Intelligence, and the Attorney General have to comply with the U.N. Convention Against Torture and all applicable laws, including the Detainee Treatment Act. Thus, the ACLU's claim the amendment threatens to revive the use of torture is patently false, unfortunately.

Currently, the Army Field Manual interrogation techniques our intelligence community interrogators must follow are publicly listed online. That is unacceptable. It is like the New England Patriots giving their opponents their playbook days or weeks before the game begins. In my experience as attorney general of New Hampshire and as a murder prosecutor, no detective or cop in even a common criminal case would tell the criminals what techniques they are going to use to gather information.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, could I ask my friend from New Hampshire to allow me to propose a unanimous consent request?

Ms. AYOTTE. I would grant the leader that request.

The PRESIDING OFFICER. The majority leader.

Mr. REID. The reason I ask is that Senator LEVIN and I have a classified briefing that starts at 5:30.

May I ask the Senator how much longer she wishes to speak? It doesn't matter, but just so I have an idea.

Ms. AYOTTE. I would say probably 5 minutes.

Mr. REID. Mr. President, I ask unanimous consent that following the statement of Senator AYOTTE of approximately 10 minutes—she has been here long enough that she has learned to keep Senators' time, and 5 minutes really isn't 5 minutes—does the Senator from Connecticut wish to speak?

Mr. LIEBERMAN. Mr. President, I would say to the leader, I am in this with the Senator from New Hampshire, so we will complete our colloquy within 10 minutes.

Mr. REID. So following their colloquy of 10 minutes, I ask unanimous consent the Senate proceed to a period of morning business for 1 hour; that following that we go back to the Defense authorization bill.

There will be no more votes this evening, though, Mr. President.

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

Mr. REID. I appreciate the time of the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Ms. AYOTTE. I thank our leader for giving us the opportunity to continue this colloquy.

I just wanted to point out—we were talking about the fact the Army Field Manual is online—that in my experience as New Hampshire's attorney general and prior to that as a murder prosecutor—and I know my colleague served as his State's attorney general as well—no detective or cop on the beat, in a common criminal case—and, of course, we are dealing with a situation where we are at war with terrorists—would ever give a criminal their playbook as to what techniques they would use to question them to get information to see if a crime has been committed and to see that justice is served. Yet here we are in a situation where we have online the techniques from the Army Field Manual while we are at war with terrorists who want to kill us.

What we are saying with this amendment is that we need to allow the intelligence professionals to develop techniques, but in a classified annex, consistent with our laws, that would allow them to gather intelligence and not tell our enemies what techniques will be used to gather information from them.

Not surprisingly, al-Qaida terrorists have taken advantage of our willingness to tell them publicly on the Internet what will and will not happen during an interrogation should they be captured. Al-Qaida terrorists have familiarized themselves with the interrogation techniques they would confront if captured, and they are training on how to respond. That makes it more difficult for us to gather information.

The willingness of the United States to give the equivalent of interrogation CliffsNotes to terrorists places our interrogators at a disadvantage and makes it more difficult to gather the information we need to save American lives. So developing a classified annex of lawful techniques for intelligence professionals who are interrogating the worst terrorists would make it harder for terrorists to train to avoid and resist interrogation.

The key to our amendment is giving this limited group of intelligence community interrogators the techniques they need to gather information but to do so without resorting to torture and while retaining an operational advantage that makes it more likely an interrogation will be successful.

Mr. LIEBERMAN. Again, Mr. President, I thank the Senator from New Hampshire. Just in listening to her, it seems so unacceptable that we are basically telegraphing to our enemy exactly the range of tactics that we will use against them as part of the interrogation.

We have set some quite appropriate constraints in this amendment consistent with our values and our laws and international law so that we are not going to get anywhere near torture. But when a member of al-Qaida or a similarly associated terrorist group is captured, I want that person to be terrified about what is going to happen to them while in American custody. I want them not to know what is going to happen. I want the terror they inflict on others to be felt by them as a result of the uncertainty of not knowing they can look on the Internet and find out exactly what our interrogators are going to be limited to.

Again, we will not tolerate torture. We will not tolerate what happened at Abu Ghraib. I think the limited interrogation in the Army Field Manual was an understandable but excessive reaction to the extreme and unacceptable behavior by Americans at Abu Ghraib. I hope this amendment will facilitate a return to the kind of sensible middle ground on which we will not be shackling our interrogators as they try to get intelligence, within the law, to protect our freedom and the safety of those who are fighting for us.

So I want to ask my friend from New Hampshire whether she thinks we have now a kind of one-size-fits-all approach to interrogation that is posted online. In other words, our laws should make it easier, within the law, not harder, to gather intelligence to keep Americans safe. Yet it seems the current policy runs counter to that basic principle. Does my friend from New Hampshire agree?

Ms. AYOTTE. I do. I do agree. As a matter of common sense, this amendment should go forward. The reality of telling our enemies online what to expect just defies common sense. That is what we are addressing with this amendment.

Mr. GRAHAM. If I may, I find the discussion fascinating. May I enter into the colloquy?

The PRESIDING OFFICER. Subject to the previous order, the Senator is welcome to join the colloquy.

Mr. GRAHAM. I thank the Chair.

As I understand it, the reason the Senator is having to do this is because President Obama, by Executive order, prevented the CIA and other agencies from using any enhanced interrogation techniques that have been classified in the past; is that correct?

Ms. AYOTTE. That is right. Unfortunately, we are just telegraphing to our enemies what techniques we are going to use.

Mr. GRAHAM. If I may, let me ask another question. All of us agree we don't want to torture anybody. Waterboarding is not the way to get good intelligence. Not only is it not the right thing to do, it is just not the wise thing to do. But we believe we have gone too far the other way; that when the President said no interrogation technique is available to our intelligence community other than the Army Field Manual, does my colleague agree that, for the first time in American history, we are advertising to our enemies what we can do to them if we capture them, and no more can be done?

Ms. AYOTTE. I would say the Senator is absolutely right. I appreciate that the Senator from South Carolina has cosponsored this amendment, as has Senator LIEBERMAN, and I appreciate Senator LIEBERMAN's leadership. I would like to say while we are in this colloquy that Senator LIEBERMAN has also been a mentor to me in the Senate, and I appreciate that as well as his leadership on these issues.

Really, it comes down to this: We should not be telegraphing, we should not be advertising to our enemies what techniques our professional interrogators will use. This amendment is limited to the group of professionals who will focus on these issues and who will be gathering intelligence from terrorists.

We have to protect our country. Why would we do this? It just doesn't make sense.

Mr. GRAHAM. My good friend from Connecticut is aware there is a proposal pending on the floor of the Senate that would say, for the first time in American history, if a U.S. citizen decides to collaborate with an enemy, they cannot be held as an enemy combatant. I think the Senator is very familiar with the history of the law in this area. Unfortunately, during the entire history of our country, during other conflicts, American citizens have, on occasion, collaborated with the enemy, one of the most famous cases being the In re Quirin case, where an American citizen in New York and other places was helping Nazi saboteurs try to sabotage America.

In that case, the Supreme Court ruled an American citizen could be detained as an enemy combatant because the decision to collaborate with the enemy was a decision to go to war with their country, not a common crime, and that the law to be applied was the law of war. I am certain the Senator is familiar with the Hamdi case, where an American citizen seized in Afghanistan was allowed to be held as an enemy combatant. The Hamdi decision reaffirmed In re Quirin, and the Padilla case involved an American citizen captured in the United States accused of collaborating with al-Qaida.

All of those cases reaffirm the law of the land is, if someone chooses to help al-Qaida, they have committed an act of war against their fellow citizens, and they can be held as an enemy combatant for an indeterminate period of time so that we can gather intelligence about what they may have done or about what they know about the enemy.

Does the Senator from Connecticut agree that now would be a very bad time for the Congress to say, for the first time in American history, if an American citizen decides to help al-

Qaida attack us, to kill us, our military can't hold them as an enemy combatant and find out what they were up to?

Mr. LIEBERMAN. Mr. President, I thank my friend from South Carolina for participating in our colloquy, and, of course, I totally agree with him, first of all, on the principle. As he has said very well, and he knows the law very well or better than anyone around here, the Supreme Court has made clear an American citizen, who by his or her acts has declared themselves to be an enemy of the United States, can be treated as an enemy combatant. If we change that now, it is not only wrong on principle, but it is absolutely the wrong time to do this.

Let me speak now for a moment—and I am privileged to be the chair of the Senate Homeland Security Committee.

The PRESIDING OFFICER. The 10 minutes allocated for the colloquy has expired.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent for an additional 4 minutes.

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

Very briefly, the great concern we have now in terms of the security of the homeland is from so-called homegrown terrorists, radicalized Americans who effectively have joined al-Qaida or other terrorist enemies to attack the United States.

It is a sad and painful reality that, since 9/11, the only Americans killed on American soil by Islamist extremists and terrorists have been killed by other Americans who have been radicalized, who have become enemy combatants. I am speaking particularly of MAJ Nidal Hasan who killed 13 people at Fort Hood, and then an American named Bledsoe, who walked into an Army recruiting station in Little Rock, AR, and killed an Army recruiter just because he was wearing a uniform of the U.S. Army.

So these people have taken sides. They have joined the enemy. So to have this body at this time, as the threat of homegrown terrorism rises, say: No, they can't be treated as enemy combatants, not only does it not make sense and is totally unresponsive to the facts I have just described, the fact is, it is also dangerous.

So I couldn't agree with the Senator more. I wish to thank Senator AYOTTE, as we come to the end of this colloquy, for her initiative, frankly, for swiftly establishing herself in the Senate as one of our important leaders on national security matters. I am a little biased about this, but I know her experience as a former State attorney general has helped as well as what I have noted is her active and informed participation on the Armed Services Committee.

I must say that as I am about to enter my last year privileged to be a U.S. Senator, it gives me great comfort to know Senator AYOTTE is going to be here to carry on these fights for American national security and for freedom.

Ms. AYOTTE. I thank Senator LIEBERMAN very much. Again, I appreciate the Senator's leadership and all he has done for our country, to protect our country. I dare say no one has been more focused on protecting our country, and we deeply appreciate his leadership.

AMENDMENT NO. 1067 WITHDRAWN

Ms. AYOTTE. Before I yield the floor, I need to briefly discuss the withdrawal of an amendment I have, which is amendment No. 1067, regarding notification of Congress with respect to the initial custody and further disposition of members of al-Qaida and affiliated entities.

I have received assurances from the Armed Services Committee majority and minority staff that these comments and steps which are outlined in that amendment will be addressed when the Defense bill goes to conference.

Therefore, Mr. President, I ask unanimous consent that my amendment No. 1067 be withdrawn. But I also understand that the Armed Services Committee will take up my amendment when the Defense bill goes to conference as part of the conference on this bill.

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

Mr. RUBIO. Mr. President, some people are wrongly suggesting that the National Defense Authorization Act for fiscal year 2012, this legislation will allow the military to capture and indefinitely detain any American citizen, and that the U.S. Armed Forces would be able to perform law enforcement functions on American soil because of the authority conferred under sections 1031 and 1032 of the act.

Several people have asked about my votes on the National Defense Authorization Act for fiscal year 2012. In particular, some people are wrongly suggesting that this legislation will allow the military to capture and indefinitely detain any American citizen, and that the U.S. Armed Forces would be able to perform law enforcement functions on American soil because of the authority conferred under sections 1031 and 1032 of the act. While I do have other serious concerns with this legislation, those particular assertions could not be further from the truth. I want to take this time to explain what the law actually does, what my position is on these issues, and why I joined with Senators DEMINT, COBURN and LEE to vote for those specific sections but against cloture on the final bill.

Section 1031 of this act merely affirms the authority that the President already has to detain certain people pursuant to the current authorization for use of military force. In fact, this same section of the bill specifically states that nothing stated in section 1031 is intended to expand the President's power. In addition, this section sets specific limits on who can be detained under this act to only those people who planned or helped carry out the 9/11 attacks on the United States or people who are a member of, or substantially support, al-Qaida, the Taliban, or their respective affiliates. There is no language that could possibly be construed as repealing the Posse Comitatus Act and allowing the U.S. military to supplant your local police department in carrying out typical law enforcement activities.

In particular, some folks are concerned about the language in section 1031 that says that this includes ''any person committing a belligerent act or directly supported such hostilities of such enemy forces.'' This language clearly and unequivocally refers back to al-Qaida, the Taliban, or its affiliates. Thus, not only would any person in question need to be involved with al-Qaida, the Taliban, or its surrogates, but that person must also engage in a deliberate and substantial act that directly supports their efforts against us in the war on terror in order to be detained under this provision. There is nothing in this bill that could be construed in any way that would allow any branch of the military to detain a law-abiding American citizen if they go to the local gun store or grocery store. What this section of the bill does is help provide for our national security by giving clarity to the military in regard to its authority to detain people who have committed substantially harmful acts against the United States. This is extremely important given that there are al-Qaida cells currently operating within our borders. I would not leave the risk of a terrorist attack that could claim the life of a member of my family up to chance, and I will not leave that risk for your family either.

Section 1032 of this bill concerns a smaller group of people who Congress believes are required to be detained by the U.S. military because people who fit within this criteria are a more serious threat to our national security. Any person detained under section 1032 must be a member of, or part of, al-Qaida or its associates and they must have participated in the planning or execution of an attack against the U.S. or our coalition partners. Simply put, the application of this detention requirement is limited to al-Qaida members that have tried to attack the U.S. or its allies. However, this detention requirement is clearly limited by a clause that states that the requirement to detain does not extend to U.S. citizens or lawful permanent residents.

Together, these two sections do the following: They affirm the authority of the executive branch to act within our national interest, and they provide the Federal Government with the tools that are needed to maintain our national security. This bill does not overturn the Posse Comitatus Act; the military will not be patrolling the streets. This bill does not take away our rights as citizens or lawful permanent residents; the authority under this act does not take away one's habeas rights. These sections do not take

away an individual's rights to equal protection under the 14th amendment to the U.S. Constitution, nor do they take away one's due process rights afforded under the 5th or 14th. If this bill did such a thing, I would strongly oppose it.

I want to thank everyone for reaching out to the office to voice their concerns on this bill. I want to assure them that I always have, and always will, listen to their concerns and address them in a timely fashion. I know this bill is not perfect. In fact, I proposed two amendments to prevent the President from transferring foreign terrorists to the U.S. to be prosecuted in the Federal court system, and I joined with Senators DEMINT, COBURN, and LEE to vote against cloture. However, in regard to the assertions that this bill allows the U.S. military to supplant our local police departments or that it allows the Federal Government to detain otherwise law-abiding citizens for simply carrying on in their daily lives, those assertions are entirely unfounded. As always, if anyone has any other questions, please feel free to contact me.

MORNING BUSINESS

The PRESIDING OFFICER. The Senate will now proceed to a period of morning business for the duration of 1 hour.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. GRAHAM. 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. GRAHAM. I would ask to be notified when 10 minutes is up.

The PRESIDING OFFICER. The Chair will let the Senator know when 10 minutes is up.

DEFENSE AUTHORIZATION

Mr. GRAHAM. I would like to do a colloquy with my good friend from Connecticut.

Senator LIEBERMAN said something that I think we need to sort of absorb. As the chairman of the Homeland Security Committee, does the Senator believe the likelihood of American citizens being recruited, enlisted, and radicalized on behalf of al-Qaida is going up? Is that what the Senator is trying to tell us?

Mr. LIEBERMAN. Mr. President, I say to my friend from South Carolina, I not only believe it, but it is shown by the facts.

I wish I had the numbers exactly in front of me. But if we chart attempts at terrorist attacks on the United States—and here I am limiting it to people who are affiliated with the global Islamist extremist movement—there were a few after 9/11, but in the last 2 or 3 years, the numbers have gone up dramatically.

I hasten to say these represent a very small percentage of the Muslim-American community. But of course it doesn't take too many people to cause great havoc. We have been effective at law enforcement and, frankly, we have been lucky that all but two of these attempts have been stopped. But I think we would find law enforcement officials, Homeland Security officials saying the toughest and most dangerous threat right now to the homeland security of the American people comes from homegrown terrorists who have been self-radicalized or radicalized by somebody else.

Mr. GRAHAM. I think that is important for us to understand. Does the Senator agree with me that when we look at the war on terror, the United States is part of the battlefield?

Mr. LIEBERMAN. Well, there is no question our enemies have declared it part of the battlefield. The very official commencement of the war against Islamist terrorism, 9/11, was an attack on America's homeland, on civilians.

Mr. GRAHAM. So let's just go with that thought for a moment.

Let's say our intelligence community, our law enforcement community, and our military/Department of Defense are all monitoring al-Qaida threats at home and abroad; does the Senator agree with that?

Mr. LIEBERMAN. Absolutely true. Al-Qaida and like Islamist terrorist groups.

Mr. GRAHAM. Under the Posse Comitatus Act, the military cannot be used for domestic law enforcement functions. Does the Senator agree with me that tracking al-Qaida operatives—citizen or not—within the United States is not a law enforcement function; it is a military function?

Mr. LIEBERMAN. It is a combination, truthfully.

Mr. GRAHAM. But our military has the ability to defend us against al-Qaida attacks at home, such as they do abroad.

Mr. LIEBERMAN. Right.

Mr. GRAHAM. So if the Department of Defense somehow intercepted information about an al-Qaida cell, let's say in Connecticut or South Carolina, could they be involved in suppressing that cell?

Mr. LIEBERMAN. I would say what has happened here since 9/11, and what we needed to have happen, is that the old stovepipes have dissolved and we have military, civilian, CIA, FBI, each with a focus, working together.

For instance, the Army doctor who killed 13 people at Fort Hood, our committee did an investigation in that case. He was actually communicating with the radical cleric Awlaki in Yemen over the Internet. That was picked up by international intelligence operatives. Part of the story is it wasn't transferred effectively to the Army so they could grab him before he committed the mass murder at Fort Hood.

But I have to say for the record, the primary responsibility for counterterrorism now in the United States is with the FBI that has developed an extraordinary capability since 9/11. But it works very closely with the CIA, gathering international intelligence, NSA, homeland security, and the military.

Mr. GRAHAM. As a team effort.

Mr. LIEBERMAN. Right.

Mr. GRAHAM. Let's imagine a scenario next week where we find an al-Qaida cell exists that is planning a series of attacks against the United States, and within that cell we have some American citizens and we have people who have come here who are noncitizens.

Would the Senator agree with me, since Congress has designated cooperating or collaborating with al-Qaida to be an act of war, that entire cell could be held as enemy combatants and questioned by our intelligence community as to what they know about the attack and questioned on future attacks?

Mr. LIEBERMAN. That certainly should be the case, and we have had this circumstance in reality. They are all part of the same enemy. In the case the Senator posits, they have all been part of the same plot to attack the American people.

Mr. GRAHAM. So would the Senator agree with me that the current law is very clear that anytime an American citizen joins the enemy force, they can be held as an enemy combatant; that is the law?

Mr. LIEBERMAN. That is the law. As the Senator has said and Chairman LEVIN has said several times in the debate, there may be some in the Chamber who don't like it, but that is what the U.S. Supreme Court has said very clearly.

Mr. GRAHAM. If we capture an American citizen as part of this cell and we can't hold them as an enemy combatant for intelligence-gathering purposes, does domestic criminal law allow us to hold someone for an indefinite period of time to gather military intelligence?

Mr. LIEBERMAN. No.

Mr. GRAHAM. Does domestic criminal law focus on the wrongdoing of the actor, based on a specific event, when we are trying to resolve a dispute between the wrongdoer and the victim?

Mr. LIEBERMAN. Yes, it does. The Senator is making a very important point. It goes back to the colloquy the Senator from New Hampshire and I had, which is, when we capture an enemy combatant, we do so for two reasons: One is to get that enemy off the battlefield, the second is to gather intelligence. Sometimes the second purpose is more important than the first because it can lead us to other plots against the American people.

Mr. GRAHAM. Does the Senator agree with me the reason the Supreme Court has recognized that an American citizen could be held as an enemy combatant if they collaborate with an