United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 112th CONGRESS, SECOND SESSION

Vol. 158 WASHINGTON, MONDAY, JANUARY 23, 2012 No. 9

Senate

The Senate met at 2 p.m. and was called to order by the Honorable RICHARD BLUMENTHAL, a Senator from the State of Connecticut.

PRAYER

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

Let us pray.

Eternal Lord God, the source of wisdom and might, with renewed powers and refreshed spirits, we return to this national Chamber of deliberation. We begin our work with the awareness that without You nothing of significance can be accomplished. Be the guardian and guide of our Senators as they travel the unbeaten path into our national future. Grant them wisdom and courage for the living of these days.

We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable RICHARD BLUMENTHAL led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 23, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD BLUMENTHAL, a Senator from the State of Connecticut, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

WELCOME

Mr. REID. Mr. President, I, first of all, welcome everyone back after the long break we had. I hope it was restful and productive for everyone.

As happens every 4 years, we have a Presidential election year and, as a result of that, things should be more tense than usual, but I certainly hope not.

MEASURES PLACED ON THE CALENDAR—H.R. 440 AND H.R. 3012

Mr. REID. Mr. President, there are two bills at the desk due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bills by title for the second time.

The legislative clerk read as follows:

A bill (H.R. 440) to provide for the establishment of the Special Envoy to Promote Religious Freedom of Religious Minorities in the Near East and South Central Asia.

A bill (H.R. 3012) to amend the Immigration and Nationality Act to eliminate the per-country numerical limitation for employment-based immigrants, to increase the per-country numerical limitation for family-sponsored immigrants, and for other purposes.

Mr. REID. Mr. President, I object to further proceedings in regard to these two bills.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bills will be placed on the calendar.

SCHEDULE

Mr. REID. Mr. President, the Senate will be in morning business until 4 o'clock today, with Senators permitted to speak for up to 10 minutes each. Following that morning business, the Senate will proceed to executive session to consider the nomination of John Gerrard to be United States District Judge for the District of Nebraska. At 5:30 p.m., we will vote on confirmation of that nomination.

ORDER OF PROCEDURE—S. 968

Mr. REID. Mr. President, I ask unanimous consent that the cloture motion with respect to the motion to proceed to Calendar No. 70, S. 968, be vitiated.

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

WISHING SENATOR KIRK A SPEEDY RECOVERY

Mr. REID. Mr. President, I was saddened to hear that Senator MARK KIRK suffered a stroke over the weekend. He had surgery this morning. I have followed it as closely as I have been able to. The doctors say he will recover, and I am confident that is true. He is young and in very good health. I wish him a full and speedy recovery and look forward to him returning to his work in the Senate as soon as possible.

FINDING COMMON GROUND

Mr. REID. Mr. President, Winston Churchill said:

Courage is what it takes to stand up and speak. Courage is also what it takes to sit down and listen.

I know each of my colleagues in the Senate—regardless of political party—has the courage to stand up and speak in defense of his or her principles. This year I hope we each find the courage and faith to listen and cooperate as well.

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

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The Founders, in their wisdom, when drafting our Constitution, created a divided government. That is what they did with this bicameral legislature they envisioned. They also looked to see a robust debate on important issues. I do not believe they envisioned the obstructionism and gridlock that ground the Senate to a halt last year. Influenced by the tea party voices, Republicans forced us to waste months on routine legislation, they nearly shut down our government, and they held hostage the full faith and credit of the United States.

So I remind my Republican colleagues that not every discussion, every matter we deal with, should collapse into a fight. We do not have to fight about everything. Every piece of legislation we consider should not result in a political battle.

When we work together, we achieve greater results for the American people. That is why this year Democrats and Republicans must seek common ground. We must also admit it when we find that common ground, and work on that common ground we have discovered.

We should all be able to agree that Congress must do whatever it takes to help create jobs and strengthen our economy. Democrats believe it will take commonsense policies that protect the middle class and smart investments that rebuild our roads, bridges, and schools, our water and sewer systems.

We must combat income inequality now or the rich will keep getting richer and the poor getting poorer, while the middle class disappears. That is not fiction; it is fact.

I watched on public television within the past week or so a wonderful piece on ''Bill Moyers Journal.'' I was so impressed with that, I called and spoke with him afterwards. I am not in the habit of calling people like that very often, but over the years we have spoken a couple times—three or four times probably over the many years I have been here.

The reason I was so impressed with what he said is that it reminded me I think of what a lot of people should be reminded. He talked about going to a public elementary school, he talked about going to a public high school, a State-supported university, and during all this time of going to libraries, public libraries.

We have to understand that government has been so helpful to most of us, and we cannot turn away from institutions of government which have been so important to us over the years.

So I repeat, we must combat income inequality and combat it now or the rich will keep getting richer, the poor getting poorer, and the middle class being squeezed all the more. I repeat, that is not fiction; it is a fact.

We Democrats will continue to defend working Americans, and we hope Republicans will join us in that regard. But if they allow the tea party to turn every issue into an all-or-nothing battle, we cannot back down—we should not back down—and we will always side with the middle class.

We saw the results of Republican brinkmanship in December.

I was on a—well, I will not talk about TV shows—but as soon as we had the vote here, I walked up to the press gallery, as I was requested to do, and complimented publicly my Republican colleague Senator MCCONNELL—and I was happy it did get some press—because Senator MCCONNELL and I made an arrangement here to complete this legislation, and he stuck by that. I know he had tremendous pressure, and I cannot understand all the pressure he did have. But I admire and appreciate what he did in sticking with what the Senate did. So we then refused to give up on a tax cut for hard-working families, and it turned out well because Members of Congress came to the realization that the American people said they could not afford a thousand-dollar tax hike. Putting money back in the pockets of 160 million American workers should not have been so difficult. It should not have been a fight in the first place. I hope we all learned a lesson in this battle.

It is time for us to stop fighting. I repeat, we do not have to fight about everything. There comes a time—and that time is now—when we need to have the courage to stand up and fight for what is right.

This year it will be as important that we summon the courage to sit down and listen. Rather than standing up and fighting, we need to sit down and listen more often.

COLLEGE BASKETBALL

Mr. REID. Mr. President, before my friend starts, the Republican leader and I deal with a lot of issues that come up in the Senate, and some of them are difficult. But the one thing we have that is kind of a diversion for us is we follow college athletics in our respective States. I have been very fortunate in Nevada that the University of Nevada has had a very good football team the last 5 or 6 or 7 years. I will not talk about the UNLV football item; it is not worth doing, as I told the university president.

But we also have in Nevada—and this is always the way it is in Kentucky; they always have good basketball teams—we have been doing very well in recent years, especially at UNLV; and now what UNR has is, I believe, the longest winning record in Division I basketball. They have only lost three games. UNLV has only lost 3 games.

So we have fun in our few minutes together talking about basketball. I have never seen a more avid fan of the University of Louisville. He, of course, follows the University of Kentucky, which is easy to follow, because their teams are always so good. But so is Louisville's team. And Louisville and UNLV have had, in recent years, some very tight basketball battles.

So I want the Acting President pro tempore and everyone else to know Senator MCCONNELL and I do, on occasion, divert from the business of the Senate.

RECOGNITION OF THE MINORITY LEADER

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

Mr. MCCONNELL. Mr. President, I will add, we do enjoy our sports discussions. Of course, I always have the ultimate trump, which is the University of Kentucky has won seven NCAA championships and the University of Louisville two. So my friend is always trying to catch up. And I would say that——

Mr. REID. We only have eight more to go.

Mr. MCCONNELL. Only eight more to go. UNLV has a good team this year, probably not as good as Kentucky, maybe as good as Louisville, but it does give us an opportunity to catch up on each other's teams every day as we head to the floor.

WISHING SENATOR KIRK A SPEEDY RECOVERY

Mr. MCCONNELL. Mr. President, let me start on a sort of sober note by saying we are all thinking of our colleague MARK KIRK. It is at moments such as these that we are all reminded of how fragile life is, and that there are far more important things in life than politics. So we send MARK and his family our prayers and our wishes for a speedy recovery.

THE JOBS CRISIS

Mr. MCCONNELL. I wish to begin my remarks today by simply stating the obvious: The jobs crisis we are in continues for millions of Americans. Many millions more are worried about the future. And Republicans are quite eager to work with the Democratic majority here in the Senate to jump-start our economy and set our Nation on an entirely different course than the one we have been on the last few years.

Let's be clear: The reason our economy has gotten worse and our future more uncertain has nothing to do with what Republicans in Congress will not do at some point in the future and everything to do with what this President has already done.

Americans are looking for an entirely new direction. It is one that focuses on growing the economy, not growing our Nation's debt.

So we are happy to work with the Democratic majority in the Senate to achieve these goals. But based on some of the news stories I have read over the last few weeks, it does not appear they are all that interested. Based on what I have read, it appears Democratic leaders right here in the Senate have gotten together with the White House

and mapped out a plan to actually guarantee gridlock for the rest of the year.

This is sort of a stunningly cynical strategy when you think about it. Millions of Americans cannot find work. The average length of unemployment is the longest it has ever been. Hundreds of thousands of Americans who had a job when this President took office have simply dropped out of the workforce. And yet the Washington Democrats' plan for this year is to sit on their hands and blame it on the other guy.

I certainly hope this was just a couple of overzealous staffers saying this. I hope our Democratic friends have not decided this is how they plan to spend the rest of this year. I hope they have not given up on governing in favor of campaigning and complaining because, to borrow a phrase, facing up to the economic crises we face cannot wait. Democrats in Congress cannot simply throw in the towel because they are no longer getting everything they want.

The fact is, Democrats got everything they wanted for 2 years—for 2 years after this President was elected. The American people decided to impose a little balance in the November 2010 election, and they are still waiting for this White House and Democratic leaders in Congress to work on a different approach. So it is about time we got started. President Obama's 3-year experiment with big government has made our economy worse and our future more uncertain. Americans want a government that is simpler, streamlined, and secure.

But we will not be able to achieve these things if Democrats refuse to even try, if they have decided to spend the next year on show votes and legislation that is designed for bus tours instead of bill signings.

The No. 1 issue facing our country is jobs, and the No. 1 goal of Republicans in 2012 is to continue to make it easier for American small business to create jobs. We will accomplish this by focusing on three things: fundamental tax reform, regulatory reform, and energy security. But we will surely fail if the Democratic majority in the Senate refuses to help.

So Republicans will continue to make the case for policies that will spark an economic revival and create new opportunities for struggling Americans, and we hope the Democrats will join us. Tomorrow, the President will come to the Capitol to tell us what he thinks about the state of our country and to outline his plans for the future. We welcome him. We look forward to his address. We stand ready to work with him as always on an agenda that will get our Nation moving again, not an agenda to divide, not a repackaging of the same ideas that have made our economy worse and our future more uncertain but a truly bipartisan agenda that gets us beyond past skirmishes and onto a different path entirely. There is much we can and should do together. Let us focus on that and put the rest aside.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until 4 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

GERRARD NOMINATION

Mr. NELSON of Nebraska. I rise to speak on behalf of an outstanding Nebraskan, State Supreme Court Justice John Gerrard. His nomination to fill a vacancy on the U.S. District Court for Nebraska is now before the Senate.

John Gerrard has built an exceptional record in private practice and on the Nebraska Supreme Court and will do an exemplary job as a U.S. district judge for the District of Nebraska. I have known him for more than 20 years and believe he has the experience, the intellect, and the temperament needed on our Federal bench. I cannot think of anyone better qualified than John Gerrard.

I was very pleased the President nominated him. I have welcomed my colleague Senator Johann's strong support, and I believe the Senate should confirm him for the position of a U.S. district court judge.

John Gerrard, a native of Schuyler, NE, has served as a private attorney, a city attorney, counsel to several public school districts in Nebraska, and he has an outstanding public record as a judge. In private practice, Judge Gerrard tried dozens of cases, both civil and criminal, to verdicts in State and Federal courts. He was highly respected as a trial attorney earning an ''AV'' Martindale-Hubbell rating from his colleagues. He was elected to the American Board of Trial Advocates by his peers.

During my tenure as Governor, I appointed him, in 1995, to the Nebraska Supreme Court. Nebraska voters have shown their confidence in him by retaining him in office three times: in 1998, 2004, and 2010. He has consistently received top ratings by the Nebraska State Bar Association in its biennial judicial evaluations, particularly in the areas of legal analysis, judicial temperament, and fair treatment of litigants and their lawyers.

Furthermore, the Nebraska judicial system gave him its Distinguished Judge for Improvement of Judicial System Award in 2006. This was in recognition of his work as cochair of the system's Minority Justice Committee and the Interpreter Advisory Committee, as well as leading initiatives promoting racial and ethnic fairness under the law.

Also, in 2008, the Nebraska State Bar Foundation gave him its Legal Pioneer Award. This was for making the courts more user friendly for citizens from all cultures by utilizing technology and other means to improve both understanding and participation in the courts. I would note that on the Nebraska Supreme Court, Judge Gerrard has authored more than 450 opinions, and he is widely considered a leader on that court.

Judge Gerrard is held in the highest regard by both the bench and the bar in Nebraska, and the American Bar Association has deemed him ''unanimously well qualified'' to serve as a U.S. district judge. Judge Gerrard maintains the same even temperament off the bench as he does on the bench. Clearly, he is an exemplary person who has contributed much to our society.

Furthermore, he and his wife Nancy have been married for 34 years and have raised four exceptional children. I would also note that during my years as Governor, I appointed 81 judges in the State of Nebraska, including the Nebraska State Supreme Court. Since I have been in the Senate, I voted on numerous judicial nominees. In all cases, I have supported candidates for the judiciary who convinced me they would follow the law and would not manipulate it to promote a personal or activist agenda. This is a critical test for me and it is relevant concerning Justice Gerrard. I am convinced he would not allow personal beliefs to interfere with his judicial duties, nor would he bring an activist agenda to the Federal bench. He has proven this beyond a doubt with his disciplined approach to the law over the last 16½ years as a judge on the Nebraska Supreme Court.

Questions, however, have been raised to Justice Gerrard on those points, and I would like to address them now. He has been asked whether a matter may be constitutional one day and not the next based on a changing legal landscape. He has answered for the record that the U.S. Supreme Court and the circuit courts set the binding precedent on whether a matter is constitutional, which he would follow as a district judge.

He has stated a Federal district court judge can conclude the law has changed only by legislation or by a ruling by a higher court. Justice Gerrard has a clear understanding of the limitations of a Federal district court judge. He has demonstrated that understanding in the deference he has given to the legislative branch and to higher court precedent during his years on the Nebraska Supreme Court.

He has also been asked specifically whether he has personal beliefs that would make him unable to carry out the death penalty. Again, he has answered, for the record, that he does not. More to the point, Nebraska carried out the death penalty while I was

Governor and Justice Gerrard was serving on the Nebraska Supreme Court. As a matter of fact, the court has concurred in establishing an execution date to take place this March 6 in the State of Nebraska.

Issuing and executing a death sentence is one of the most solemn responsibilities the judicial and executive branches are entrusted with. In every instance, Justice Gerrard has ruled on the death penalty, he has been balanced, even-handed and, most important, faithful to the Constitution. In fact, Judge Gerrard has confirmed for the record that the U.S. Supreme Court and the Nebraska Supreme Court have repeatedly held that the death penalty is an acceptable punishment as long as the laws for imposing it are followed and the constitutional limitations imposed by the U.S. Supreme Court are respected.

Finally, Judge Gerrard has stated, and the record shows, he has voted to confirm a number of sentences and convictions of those sentenced to death, and he has authored more than one State court opinion upholding the constitutionality of Nebraska's death penalty law. In my view, Judge Gerrard's answers and his clear record more than adequately address any concerns about his ability or willingness to both apply the law with impartiality and to carry out the law effectively .

To sum up, John Gerrard deserves to be confirmed by the Senate because he has an outstanding legal record, he possesses the proper temperament needed on the Federal bench, and he will follow legal precedent to carry out the law rather than interpret as he sees it. He has been and will be an impartial judge, not an activist. So I urge his confirmation by my colleagues.

I yield the floor and 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. JOHANNS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. JOHANNS. Mr. President, I am very pleased today to rise in support of a man who has proven himself worthy to serve as a Federal judge on the U.S. district court.

Justice John Gerrard has experience, integrity, and respect for the Constitution—all of which are necessary for someone serving on our Federal bench.

He has earned the respect and the admiration of the people of Nebraska. He consistently receives top ratings from the Nebraska State Bar Association, and the people of Nebraska have expressed their confidence in him not once, not twice, but three times, voting to retain him on the bench.

Justice Gerrard has authored hundreds of opinions throughout his 16 years as a member of the Nebraska Supreme Court. These decisions reveal with clarity his philosophy regarding the powers and limitations of a judge. They reflect his commitment to adhere to the Constitution and the laws of our great Nation.

When asked about judicial restraint after his nomination to the U.S. district court, Justice Gerrard responded:

> I firmly believe that a judge should rely on the admissible evidence and applicable law (and nothing else) when rendering a decision.

He further responded:

> I do not believe a judge should consider his or her own values or policy preferences in determining what the law means—and I have never done so at any time in my judicial career.

This unequivocal statement says a lot. Justice Gerrard knows that his more than 450 opinions are a matter of public record and that they are open to everyone's scrutiny. He has welcomed that. He has welcomed it with humility.

You will not hear him boast about being the youngest person ever appointed to my home State's high court, nor will you hear him boast about his successful years as a private attorney and city attorney—and they were successful. He is absolutely unassuming. He is reflective and he is articulate. He speaks with great reverence about the oath he took to uphold the Constitution.

I did not know Justice Gerrard prior to his appointment to the Nebraska Supreme Court, but he quickly developed a reputation as a disciplined judge who renders very well researched opinions.

I believe Justice John Gerrard is a worthy member to join the U.S. district court, and so I stand here today urging my colleagues to vote in favor of his confirmation.

I would also like to take a moment to talk about the process that brought us here this afternoon. In this regard, I would like to offer my appreciation and thanks to my colleague from Nebraska, the senior Senator, BEN NELSON. Senator NELSON called me before this nomination was made and asked for my input. I took that opportunity to sit down with Judge Gerrard and to talk to him. After our meeting and knowing what I knew about the justice, it was my decision to support his nomination to the U.S. district court. In fact, I would say, if I had total control of this nomination, I would do it all over again.

This is a fine man. This is a man who I hope will have strong bipartisan support this afternoon when we vote on making him a U.S. district judge. He is a good man, and he deserves a strong bipartisan vote. He is going to adhere to the laws of our Nation with integrity, humility, and a strict adherence to the law.

I yield the floor.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF JOHN M. GERRARD TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of John M. Gerrard, of Nebraska, to be United States District Judge for the District of Nebraska.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 90 minutes for debate, with 60 minutes divided in the usual form and 30 minutes under the control of the Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask that I be notified after 12 minutes.

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

Mr. SESSIONS. Mr. President, by all accounts, Judge Gerrard of the Nebraska Supreme Court is a good man with a good family and many friends, and he has done a pretty good job over the years—maybe a good job over the years—as a capable practicing jurist now on the Supreme Court of Nebraska.

I will vote against that nomination, reluctantly. I really do not want to in one sense, but his nomination raises an important issue about the duty of a judge to be faithful to the law and to commit to serve under the law and under the Constitution, as the oath of a Federal judge requires. In other words, as a judge you are a servant to the law.

You honor the law. You venerate the law. You follow the law whether or not you like it, whether or not you think it is a good idea, whether or not had you been at the Constitutional Convention in the 1700s, you would have voted for that phrase or not voted for that phrase or whether if you had been in the House or the Senate you would have worked to change the Constitution or change the law of the State of Nebraska. Those are matters that are outside the province of a judge. If judges choose to be involved in policy-setting, then they ought to invest themselves in the policy-setting branches, the legislative and executive branches.

So judges are, as Justice Roberts said so wonderfully, ''neutral umpires.'' They do not take sides in the game; they enforce the rules of the game. How those rules have been written and established and what motivation caused the Congress to pass them is not the critical issue. So there is a very troubling matter to me which reveals an activist tendency in this judge, and it was the case of State v. Moore.

The case of State v. Moore in Nebraska is very significant because it raises quite clearly these very issues. In the Moore case, Judge Gerrard took an active role as one of the members of the court. Mr. Moore had been on death row since 1980. He had confessed to murdering two people. He had appealed to the Nebraska Supreme Court three times. Three times the Nebraska Supreme Court had denied his appeals. He had quit appealing. In fact, he filed a motion and said he did not desire any more appeals. His pleading said he no longer wished to challenge his sentence, and he was being set for an execution that by law he deserved.

Judge Gerrard intervened on his own motion and stayed that execution even though no pleading had been filed. He did it on the basis that while Moore was set for electrocution, he was aware that another case that was coming up to the Supreme Court of Nebraska dealt with the constitutionality of the death by electrocution statute. Apparently the judge did not like the death by electrocution statute. But he stopped it. Technically, I am not sure that was correct. He was criticized by three members of the court, but he did that.

Then the case came before the court, this other case, the Mata case. The judge then confronted the fundamental question of whether the utilization of electrocution was a constitutional matter.

Now in Nebraska and in most States there are two types of constitutions: the U.S. Constitution and the Nebraska Constitution. As is often the case, the exact same words with regard to the death penalty are in the U.S. and Nebraska Constitutions: that the Constitution prohibits the carrying out of a death penalty by cruel or unusual means. ''Cruel and unusual'' actually is the phrase. So it must be cruel and it must be unusual to be unconstitutional, otherwise States can all carry out death penalties as they choose.

In fact, at the time the Constitution was adopted, every colony, every State that formed our Union had a death penalty. The U.S. Government had a death penalty. There are multiple references in the U.S. Constitution to the imposition of a death penalty. It says, for example, that you cannot deny a person ''life'' without due process. It makes reference to ''capital crimes,'' which are death penalty crimes. There are several, multiple references to that. Implicit in the Constitution itself is a constitutional acceptance of the ability of the Congress or the State legislatures to impose a death penalty.

The Constitution was in no way ever thought to be a document that would have prohibited all death penalty cases. But there became a movement in the middle of the last century and later that the death penalty was bad and that judges should overthrow it. Actually two judges on the Supreme Court opposed every death penalty case because they said it was cruel and unusual.

That was not the Constitution. They were allowing their personal views about the wisdom, or lack of it, of the death penalty to influence their judicial decisionmaking. How can we say the Constitution prohibits the death penalty when it makes multiple references to the death penalty? Every State and the Federal Government have been utilizing the death penalty since the time the Republic was founded.

So I am not debating the death penalty. I am not debating the death penalty. Good people can disagree. It ought to be brought up on the floor of this Congress, on the floor of the legislatures of Nebraska, Alabama, Texas, and New York, and they can decide whether they want to have one and how it will be carried out.

The Constitution does say, however, that we cannot use cruel and unusual methods of carrying out the death penalty because they understood that. They did not want people to be drawn and quartered and chopped up and things like that—burned in fires. The accepted penalty at that time was firing squad and hanging, generally. That is what was approved in most States. We still have States—at least one State today—that allows firing squad. I think we still have some that have hanging. But most States have gone more and more to lethal injection, and a number, quite a number, still have electrocution.

So the question of electrocution was brought up. The guy was defending a person who had been sentenced to die as a result of his crimes. They objected, saying electrocution was cruel and unusual in 1890. In 1890 the Supreme Court ruled that it was not unconstitutional. Then again it was ruled in 1947 that electrocution was not cruel and unusual punishment. Since that time, up until recent years, most—I would say perhaps even a majority of States—used electrocution as being less painful and more consistent with our values than a firing squad or hanging. So it was seen as a reform, a better way to carry out the severe penalty of death.

The Supreme Court of the United States has since repeatedly denied appeals to seek to raise again electrocution as being unconstitutional.

This other case came up in Nebraska, State v. Mata. It squarely challenged the constitutionality of electrocution as a method of execution. Although he acknowledged the Nebraska Supreme Court had always held that electrocution was not cruel and unusual, Judge Gerrard asserted in the Moore case that ''a changing legal landscape raises questions regarding the continuing vitality of that conclusion.''

I am not aware of anything in the landscape that would justify any change in that. I think 1 State in the United States out of 50 has held that electrocution is not appropriate. I don't know how it violates the cruel and unusual clause. I am not sure how they possibly so ruled, but they did. So it came up before this court. The Mata case came up before the court and, to sum it up, let me just say they concluded, contrary to the previous rulings of the Nebraska Supreme Court, contrary to the rulings of the U.S. Supreme Court, that electrocution amounts to a cruel and unusual punishment and eliminated and stayed the execution of two individuals, Mr. Mata and Mr. Moore.

I guess what I will say is this: We all in this body have to make a decision about whether judges make errors—which they sometimes do—and then how serious those errors are and what those errors reflect about the ability of the judge to fulfill the oath they take. The oath, remember, is to serve under the Constitution, under the laws of the United States, and to do equal justice to the rich and the poor and to follow the law, in effect, whether you like it or not.

I think this was not a little bitty matter. I think the people of the United States and judges on the Supreme Court of the United States have dealt with death penalty cases for some time, and the American people have been called upon on a number of occasions to eliminate death penalties in their States. A few have; most have not.

Mr. President, 30 minutes has been set aside for me, correct?

The ACTING PRESIDENT pro tempore. That is correct. The Senator has used just over 13 minutes.

Mr. SESSIONS. I ask to be notified after 7 additional minutes.

The ACTING PRESIDENT pro tempore. The Chair will notify the Senator.

Mr. SESSIONS. Mr. President, it is not a little bitty matter. These matters have gone to the Supreme Court. Electrocution was passed by legislatures and voters for one reason. They thought it was a way to carry out a grim death penalty sentence in a way less painful than a firing squad and hanging. That is why they did that. It was not any more cruel and unusual but less cruel and unusual. Death is instantaneous, and it is an effective method and is consistent with our Constitution, as the Supreme Court held and as the Nebraska Supreme Court previously held.

Here we are in this body and we have heard the debates. A lot of good people with very plausible arguments—I don't agree with them, but I respect them—

say we should not have a death penalty. This is a debate we should have and talk about with the American citizens. It is not a matter for judges to effectively decide by altering the plain meaning and principles of the U.S. Constitution because they think it is not right. They are not legislators. This is a big issue around the country and people are tired of it. They say people are not happy with the judges and they don't understand the law. Well, they understand the death penalty. They have considered it. Their elected representatives have voted on it. It has been approved in most States. They expect their judges to carry out the law, unless it plainly violates the Constitution of their State or the Nation.

I just suggest that I believe this decision was a product of an ill will or a bias against the death penalty, consistent with the effort of a lot of people working around the legal system every day. I was the attorney general of Alabama, chief prosecutor in the State. I was a U.S. attorney for 12 years. So I have wrestled with these issues. I know how the deal works. Everybody in the system understands what this is.

For the Supreme Court of Nebraska to hold that electrocution violates the cruel and unusual clause of the Constitution of Nebraska or the Constitution of the United States—they said in this case, Nebraska, which has exactly the same language as the U.S. Constitution; for them to rule that way, I believe, is outside the bounds of what I am willing to accept. We have people saying the evolving standards of decency, evolving legal principles, and evolving national and international law says we ought to change. No, the American people rule and they elect their representatives and they pass laws; and judges have one obligation, which is to enforce the law, unless it is plainly contrary to the Constitution. My opinion, as someone who has been in the legislature and had to defend death penalties as the attorney general of the State of Alabama—my opinion is that declaring electrocution to be an unconstitutional method of imposing the death penalty steps out of objective, neutral judging and evidences a plain activist tendency to promote a result.

I think it is compounded by the fact that the judge went out of his way, contrary to other judges' wishes on the court, to lead an effort to stay one execution until they could take up this case and then to rule over the Chief Judge's dissent that it was indeed unconstitutional.

Mr. Moore remains now, since 1980, even today, still on death row. People are unhappy about that. They rightly think the law is not working and that there is too much politics in it, and people are undermining duly enacted law. There was no question of this defendant's guilt. He murdered two people and he confessed to it.

That is the way I feel about this. I can see a lot of other people saying Judge Gerrard is a good man, a smart lawyer, and he will do a good job on the bench—and I hope he does—but I am not voting for judges, as I have said before, who will not establish that they are willing to follow the law even if they don't like it. Particularly, I am very reluctant to support judges who, I believe, in this most controversial area where much debate has occurred, in one form or another, take extraordinary, unlawful steps in my view, to undermine the death penalty because they don't like it.

You say: Somebody else said that may have been a mistake, but it is not disqualifying. I respect other people's opinions. I am not calling on other people to reject Judge Gerrard. As I said, by all accounts, he is a good man. I am saying I don't feel comfortable voting for someone based on a legal issue such as this that I personally dealt with over the years. I would not oppose him if he personally opposes the death penalty. That is fine. But as a judge he is required to carry it out in an effective way. We have had far too much obstruction of the death penalty, and I hope we will see an end to it and get judges on the bench who will follow the law.

I reserve the remainder of my time.

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

Mr. JOHANNS. Mr. President, I ask if the Senator from Alabama will yield me 3 minutes to speak on Judge Gerrard.

Mr. SESSIONS. I will. I appreciate my colleague's interest in this matter. I believe there is considerable time left on the other side. He can certainly have that on my time.

The ACTING PRESIDENT pro tempore. There is about 10 minutes.

Mr. SESSIONS. Mr. President, I yield what time I have to the Senator from Nebraska.

Mr. JOHANNS. Mr. President, I thank the Senator from Alabama for yielding the time. One thing I wish to say, to start out with, is that the Senator from Alabama and I would almost always agree about judicial appointments. It is a very unusual situation that we would be in any kind of disagreement. Many times I come to the floor and seek out the Senator from Alabama and ask his thoughts on things or to tell me more about a nominee. I am here this afternoon with great respect for the Senator from Alabama and his views of judicial nominees.

I have very strong feelings, though, about Justice Gerrard. I have had an opportunity to watch this man on the Nebraska Supreme Court for many years. In my view—and I doubt there would be many who would disagree with this—judges, especially Federal judges, should follow the law and not their own inclinations or personal preferences or their own personal feelings on a matter or controversy before them. I think we need to examine this issue very carefully.

There has been some suggestion that Justice Gerrard might seek to craft his own preferred outcomes instead of following the law. I wish to respond to that. The concerns, of course, relate to a case out of Nebraska, State of Nebraska v. Moore.

In that case, Justice Gerrard ordered a stay of a death warrant pending the outcome of another case the Nebraska Supreme Court was considering. At issue in the second case was whether the death penalty by electrocution, as provided by Nebraska statute, was consistent with the Nebraska Constitution. Because the defendant in Moore was scheduled to die by electrocution, Justice Gerrard stayed the warrant pending the court's decision in that second case. In the majority opinion in Moore, Justice Gerrard noted that the court was using its inherent authority to stay the warrant.

If I might, let me take a moment to explain what Justice Gerrard was saying there.

Some have concluded that what he was saying was he was calling on some nebulous, indistinct legal authority merely to cloak his own wishes. But I would suggest respectfully that Justice Gerrard has fully and very satisfactorily explained exactly what he meant by the specific choice of those words. He was, in fact, carefully using authorities granted to him by Nebraska law. As the judge explained in a letter, Nebraska law provides that the Nebraska Supreme Court is directly responsible for issuing the order of execution of prisoners sentenced to death. So when Judge Gerrard used his inherent authority to stay the execution at issue in Moore, he was using authority granted by Nebraska statute to order the execution in the first place. In other words, the Nebraska Supreme Court, by Nebraska law, has the power to issue the order and then deal with that order in the future.

This is what Judge Gerrard said in his letter in a series of questions that were posed to him relative to his nomination for the U.S. district court:

> The ''inherent authority'' referred to in the Moore order was only the court's inherent authority to control the implementation of its own orders, just as any court, at any level, can control its own orders.

I should note also that Judge Gerrard makes plain that he considers the death penalty to be the law of the land, one that he must uphold.

On the question of whether the death penalty is constitutional, Justice Gerrard writes:

> I am aware of no authority, nor any persuasive evidence, supporting the conclusion that the death penalty itself is unconstitutional. Our court has concluded in multiple cases that the death penalty itself is constitutional, and I have joined in (and authored many) of those decisions.

Mr. President, as I have indicated in my remarks in support of this nominee, I do believe Judge Gerrard will base his decisions on the evidence before him and the applicable law. I have

had an opportunity to watch him do that for years and years. That is what he will do. He will base his decisions on the evidence before him and the applicable law and nothing else. Furthermore, he has earned the respect and support of Nebraskans, who three times voted to return him to the bench. I believe he is well qualified to serve our Nation in the Federal courts as a district judge. Justice Gerrard's nomination deserves our support, and I again urge my colleagues to support him today.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I wish to compliment the Senator from Nebraska for his comments. I totally agree with him.

As last year drew to a close, I spoke about the Senate's lost opportunity to take long overdue steps to address the serious vacancies crisis on Federal courts throughout the country. With nearly one out of every 10 Federal judgeships vacant, the Senate should not have adjourned with 21 judicial nominations on the calendar and stalled from having a vote. Regrettably, Senate Republicans chose to end last year using the same obstructionist tactic that they used the year before. They continue to delay final confirmation votes on consensus judicial nominees for no good reason. Such delaying tactics are a disservice to the American people and prevent the Senate from doing its constitutional duty and ensuring the ability of our Federal courts to provide justice to Americans around the country.

The result of the Senate Republicans' inaction is that the people of New York, California, West Virginia, Florida, Nebraska, Missouri, Washington, Utah, the District of Columbia, Nevada, Louisiana, and Texas are without the judges they need. The result is that judicial emergency vacancies in Florida, Utah, California, Nevada and Texas remain unfilled. Last year it took us until June to make up the ground we lost when Senate Republicans refused to complete action on judicial nominees at the end of 2010. The Senate starts this year with 19 judicial nominees awaiting final Senate action, all but one of them reported with significant bipartisan support, 16 of them unanimously. They should have been confirmed last year.

By repeating its obstruction and refusing to consent to votes on consensus nominees before the end of the year, Senate Republicans have again ratcheted up the partisanship in connection with filling judicial vacancies. While once Republican Senators threatened to blow up the Senate to force votes on a handful of President Bush's most extreme ideological picks, Senate Republicans now stall and block even President Obama's mainstream, consensus nominees across the board. Those they delayed are the kind of qualified, consensus nominees who in the past would have been considered and confirmed by the Senate within days of being reported with the support of their home state Senators and the support of both Democrats and Republican on the Senate Judiciary Committee.

Last year, final consideration of qualified, consensus judicial nominees took months because Senate Republicans refused to consent to confirmation votes. They took this to a new extreme by ending the year by refusing to hold votes on any judicial nominees. Meanwhile, the millions of Americans who are served by the Federal courts in those districts and circuits whose vacancies could be filled with qualified, consensus nominees are left with overburdened courts and unnecessary delays in having their cases determined.

I thank the Majority Leader for arranging for final consideration of Justice John Gerrard's nomination. Since 1995, Justice Gerrard has served on the Supreme Court of Nebraska, and his nomination received the highest possible rating from the ABA's Standing Committee on the Federal Judiciary, unanimously ''well qualified.'' He received a near-unanimous vote before the Senate Judiciary Committee back in mid-October last year and has had the support of his home state Senators, a Democrat and a Republican, from the outset. Recently, the senior Senator from Nebraska announced that this will be his last year in the Senate. I have always enjoyed working with Senator NELSON. He has worked hard and represented the people of his state well. He has been diligent with respect to judicial nominations for vacancies in Nebraska and tirelessly pressed to fill vacancies there to ensure that cases before the Federal courts in Nebraska were not needlessly delayed. I am sorry that confirmation of this judicial nomination, one he has so strongly supported, has been needlessly delayed more than three months while the Federal trial court for the District of Nebraska remains overburdened.

More than half of all Americans live in districts or circuits that have a judicial vacancy that could be filled today if Senate Republicans just agreed to vote on the nominations that have been voted out of the Senate Judiciary Committee and have been awaiting a final confirmation vote by the Senate since last year. It is wrong to delay votes on these qualified, consensus judicial nominees. The Senate should be helping to fill these numerous, extended judicial vacancies, not delaying final action for no good reason.

Our courts need qualified Federal judges not vacancies, if they are to reduce the excessive wait times that burden litigants seeking their day in court. It is unacceptable for hardworking Americans who are seeking their day in Federal court to suffer unnecessary delays. When an injured plaintiff sues to help cover the cost of medical expenses, that plaintiff should not have to wait for three years before a judge hears the case. When two small business owners disagree over a contract, they should not have to wait years for a court to resolve their dispute. With one in 10 Federal judgeships currently vacant, the Senate should have come together to address the serious judicial vacancies crisis on Federal courts around the country.

Professor Carl Tobias makes the point in his column at the end of last year entitled, ''Judicial Openings Erode U.S. Justice System.'' He correctly observed: ''The Senate recessed without considering any of the 21 nominees, 16 of whom the Committee unanimously reported, on its calendar because Republicans refused to debate and vote on them.'' He goes on to describe some of the slowdown tactics Senate Republicans have employed and concludes: ''Most problematic has been Republican refusal to vote on uncontroversial nominees.'' I ask consent that a copy of Professor Tobias' column be included at the conclusion of my statement.

In his 2010 Year-End Report on the Federal Judiciary, Chief Justice Roberts rightly called attention to the problem of overburdened courts across the country. Indeed, the workload in our Federal trial courts has increased 5 percent during President Obama's term in office and 22 percent over the last 10 years. Senate Republicans have shown no interest in adding the judgeships that the Judicial Conference, Chief Justice Rehnquist and Chief Justice Roberts have requested. To the contrary, they have been stalling needed Federal judges and keeping judicial vacancies at historically high levels for unprecedented lengths of time. Unfortunately, the unprecedented obstruction of consensus judicial nominations by Senate Republicans continues. They have dramatically departed from the Senate's longstanding tradition of regularly considering consensus, noncontroversial nominations. Their obstruction marks a new, dark chapter in what Chief Justice Roberts had called the ''persistent problem of judicial vacancies in critically overworked districts.''

Chief Justice Rehnquist had chastised Senate Republicans for their stalling tactics on judicial nominees during the Clinton administration. In his 2001 Year-End Report on the Federal Judiciary, Chief Justice Rehnquist reiterated his critical comments from 1997 and 1998 when Senate Republicans were responsible for stalling scores of qualified, needed judicial appointments. By the next year, Senate Democrats had completed confirmations of 100 of President Bush's nominees and reduced judicial vacancies throughout the country to 60. By the end of the third year of the Bush administration, the Chief Justice reported that he was pleased by the progress being made filling vacancies and focused his attention on seeking to raise judicial salaries. With respect to judicial vacancies, he

noted that the Federal trial courts had only 27 vacancies.

Regrettably, that progress is not being replicated despite President Obama's efforts to work with home state Republican Senators and to nominate qualified, mainstream candidates. A New York Times editorial from January 4, 2011, properly noted that Senate Republicans' ''refusal to give prompt consideration to noncontroversial nominees'' in 2010 was a ''terrible precedent.'' Regrettably, Senate Republicans continued that tactic through 2011. They replicated the blockade of consensus judicial nominees they had conducted at the end of 2010 by again blocking consensus nominees across the board at the end of 2011. At the end of 2010, they blocked 17 judicial nominees who should have been confirmed in 2010 but had to be carried over for months before finally being acted upon by the Senate. In 2011, Senate Republicans ended the year needlessly stalling another 19 judicial nominees, including 18 who were by any measure consensus nominees, who should have been confirmed.

Their partisan tactics are at odds with the professed concern about caseloads that Republican Senators contended justified their filibuster of Caitlin Halligan and prevented a vote on her nomination to the D.C. Circuit. The Washington Times' banner headline last December 7th correctly proclaimed that with the Senate Republican filibuster of that nomination ''GOP Ends Truce on Judicial Hopefuls.'' Of course, if caseloads were really what mattered to Senate Republicans, they would not have blocked the Senate from voting to confirm consensus nominees to fill judicial emergency vacancies around the country.

If caseloads were really what mattered to Senate Republicans, they would have consented to consider the nomination of Judge Adalberto Jordan of Florida, which was reported unanimously last October, to fill a judicial emergency vacancy on the Eleventh Circuit. If they were really concerned with caseloads, they would have consented to move forward to confirm Judge Jacqueline Nguyen of California, a well-qualified nominee to fill a judicial emergency vacancy on the Ninth Circuit, the busiest Federal appeals court in the country. Judge Nguyen is nominated to fill the judicial emergency vacancy that remains after another Republican filibuster, that against the nomination of Goodwin Liu, now a Supreme Court Justice in California. If they cared about caseloads, they should also have consented to votes on the nominations of Michael Fitzgerald to the Central District of California, David Nuffer to the District of Utah, Miranda Du to the District of Nevada, Gregg Costa to the Southern District of Texas, and David Guaderrama to the Western District of Texas, all nominations to fill judicial emergency vacancies in our Federal trial courts.

If Republican Senators were concerned about ensuring that our courts have the judges they need to administer justice for the American people, they would not have refused consent for the Senate to consider qualified, consensus judicial nominees. Republicans' consent is what was needed to vote to fill these judicial vacancies and support the Federal judiciary, to help them deal with what Chief Justice Roberts calls ''demanding dockets'' and to further public confidence in the integrity and responsiveness of our Federal justice system. Instead, Senate Republicans' refusal to confirm 18 qualified, consensus judicial nominees before adjourning last year, reminds me of the Republican pocket filibusters that blocked more than 60 of President Clinton's judicial nominations from Senate consideration.

When I became Chairman in 2001 and made the Committee blue slip process public for the first time and worked to confirm 100 judicial nominees of a conservative Republican President in 17 months, I hoped we had gotten past these partisan tactics. I am disappointed after working for more than a decade to restore transparency and fairness to the process of considering judicial nominations that Senate Republicans are again using partisan holds to block progress at filling judicial vacancies.

If Republican Senators were concerned about ensuring that our courts have the judges they need to administer justice for the American people, they would do what Democrats did during President Bush's first term. During President Bush's first term we reduced the number of judicial vacancies by almost 75 percent. When I became Chairman in the summer of 2001, there were 110 vacancies. By the time Americans went to the polls in November 2004 there were only 28 vacancies. Despite 2004 being an election year, we were able to reduce vacancies to the lowest level in the last 20 years.

In November of 2008, when I was Chairman with a Republican president, we again reduced judicial vacancies to only 37. I was willing to accommodate Senate Republicans and held expedited hearings and votes on judicial nominations, even as late as September 2008. By working together, even in an election year, we were able to reduce the number of judicial vacancies.

It is wrong to dismiss the delays resulting from the Senate Republicans' obstruction as merely tit for tat. This is a new and damaging tactic Senate Republicans have devised. They are stalling action on noncontroversial nominees and have been doing so for the last three years. Meanwhile, millions of Americans across the country who are harmed by delays in overburdened courts bear the cost of this obstruction.

I had hoped and urged that such damaging obstruction not be repeated. I had urged that before the Senate adjourned last year at least the 18 judicial nominees voted on by the Judiciary Committee who are by any measure consensus nominees be confirmed. With vacancies continuing at harmfully high levels, the American people and our Federal courts cannot afford these unnecessary and damaging delays. So while I am pleased to see John Gerrard's nomination voted on today, there remain another 17 qualified, consensus judicial nominees still being stalled from last year.

For the last two years in a row, Republicans have rejected the Senate's traditional, longstanding practice of taking final action on consensus nominations before the end of the Senate session. Senate Democrats consented to consider all of the consensus nominations at the end of President Reagan's third year in office and President George H.W. Bush's third year in office, when no judicial nominations were left pending on the Senate Executive Calendar. That is also what the Senate did at the end of the 1995 session, President Clinton's third year in office, when only a single nomination was left pending on the Senate calendar.

That is also what we did at the end of President George W. Bush's third year. Although some judicial nominations were left pending, they were among the most controversial, extreme and ideological of President Bush's nominees. They had previously been debated extensively by the Senate. The standard then was that noncontroversial judicial nominees reported by the Judiciary Committee were confirmed by the Senate before the end of the year. That is the standard we should have followed in 2010 and 2011, but Senate Republicans would not. They set a new and destructive standard to hold up qualified, consensus judicial nominees for no good reason.

The Senate remains far behind where we should be in considering President Obama's judicial nominations. Three years into his first term, the Senate has confirmed a lower percentage of President Obama's judicial nominees than those of any President in the last 35 years. The Senate has confirmed just over 70 percent of President Obama's circuit and district nominees, with more than one in four not confirmed. In stark contrast, the Senate confirmed nearly 87 percent of President George W. Bush's nominees, nearly nine out of every 10 nominees he sent to the Senate over two terms. That was a higher percentage of judicial nominees confirmed than President Clinton achieved and is far higher percentage than for President Obama's nominees, most of whom are mainstream, consensus choices.

We remain well behind the pace set by the Senate during President Bush's first term. By the end of his first term, the Senate had confirmed 205 district and circuit nominees. At the beginning of his fourth year in office, the Senate had lowered judicial vacancies to 46 and already confirmed 168 of his judicial nominees. In contrast, the Senate

has confirmed only 124 of President Obama's district and circuit nominees, leaving judicial vacancies at more than 80. The vacancy rate remains nearly double what it had been reduced to by this point in the Bush administration.

Senate Republicans have returned to the strategy of across-the-board delays and obstruction of the President's judicial nominations, again leading to persistently high judicial vacancies. In 2009, the Senate was allowed to confirm only 12 Federal circuit and district court judges, the lowest total in 50 years. In 2010, the Senate was allowed to confirm 48 Federal circuit and district judges. That has led to the lowest confirmation total for the first two years of a new presidency in 35 years. As a result, judicial vacancies rose again over 110 and stayed at about 90 for the longest period of historically high vacancies in 35 years.

Last year, we worked hard to overcome filibusters and delays and improve the number of confirmations. They included 17 confirmations that should have taken place in 2010 but were delayed. That resulted in only 47 judicial nomination confirmations from hearings conducted last year. Even including the 17 confirmations in last year's total that should not have been delayed from the previous year, the total lags far behind the total in President Bush's second year in office when the Senate Democratic majority confirmed 72 Federal circuit and district court judges. It was lower than the total in President Bush's third year in office, when Senate Democrats worked with the Senate Republican majority to confirm 68 Federal judges. And it was lower than the 66 Federal judges the Senate Democratic majority confirmed in the last year of President George H.W. Bush's presidency during a presidential election year.

The Senate starts this year with 18 qualified, consensus judicial nominations that should have been confirmed last year. Senate action on those 18 qualified, consensus judicial nominations would have gone a long way to helping resolve the longstanding judicial vacancies that are delaying justice for so many Americans in our Federal courts across the country. I urge Senate Republicans to abandon these destructive practices and join with us to confirm the qualified, consensus judicial nominations they have stalled. This cycle of unnecessary delays must end.

Mr. President, I ask to proceed in morning business to speak about an important effort to help the American economic recovery and preserve American jobs.

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

PROTECT IP ACT, S. 968

Mr. President, rogue websites, primarily based overseas, are stealing American property, harming American consumers, hurting the American economic recovery and costing us American jobs. Stealing and counterfeiting are wrong. They are harmful. The Institute for Policy Innovation estimates that copyright infringement alone costs more than $50 billion a year, and the sale of counterfeits online is estimated to be several times more costly. The AFL–CIO estimates that hundreds of thousands of jobs are lost to these forms of theft.

And this is not just an economic and jobs problem for Americans. This is a consumer safety issue. According to a study released earlier this year, a couple dozen websites selling counterfeit prescription drugs had more than 141,000 visits per day, on average. Counterfeit medication, brake linings and other products threaten Americans' safety. These are serious concerns. These are the concerns I have kept in mind over the last several years as I have worked with Senators on both sides of the aisle to help resolve these serious problems.

I admire and respect the marvelous advances of technology and, in particular, those represented by the Internet. I have promoted its democratizing impact around the world. I have fought to keep the Internet free and open, as it has become the incredible force that it is today. I have promoted its potential for access in rural areas, for distance learning, for increasing points of view and allowing all voices to be heard and as a means for small start ups and firms in Vermont and elsewhere to market quality products. Nor is this a newfound interest or passing fancy. I started and chaired a Judiciary Committee panel two decades ago on technology and the law and was a founder of the bipartisan, bicameral congressional Internet Caucus. Yesterday, The Washington Post got it right in its editorial entitled ''Freedom on the Internet'':

> A free and viable Internet is essential to nurturing and sustaining the kinds of revolutionary innovations that have touched every aspect of modern life. But freedom and lawlessness are not synonymous. The Constitution does not protect the right to steal, and that is true whether it is in a bricks-and-mortar store or online.''

Last week, a Wall Street Journal editorial was like-minded, noting:

> The Internet has been a tremendous engine for commercial and democratic exchange, but that makes it all the more important to police the abusers who hijack its architecture.
>
> . . . Without rights that protect the creativity and innovation that bring fresh ideas and products to market, there will be far fewer ideas and products to steal.''

Two years ago, I announced a bipartisan effort to target the worst-of-the-worst of the foreign rogue websites that profited from piracy, stealing and counterfeiting, while also ensuring that we protect the Internet. I have been working since that time to do just that. In 2010, the bill that Senator HATCH and I introduced was reported unanimously by the Senate Judiciary Committee.

I took seriously the views of all concerned. I reached out to the administration. We incorporated revised definitions suggested by Senator WYDEN. We held additional hearings to which we invited Google and Yahoo!. And we redrafted the legislative measure and reintroduced it as The Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act, more commonly known as the PROTECT IP Act. Senator GRASSLEY joined as an original cosponsor. I continued to work with all who showed interest. The measure was reported unanimously from the Judiciary Committee in May 2011, and 40 Senators from both sides of the aisle have cosponsored it. It is rare that editorial boards with divergent viewpoints such as The Wall Street Journal and The Washington Post agree on a problem and legislative approach. As I have already noted, this problem of foreign rogue websites engaging in piracy, theft and counterfeiting is one such time. I ask that copies of the recent editorials from The Washington Post and The Wall Street Journal be included in the RECORD at the conclusion of my remarks.

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

Mr. LEAHY. Few issues unite the United States Chamber of Commerce and the AFL–CIO; the National Association of Manufacturers and the Teamsters; the cable industry and the broadcast industry. By targeting the worst-of-the-worst and protecting the integrity of the Internet, we have been able to create a broad ranging coalition of support of the PROTECT IP Act. Along with law enforcement groups, more than 400 companies, associations, and unions have come together to support this targeted, bipartisan legislation to combat foreign rogue websites.

Protecting American intellectual property and the American jobs that depend on it is important. Last year we were able to reform our patent laws to unleash American innovators and help boost our economic recovery. Now we need to confront the threat to our economic recovery posed by Internet piracy.

As I have demonstrated throughout my service in the Senate and again during the last two years, I have remained flexible in terms of the legislative language in order to best meet our goals of stemming the criminality when protecting legitimate activities and guarding against doing anything to undercut innovation or fetter free discussion. I have urged those with concerns to come forward and to work with us. We adjusted the very definitions in the bill to narrow them as Senator WYDEN had suggested. I announced two weeks ago that I took seriously the concerns about the domain name system provisions and would fix it as part of a manager's amendment when the bill was considered by the Senate.

I regret that the Senate will not be proceeding this week to debate the legislation, and any proposed amendments. I thank the Majority Leader for seeking to schedule that debate on this serious economic threat. I understand that when the Republican leader recently objected and Republican Senators who had cosponsored and long supported this effort jumped ship, he was faced with a difficult decision. My hope is that after a brief delay, we will, together, confront this problem. Everyone says they want to stop the Internet piracy. Everyone says that they recognize that stealing and counterfeiting are criminal and serious matters. This is the opportunity for those who want changes in the bill to come forward, join with us and work with us. This is the time to suggest improvements that will better achieve our goals. The PROTECT IP Act is a measure that has been years in the making, and which has been twice reported unanimously by the Senate Judiciary Committee to better enforce American intellectual property rights and protect American consumers. It has been awaiting Senate action since last May. Today the rogue foreign websites based in Russia that are stealing Americans' property are delighted to continue their operations and counterfeiting sweatshops in China are the beneficiaries of Senate delay. People need to understand that the PROTECT IP Act would only affect websites that have been judged by a federal court to have no significant use other than engaging in theft whether through stolen content or the selling of counterfeits. It is narrowly targeted at the worst-of-the-worst. Websites that have some infringing content on their sites but have uses other than profiting from infringement are not covered by the legislation. Websites like Wikipedia and YouTube that have obvious and significant uses are among those that would not be subject to the provisions of the bill. That Wikipedia and some other websites decided to ''go dark'' on January 18 was their choice, self imposed and was not caused by the legislation and could not be.

It was disappointing that sites linked to descriptions of this legislation that were misleading and one-sided. The Internet should be a place for discussion, for all to be heard and for different points of view to be expressed. That is how truth emerges and democracy is served. Last week, however, many were subjected to false and incendiary charges and sloganeering designed to inflame emotions. I am concerned that while critics of this legislation engage in hyperbole about what the bill plainly does not do, organized crime elements in Russia, in China, and elsewhere who do nothing but peddle in counterfeit products and stolen American content are laughing at their good fortune that congressional action is being delayed.

Nothing in PROTECT IP can be used to cut off access to a blog. Nothing in PROTECT IP can be used to shut off access to sites like YouTube, Twitter, Facebook or eBay. Nothing in PROTECT IP requires anyone to monitor their networks. Nothing in PROTECT IP criminalizes links to other websites. Nothing in PROTECT IP imposes liability on anyone. Nothing in PROTECT IP can be required without a court order, first, and without providing the full due process of our Federal court system to the defendants before a final judgment is rendered. I also note that the guarantees of due process provided in the PROTECT IP Act are those likewise provided every defendant in every Federal court proceeding in the United States, no less. The PROTECT IP Act requires notice to the defendant. If the plaintiff seeks an injunction, the court must apply Federal Rule of Civil Procedure 65, which is the standard for all courts in determining whether to issue an injunction, including whether to issue the injunction as a temporary restraining order for a limited period of time. When stealing of copyrights are involved, such court orders can be made if, upon a factual showing, a court finds that serious harm would otherwise occur and it is in the public interest to do so while the case is more fully considered.

The PROTECT IP Act is directed at the foreign websites that are the worst-of-the-worst thieves of American intellectual property and operate from outside the United States and the jurisdiction of our courts. These website operators prey on American consumers, steal from our creators and economy, but are currently beyond the jurisdiction of U.S. courts.

The Obama administrative officials were right in a recent post saying ''existing tools are not strong enough to root out the worst online pirates beyond our borders.'' They called on Congress ''to pass sound legislation this year that provides prosecutors and rights-holders new legal tools to combat online piracy originating beyond U.S. borders while staying true to the principles outlined. . . . We should never let criminals hide behind a hollow embrace of legitimate American values.'' That is what we are trying to do with the PROTECT IP Act.

What the PROTECT IP Act does is provide tools to prevent websites operated overseas that do nothing but traffic in infringing material or counterfeits from continuing to profit from piracy with impunity. The Internet needs to be free, but not a lawless marketplace for stolen commerce and not a haven for criminal activities.

In the flash of interest surrounding this bill last week, those who were forgotten were the millions of individual artists, the creators and the companies in Vermont and elsewhere who work hard every day only to find their works available online for free, without their consent. There are factory workers whose wages are cut or jobs are lost when low-quality counterfeit goods are sold in place of the real thing they worked so diligently to produce. There are men and women of our National Guard and military who put their lives on the line for all of us every day, and for whom a counterfeit part can literally be a matter of life and death. There are the seniors who are struggling to be able to afford medications and order from what appears to them to be a reputable site, only to find that a foreign website has sent them an untested counterfeit drug that will not control their blood pressure or diabetes or heart problem.

At the end of the day, this debate boils down to a simple question. Should Americans and American companies profit from what they produce and be able to provide American jobs, or do we want to continue to let thieves operating overseas steal that property and sell it to unsuspecting American consumers? I hope that in the coming days the Senate will focus on stopping that theft that is undercutting our economic recovery. I remain committed to confronting this problem. And I appreciate the efforts of Senator KYL, Senator ALEXANDER and others who want to continue to work in a thoughtful manner with all interested parties to find an effective solution to eliminate online theft by foreign rogue websites. I thank those Senators who called me in Vermont and back here this past week when I got back to Washington to offer their help—Senators on both sides of the aisle. It means a lot.

I know the senior Senator from Nebraska is waiting to speak about the judicial nominee from his State. I will say what I said to him privately because I know this is his last year in the Senate. I have always enjoyed working with him. He has worked hard. He has represented the people of his State well. He has been very honest in his dealings with me. He has been diligent with respect to judicial nominations for vacancies in Nebraska. He has tirelessly pressed to fill vacancies there to ensure cases before the Federal court are not needlessly delayed. He did that to protect everybody in Nebraska, Republicans and Democrats, to make sure the courts are open for them.

I am sorry the confirmation of Justice Gerrard, one he so strongly supported, has been so needlessly delayed for more than 3 months, but I say to the people of Nebraska they are very fortunate to have been represented by the senior Senator from Nebraska, my friend BEN NELSON, who has been there fighting for them. He fought for the people of Nebraska every day from the day he took the oath of office. This may be his last year here, but based on past performance I think it is safe to say he will fight for Nebraska right up until the moment that adjournment bell sounds.

Mr. President, I ask unanimous consent a January 19 article from the Wall Street Journal and a January 22 article from the Washington Post be printed in the RECORD.

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

[From the Wall Street Journal, Jan. 19, 2012]

BRAKE THE INTERNET PIRATES

Wikipedia and many other websites are shutting down today to oppose a proposal in Congress on foreign Internet piracy, and the White House is seconding the protest. The covert lobbying war between Silicon Valley and most other companies in the business of intellectual property is now in the open, and this fight could define—or reinvent—copyright in the digital era.

Everyone agrees, or at least claims to agree, that the illegal sale of copyrighted and trademarked products has become a world-wide, multibillion-dollar industry and a legitimate and growing economic problem. This isn't college kids swapping MP3s, as in the 1990s. Rather, rogue websites set up shop overseas and sell U.S. consumers bootleg movies, TV shows, software, video games, books and music, as well as pharmaceuticals, cosmetics, fashion, jewelry and more.

Often consumers think they're buying copies or streams from legitimate retail enterprises, sometimes not. Either way, the technical term for this is theft.

The tech industry says it wants to stop such crimes, but it also calls any tangible effort to do so censorship that would ''break the Internet.'' Wikipedia has never blacked itself out before on any other political issue, nor have websites like Mozilla or the social news aggregator Reddit. How's that for irony: Companies supposedly devoted to the free flow of information are gagging themselves, and the only practical effect will be to enable fraudsters. They've taken no comparable action against, say, Chinese repression.

Meanwhile, the White House let it be known over the weekend in a blog post—how fitting—that it won't support legislation that ''reduces freedom of expression'' or damages ''the dynamic, innovative global Internet,'' as if this describes the reality of Internet theft. President Obama has finally found a regulation he doesn't like, which must mean that the campaign contributions of Google and the Stanford alumni club are paying dividends.

The House bill known as the Stop Online Piracy Act, or SOPA, and its Senate counterpart are far more modest than this cyber tantrum suggests. By our reading they would create new tools to target the worst-of-the-worst black markets. The notion that a SOPA dragnet will catch a stray Facebook post or Twitter link is false.

Under the Digital Millenium Copyright Act of 1998, U.S. prosecutors and rights-holders can and do obtain warrants to shut down rogue websites and confiscate their domain names under asset-seizure laws. Such powers stop at the water's edge, however. SOPA is meant to target the international pirates that are currently beyond the reach of U.S. law.

The bill would allow the Attorney General to sue infringers and requires the Justice Department to prove in court that a foreign site is dedicated to the wholesale violation of copyright under the same standards that apply to domestic sites. In rare circumstances private plaintiffs can also sue for remedies, not for damages, and their legal tools are far more limited than the AG's.

If any such case succeeds after due process under federal civil procedure, SOPA requires third parties to make it harder to traffic in stolen online content. Search engines would be required to screen out links, just as they remove domestic piracy or child pornography sites from their indexes. Credit card and other online financial service companies couldn't complete transactions.

(Obligatory housekeeping: We at the Journal are in the intellectual property business, and our parent company, News Corp., supports the bills as do most other media content companies.)

Moreover, SOPA is already in its 3.0 version to address the major objections. Compromises have narrowed several vague and overly broad provisions. The bill's drafters also removed a feature requiring Internet service providers to filter the domain name system for thieves—which would have meant basically removing them from the Internet's phone book to deny consumer access. But the anti-SOPA activists don't care about these crucial details.

The e-vangelists seem to believe that anybody is entitled to access to any content at any time at no cost—open source. Their real ideological objection is to the concept of copyright itself, and they oppose any legal regime that values original creative work. The offline analogue is Occupy Wall Street.

Information and content may want to be free, or not, but that's for their owners to decide, not Movie2k.to or LibraryPirate.me or MusicMP3.ru. The Founders recognized the economic benefits of intellectual property, which is why the Constitution tells Congress to ''promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries'' (Article I, Section 8).

The Internet has been a tremendous engine for commercial and democratic exchange, but that makes it all the more important to police the abusers who hijack its architecture. SOPA merely adapts the current avenues of legal recourse for infringement and counterfeiting to new realities. Without rights that protect the creativity and innovation that bring fresh ideas and products to market, there will be far fewer ideas and products to steal.

[From the Washington Post, Jan. 22, 2012]

MEGAUPLOAD SHOWS ONLINE COPYRIGHT PROTECTION IS NEEDED

(By Editorial Board)

By most measures, the Web site Megaupload was a 21st-century success story, with 50 million daily visitors and $175 million in profits. According to the Obama administration, it was also an ''international organized crime enterprise.''

In an indictment last week, the Justice Department accused the company and several of its principals of conspiracy, racketeering and vast violations of copyright law. The loss to copyright owners of movies, television programs, entertainment software and other content: some $500 million. The government calls this the largest criminal copyright case in the nation's history.

Megaupload maintained servers in the United States and relied on U.S.-registered domain names, allowing U.S. prosecutors to tap domestic laws to shutter the business. But what if the Web site had been run using only foreign-based servers and foreign-registered domain names? U.S. law enforcers would have had a difficult if not impossible time stopping the alleged wrongdoing.

That reality, of course, is what gave rise to the Protect IP Act (PIPA) and its House counterpart, the Stop Online Piracy Act (SOPA), which proposed to give the Justice Department and copyright owners the legal reach and muscle to thwart overseas theft of American intellectual property. SOPA was fatally flawed, with vague provisions that could have made legitimate Web sites vulnerable to sanctions. PIPA was more measured, allowing action against a site only if a federal judge concluded it was ''dedicated to'' profiting from the unauthorized peddling of others' work.

Still, Internet giants such as Google railed against the bills, arguing they sanctioned government censorship and threatened the viability and security of the Internet. The protests culminated last week in a remarkable, largely unprecedented protest during which sites such as Wikipedia temporarily went dark. Millions of individuals—many of them armed with distorted descriptions of the bills—phoned, e-mailed and used social networks to demand that they be quashed.

Whether it was democracy in action or spinelessness by cowed lawmakers, the campaign worked. House and Senate leaders said they would pull back the bills for further consideration. While a temporary breather may be helpful, lawmakers should not abandon the quest to curb the multibillion-dollar problem that is overseas online piracy.

Some opponents will fight any regulation of the Internet. This should not be acceptable. A free and viable Internet is essential to nurturing and sustaining the kinds of revolutionary innovations that have touched every aspect of modern life. But freedom and lawlessness are not synonymous. The Constitution does not protect the right to steal, and that is true whether it is in a bricks-and-mortar store or online.

The PRESIDING OFFICER (Mr. COONS). The Senator from Nebraska.

Mr. NELSON of Nebraska. I thank my colleague, the esteemed chair, for such kind remarks. I wish they were universally believed by all. This is the kind of introduction my father would have enjoyed but my mother would have believed. I appreciate so very much his kind comments.

The Nebraska Supreme Court temporarily stayed the execution of one prisoner, a Carey Dean Moore, because a full evidentiary record was before it in another immediately pending case, State v. Mata, which was referred to by my friend and colleague from Alabama, Senator SESSIONS. That case challenged the constitutionality of electrocution as a method of execution. It did not challenge, it did not deal with, and was not associated with whether or not to have a death penalty. It was not challenging the death penalty but the methodology of a death penalty.

The court had to determine whether a prisoner should be executed depending on whether that question was soon answered. The temporary stay was issued and the other case decided as a matter of State constitutional law. The court, by a vote of 6 to 1, determined that execution as a method—and I emphasize ''a method'' of electrocution—violated prohibitions against cruel and unusual punishment, which is the purview of the court to make that determination where there is a question of dealing with the Constitution.

The court was clear that the death penalty remained valid in Nebraska. No writ of certiorari had been taken. The Nebraska Legislature changed the method of execution to lethal injection, and the execution of Moore, Mata, and others will be carried out accordingly.

As a matter of fact, the court has set a date of execution for a prisoner to be executed on March 6. This same court set dates of execution while I was Governor on three occasions, and they were carried out. Judge Gerrard was a

member of the court at that time and had no objections to the executions. It is the methodology that the court dealt with.

It is important to recognize that in the Moore case the issue was not whether the death penalty itself was constitutional; it was whether a particular means of execution was constitutional. Those are completely different questions.

Senator SESSIONS claims that Judge Gerrard stayed the defendant's execution in the light of ''a changing legal landscape.'' However, it is not uncommon for a court, when presented with different cases involving related issues, to withhold ruling on any one case until all of the related issues are resolved. Therefore, the Moore order reflects a pragmatic decision to wait until both cases could be resolved.

I agree with Senator SESSIONS that this is about the duty of a judge to be faithful to the law and to serve under the law. However, I strongly disagree with Senator SESSIONS' characterization of Judge Gerrard as an activist judge. Judge Gerrard has written 450 opinions in his 15-plus years on the Nebraska Supreme Court. The U.S. Supreme Court concluded in a previous case that the U.S. Supreme Court and the Nebraska Supreme Court have held in a related matter that the death penalty is not cruel and unusual. Judge Gerrard would have no difficulty following that binding precedent. As a matter of fact, he has. He has no personal beliefs that would prevent him from enforcing the death penalty. In fact, he has authored several opinions and voted to affirm the convictions and sentences of defendants who have actually been sentenced to death.

Judge Gerrard believes the death penalty is an acceptable form of punishment. He understands the significant difference between a judge on a court of last resort interpreting State court constitutional law and a Federal district judge who follows U.S. Supreme Court precedent.

I reiterate for the record, Judge Gerrard is held in the highest regard by both the bench and the bar in Nebraska. He has earned an ''AV'' Martindale-Hubbell rating from his colleagues, and the American Bar Association has deemed him ''unanimously well-qualified'' to serve on the U.S. district court.

I thank my colleague, Senator JOHANNS from Nebraska, for his support and his comments which I think were also very supportive, clearly supportive, of Judge Gerrard and the decisions. Clearly, he is not an activist judge.

I yield the floor.

RECESS APPOINTMENTS

Mr. GRASSLEY. Mr. President, just over a month ago, on December 17, the Senate entered into a unanimous consent agreement to consider the nomination of John M. Gerrard, of Nebraska, to be United States District Judge for the District of Nebraska. We are proceeding with this nomination, which I will support, despite the President's actions on recess appointments. During the last session we acted responsibly in considering the President's nominees. Even the Majority Leader acknowledged this. He stated, ''We have done a good job on nominations the last couple of months. Actually, in the last 3 months, we have accomplished quite a bit.''

I will have more to say about the recess appointments. But with regard to this nomination I hope my colleagues understand that even though we are proceeding under regular order today, it is only because this unanimous consent agreement was locked in before the President demonstrated his monarchy mentality by making those appointments. I am not going to hold this nominee accountable for the outrageous actions of the President.

However, as this is a matter of concern to my Republican colleagues, as it should be for all Senators, we must consider how we will respond to the President and restore a Constitutional balance. Since the adoption of the unanimous consent agreement governing the nomination before us, President Obama has upset the nominations process. Article II, Section 2 of the Constitution provides for only two ways in which Presidents may appoint certain officers.

First, it provides that the President nominates, and by and with the advice and consent of the Senate, appoints various officers. Second, it permits the President to make temporary appointments when a vacancy in one of those offices happens when the Senate is in recess. On January 4, the President made four appointments. They were purportedly based on the Recess Appointments Clause. He took this action even though the Senate was not in recess. This action is of the utmost seriousness to all Americans.

These appointments were blatantly unconstitutional. They were not made with the advice and consent of the Senate. And they were not made ''during the recess of the Senate.''

Between the end of December and today, the Senate has been holding sessions every 3 days. It did so precisely to prevent the President from making recess appointments. It followed the same procedure as it had during the term of President Bush. Honoring the Constitution and the desire of the Senate President Bush declined to make recess appointments during these periods. But President Obama chose to make recess appointments despite the existence of these Senate sessions.

In addition to being unconstitutional, these so-called recess appointments break a longstanding tradition. They represent an attempted presidential power grab against this body.

A President has not attempted to make a recess appointment when Congress has not been in recess for more than 3 days in many decades. In fact, for decades, the Senate has been in recess at least 10 days before the President has invoked this power.

Other parts of the Constitution beyond Article II, Section 2 show that these purported appointments are invalid. Article I, Section 5 provides, ''Each House may determine the Rules of its Proceedings. . . .''

In December and January, we provided that we would be in session every 3 days. The Senate was open and provided the opportunity to conduct business. That business included passing legislation and confirming nominations. In fact, the Senate did pass legislation, which the President signed. According to the Constitution—each House—not the President determines whether that House is in session. The Senate said we were in session. The President recognized that fact by signing legislation passed during the session.

Article I, Section 5 also states, ''Neither House, shall, during the session of Congress, without the consent of the other, adjourn for more than 3 days. . . .'' The other body did not consent to our recess for more than 3 days. No concurrent resolution authorizing an adjournment was passed by both chambers. Under the Constitution, we could not recess for more than 3 days. We did not do so. The President's erroneous belief that he can determine whether the Senate was in session would place us in the position of acting unconstitutionally. If he is right, we recessed for more than 3 days without the consent of the other body. By claiming we were in recess, the President effectively dares us to say that we failed to comply with our oath to adhere to the Constitution. Yet, it is the President who made appointments without the advice and consent of the Senate while the Senate was in session. It is the President who has violated the Constitution.

Of course, the President does not admit that he violated the Constitution. He has obtained a legal opinion from the Office of Legal Counsel at his own Department of Justice.

That opinion reached the incredible conclusion that the President could make these appointments, notwithstanding our December and January sessions. That opinion is entirely unconvincing. For instance, to reach its conclusion that the Senate was not available as a practical matter to give advice and consent, it relies on such unpersuasive material as statements from individual Senators.

The text of the Constitution is clear. It allows no room for the Department to interpret it in any so-called ''practical'' way that departs from its terms.

The Justice Department also misapplied a Judiciary Committee report from 1905 on the subject of recess appointments. That report said that a Senate ''recess'' occurs when ''the Senate is not sitting in regular or extraordinary session as a branch of the Congress, or in extraordinary session for the discharge of executive functions;

when its Members owe no duty of attendance; when its Chamber is empty; when, because of its absence, it can not receive communications from the President or participate as a body in making appointments.''

Obviously, that report does not support the Department of Justice. During these days, the Senate was sitting in session. It could discharge executive functions. The Chamber was not empty. It could receive communications. It could participate as a body in making appointments. In fact, it sat in regular session and passed legislation.

There is nothing in the 1905 report that justifies the President substituting his judgment for the Senate's regarding whether the Senate is in session. In any event, a Senate Judiciary Committee report from 1905 does not govern the United States Senate; in 2012. The Senate; as constituted today; decides its rules and proceedings.

The Department is on shaky legal ground when it claims that ''whether the House has consented to the Senate's adjournment of more than 3 days does not determine the Senate's practical availability during a period of pro forma sessions and thus does not determine the existence of a 'Recess' under the Recess Appointments Clause.''

There is no basis—none—for treating the same pro forma sessions differently for the purposes of the 2 clauses. The Department simply cannot have it both ways.

The Justice Department's opinion contains other equally preposterous arguments. For instance, the opinion claims that the Administration's prior statements to the Supreme Court—through former Solicitor General Elena Kagan—that recess appointments can be made only if the Senate is in recess for more than 3 days are somehow distinguishable from its current opinion, or that the pocket veto cases do not apply.

Or even if they did, the ''fundamental rights'' of individuals that the courts described in those cases include the right of the President to make recess appointments.

There was a time when Presidents believed that they could take action only when the law gave them the power to do so. They obtained advice from the Justice Department on the question whether there was legal authority to justify the action they wished to take. But Theodore Roosevelt started to change the way Presidents viewed power. He believed that the President could do anything so long as the Constitution did not explicitly preclude him from acting. When he used that theory to create wildlife refuges against a rapidly expanding industrial base, there was no objection. But a dangerous precedent was set. When he claimed that he could make recess appointments during a ''constructive recess'' of the Senate, the Senate rejected this view in that 1905 report.

When a President thinks he can do anything the Constitution does not expressly prohibit, the danger arises that his advisers will feel pressure to say that the Constitution does not stand in the way. At that point, a President is no longer a constitutional figure with limited powers as the founders intended. Quite the contrary, the President looks more and more like a king that the Constitution was designed to replace.

This OLC opinion reflects the changes that have occurred in the relationship between the Justice Department and the President on the question of presidential power. Formerly, the Justice Department gave legal advice to the President based on an objective reading of texts and judicial opinions. It was not an offshoot of the White House Counsel's office.

This more objective view of the limits of Presidential power also provided a level of protection for individual liberty, the principle at the core of our constitutional separation of powers. The President might refuse to accept the advice. He might choose to fire the officer who gave him advice with which he disagreed. He could seek to appoint a new officer who would provide the advice he preferred. But he risked paying a political price for doing so. An official who thought that loyalty to the Constitution exceeded his loyalty to the President could refuse to comply, at great personal risk. That is what Elliot Richardson did during the Saturday Night Massacre of the Watergate era.

During the Reagan Administration, OLC issued opinions that concluded that the President lacked the power to undertake certain acts to implement some of his preferred policies. The President did not undertake those unilateral actions.

President Obama originally submitted a nominee for OLC that was wholly objectionable. The Senate had good reason to believe that she would not interpret the law without regard to ideology. We refused to confirm her.

The President ultimately withdrew her nomination and nominated instead Virginia Seitz. We asked important questions at her confirmation hearing and thorough questions for the record.

Ms. Seitz responded that OLC should adhere to its prior decisions in accordance with the doctrine of stare decisis. And she stated that if the administration contemplated taking action that she believed was unconstitutional, she would not stand idly by. Relying on those assurances, the Senate confirmed Ms. Seitz.

Ms. Seitz is the author of this wholly erroneous opinion that takes an unprecedented view of the Recess Appointments Clause. And I suppose it is literally true that Ms. Seitz did not stand idly by when the administration took unconstitutional action: rather, she actively became a lackey for the administration. She wrote a poorly reasoned opinion that placed loyalty to the President over loyalty to the rule of law.

That opinion, and her total deviation from the statements she made during her confirmation process, show extreme disrespect for the institution of the Senate and the constitutional separation of powers. I gave the President and Ms. Seitz the benefit of the doubt in voting to confirm her nomination. However, after reading this misguided and dangerous legal opinion, I am sorry the Senate confirmed her. It's likely to be the last confirmation she ever experiences.

The Constitution outlines various powers that are divided among the different branches of our Federal government. Some of these powers are vested in only one branch, such as granting pardons or conducting impeachment proceedings. Other powers are shared, such as passing and signing or vetoing bills. The appointment power is a shared power between the President and the Congress. When one party turns a shared power into a unilateral power, the fabric of the Constitution is itself violated, and a response is called for.

In Federalist 51, Madison wrote that the separation of powers is more than a philosophical construct. He wrote that the ''separate and distinct exercise of the different powers of government'' is ''essential to the preservation of liberty.''

The Framers of the Constitution wrote a document that originally contained no Bill of Rights. They believed that liberty would best be protected by preventing government from harming liberty in the first place. That was the reason for the separation of powers. They designed a working separation of powers through checks and balances to ensure a limited government that protected individual rights. Madison wrote, ''Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.''

That is what the Framers intended in a case such as this. When the President unconstitutionally usurped the power of the Senate, the Senate's ambition would check the President's. In this way, the Constitution is preserved. The power of the government is limited. And the liberties of the people are protected. But the Framers did not anticipate the modern Presidency. It took Justice Jackson's famous concurrence in the Youngstown case to address presidential powers in today's world. When the Judiciary Committee held its confirmation hearings on President Bush's Supreme Court nominations, my friends on the other side of the aisle posed many questions about the Jackson concurrence. That opinion sheds light on these so-called recess appointments.

For instance, President Obama argued in a nationally televised rally that his actions were justified because ''[e]very day that Richard [Cordray] waited to be confirmed . . . was another day when millions of Americans were left unprotected. . . . And I refuse to take 'no' for an answer.''

Justice Jackson anticipated these hyperbolic statements. He wrote: ''The tendency is strong to emphasize the transient results upon policies. . . . and lose sight of enduring consequences upon the balanced power structure of our Republic.'' President Obama has definitely let transient policy goals overtake the Constitution. His argument is that the end justifies the means.

His argument is that he can say no to the Constitution. Or, in essence, that the Constitution does not apply to him. But the Constitution demands that the means justify the ends, and that adherence to established procedure is the best protection for liberty. A monarch or a king could say no to the Constitution. But under our Constitution, the President may not. It is the Constitution, and not the President, that refuses to take no for an answer.

Justice Jackson was also aware that the modern President's actions ''overshadow any others [and] that, almost alone, he fills the public eye and ear.'' By virtue of his influence on public opinion, he wrote, the President ''exerts a leverage upon those who are supposed to check and balance his power which often cancels their effectiveness.''

Some people believe that President Obama challenged the Senate for partisan purposes. But Justice Jackson understood the true partisan dynamic that is now playing out. He recognized that the President's powers are political as well as legal. Many presidential powers derive from his position as head of a political party. Jackson wrote: ''Party loyalties and interests sometimes more binding than law, extend his effective control into branches of government other than his own, and he often may win, as a political leader, what he cannot command under the Constitution.'' Finally, he concluded, ''[O]nly Congress itself can prevent power from slipping through its fingers.''

Outside these walls, in the reception room, are portraits of great Senators of the past. The original portraits were selected by a committee that was headed by then Senator John F. Kennedy. They included such figures as Webster, Clay, Calhoun, LaFollette, and Taft. Yes, these Senators were partisans. But they were selected because of the role they played in maintaining the unique institution that is the Senate in our constitutional system. In particular, they protected the Senate and the country from the excessive claims of presidential power that were made by the chief executives of their time. Where are such Members today?

Where is a member of the President's party today who is like a more recent Senate institutionalist—Robert C. Byrd? He defended the powers of the Senate when Presidents overreached—even Presidents of his own party. Where are the Members who recognized that our sessions every 3 days rightly prevented President Bush from making recess appointments but who stand idly by as President Obama makes recess appointments without a recess?

I remind my colleagues of my experiences as chairman or ranking member of the Finance Committee. I refused to process nominees to positions that passed through that committee to whom President Bush gave recess appointments. That is how I used the authority that I had to protect the rights of the Senate.

I do not believe we should let the powers vested in the elected representatives of the American people slip through our fingers because we place partisan interests above the Constitution. I have shown how the Framers understood that supposedly expedient departures from the Constitution risked individual liberty. The constitutional text in this situation is clear. It must be upheld. We must take appropriate action to see that it is done.

Nor should we wait for the courts.

Although the NLRB appointments are already the subject of litigation, we should take action ourselves rather than rely on others. The stakes are too high. On the other hand, even the OLC opinion recognizes, as it must, the litigation risk to the President.

For more than 200 years, Presidents have made very expansive claims of power under the Recess Appointments Clause. The President and the Senate have worked out differences to form a working government.

Now, the Obama administration seeks to upend these precedents and that working relationship. It may well find, as did the Bush administration, that when overbroad claims of presidential power find their way to court, that not only does the President lose, but that expansive arguments of presidential power that had long been a part of the public discourse can no longer be made.

Although I believe that this ironic result will ultimately occur here as well, the Senate must defend its constitutional role on its own, as intended by the framers of the Constitution that we all swore an oath to uphold.

Mr. KYL. Mr. President, important questions have been raised about Judge Gerrard's willingness to follow established precedent in a reasoned way in death-penalty cases. Too often, the Senate has confirmed nominees who are hostile to the death penalty, and who then abuse their authority and twist the law to block the execution of legally sound capital sentences that have been entered by State courts. In his December 15, 2011, written response to questions posed to him by Senator SESSIONS, however, Judge Gerrard assured the Senate that he ''would have no difficulty'' in following ''binding precedent'' in capital cases, and that he has ''no personal beliefs that would prevent [him] from enforcing the death penalty.'' I take Judge Gerrard at his word and thus will vote in favor of confirming his nomination to be a United States district judge.

Mr. GRASSLEY. Mr. President, John M. Gerrard is nominated to be United States District Judge for the District of Nebraska. Judge Gerrard received his B.S. degree from Nebraska Wesleyan University in 1975 and his J.D. from Pacific McGeorge School of Law in 1981.

He began his legal career in private practice as an associate for the Nebraska law firm of Jewell, Otte, Gatz, Collins & Domina. A year later, Judge Gerrard joined in a new law firm where he conducted primarily a general litigation practice. In 1990, Judge Gerrard and two partners formed a new law office. For the next 5 years, before being appointed to the bench, he engaged in an active trial practice and administrative law/school law practice.

In 1995, then-Governor Nelson appointed Judge Gerrard to the Nebraska Supreme Court. He has been retained (by election) in 1998, 2004, and 2010. He has written roughly 480 opinions, 450 of which are published. The opinions cover a variety of legal issues, including homicide appeals, tort issues, and evidentiary disputes. While serving on the State's highest court, Judge Gerrard has served on a number of committees, including those focusing on issues pertaining to gender, race and the judicial system.

The American Bar Association Standing Committee on the Federal Judiciary has rated Judge Gerrard with a unanimous ''Well Qualified'' rating.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. CONRAD. Mr. President, I yield back all time on our side.

The PRESIDING OFFICER. All time has expired.

The question is, Will the Senate advise and consent to the nomination of John M. Gerrard, of Nebraska, to be United States District Judge for the District of Nebraska?

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Carolina (Mrs. HAGAN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Vermont (Mr. SANDERS) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from

Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Utah (Mr. HATCH), the Senator from North Dakota (Mr. HOEVEN), and the Senator from Illinois (Mr. KIRK).

Further, if present and voting, the Senator from Utah (Mr. HATCH) would have voted ''yea.''

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

The result was announced—yeas 74, nays 16, as follows:

[Rollcall Vote No. 1 Ex.]

YEAS—74

Akaka	Durbin	Merkley
Alexander	Enzi	Moran
Ayotte	Feinstein	Murkowski
Barrasso	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Grassley	Nelson (FL)
Bennet	Harkin	Portman
Bingaman	Heller	Pryor
Blumenthal	Hutchison	Reed (RI)
Blunt	Inouye	Reid (NV)
Boxer	Johanns	Roberts
Brown (MA)	Johnson (SD)	Rockefeller
Brown (OH)	Kerry	Schumer
Burr	Klobuchar	Shaheen
Cantwell	Kohl	Snowe
Cardin	Kyl	Stabenow
Carper	Landrieu	Tester
Casey	Leahy	Thune
Coats	Levin	Udall (CO)
Cochran	Lugar	Udall (NM)
Collins	Manchin	Warner
Conrad	McCain	Webb
Coons	McCaskill	Whitehouse
Corker	McConnell	Wyden
Crapo	Menendez	

NAYS—16

Boozman	Johnson (WI)	Shelby
Coburn	Lee	Toomey
Cornyn	Paul	Vitter
DeMint	Risch	Wicker
Inhofe	Rubio	
Isakson	Sessions	

NOT VOTING—10

Chambliss	Hoeven	Mikulski
Graham	Kirk	Sanders
Hagan	Lautenberg	
Hatch	Lieberman	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The Senator from Illinois is recognized.

MORNING BUSINESS

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

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

ORDER OF PROCEDURE

Mr. CORNYN. Mr. President, reserving the right to object, can I kindly ask the assistant leader something, and this is a matter of accommodation. We have two speakers on the Republican side and two on the Democratic side. Would he be amenable to entering into an order to lock in the order and go back and forth?

Mr. DURBIN. I have no objection. May I have some suggestion about the time for each? Senators WYDEN and MORAN want to speak.

Mr. WYDEN. Mr. President, I think that is a reasonable request. Senator MORAN and I, who have teamed up on Internet policy, wish to speak for a few minutes, if we could follow each other. We plan to be brief. The Senator from Illinois will be brief. Is that acceptable?

Mr. CORNYN. I ask whether the Senator from Illinois would agree that following his comments I be recognized for 10 minutes, and then go back and forth.

Mr. DURBIN. Mr. President, here is what I suggest to the Senator from Texas. Senator WYDEN and Senator MORAN already asked for time. I only ask for 3 minutes to speak about Senator KIRK, and then I will turn it over to them. I will not speak at length. After they have spoken—can the Senator suggest a time?

Mr. WYDEN. Five or 10 minutes each. We will be brief.

Mr. DURBIN. And then we will go back to the Senator's side. Is that fair?

Mr. CORNYN. Yes.

Mr. DURBIN. I ask unanimous consent that that be the order.

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

SENATOR MARK KIRK

Mr. DURBIN. Mr. President, we have been gone for 6 weeks or so. It is great to see our colleagues back here. A lot of things have been exchanged about what we did back home during the break, but the focal point of most conversations on the floor this evening has been, rightfully, about my colleague, Senator MARK KIRK. Most everybody knows now he suffered a stroke over the weekend, and he underwent surgery in Chicago at Northeastern Hospital last night.

All that I know about this comes from a press conference his surgeon gave in Chicago today. We want to make it clear to MARK that he is in our thoughts and prayers, as is his family. We all feel, to a person, that he will make a strong recovery. He is young and in good condition. He prides himself on his service in the Naval Reserve and stays fit to serve our country in that capacity, as well as in the Senate. He has a tough, steep hill ahead of him, but he is up to the task.

If encouragement from a Democrat, as well as many Republicans, is what is needed, he has that. I want to let him know, if the word is passed along to him in his recovery, that his colleagues in the Senate are focusing on his quick recovery and are anxious for him to return.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, Senator DURBIN speaks for every Member of the Senate. Senator KIRK is such a decent, caring, and thoughtful man, and all of us enjoy working with him in the Senate on various kinds of bills. Godspeed, Senator KIRK, for a healthy recovery. We are thinking of you tonight and you are in our prayers. I am very glad the senior Senator from Illinois has reflected the concerns of everybody from his home State tonight.

THE INTERNET

Mr. WYDEN. Mr. President, I want to take a few minutes with Senator MORAN tonight to reflect on the events of the last few days with respect to the Internet legislation. I want to begin by thanking Majority Leader HARRY REID for reopening the debate on anticounterfeiting and copyright protection legislation. In pulling the Protect IP Act from the floor, Leader REID has given the Senate an opportunity to get this policy right. The Senate now has the opportunity to consult all of the stakeholders, including the millions of Internet users who were heard last week. The Senate has the opportunity to ensure that those exercising their first amendment rights through the Internet, those offering innovative products and services, and those looking for new mediums for sharing and expression, have their voices heard.

I also express my appreciation to Senator MORAN. He is an impassioned advocate for job creation and innovation on the Net—the first on the other side of the aisle to join me in this cause. My colleague, Senator CANTWELL from Washington State, who is as knowledgeable as anybody in public service about technology, and Senator RAND PAUL, who is a champion of the Internet as a place where those who look at the Net as a marketplace of ideas, stand together and approach policy in an innovative way.

Last week, tens of millions of Americans empowered by the Internet effected political change here in Washington. The Congress was on a trajectory to pass legislation that would change the Internet as we know it. It would reshape the Internet in a way, in my view, that would have been harmful to our economy, our democracy, and our national security interests.

When Americans learned about all this, they said no. The Internet enables people from all walks of life to learn about the legislation and then take collective action to urge their representatives in Washington to stop it.

So everybody asked, come Wednesday, what would happen? In fact, the American people stopped this legislation. Their voices counted more than all the political lobbying, more than all of the advertising, more than all of the phone calls that were made by the heads and the executives of the movie

studios. Their voices were heard loud and clear.

Last week, the Congress did what the American people called for instead of what the Washington insiders wanted. That is what I call real change. It was a grassroots victory for the history books, and, as one commentator said, now we are in unexplored territory. Here is why. Eight million of 162 million who visited Wikipedia took action to influence their Member of Congress; 7 million Americans signed Google's petition to block consideration of PIPA; hundreds of thousands of Americans called the Congress. In all, in just 1 day, more than 15 million Americans communicated with Congress and urged it to reject the Hollywood proposal to censor and censure the Internet.

The 15 million Americans who took action, who signed petitions, who provided their e-mail addresses and ZIP Codes in a desire to be informed are now going to be watching us like never before. The 15 million who looked up and spoke up are not faceless and they are not anonymous. They are people such as Frances Stewart of Maryland, Nancy Linton from Oregon, Debbie Kearns from East Hartford, CT, and John Jewett of Colorado, who gave their names to Web sites around the country. They are joined by millions of other Americans who were raising concerns for months before last week's Web blackout and supporting the filibuster I announced here in the Senate almost 1½ years ago.

These 15 million citizen activists were not the only ones saying the PROTECT IP Act took the wrong approach. The New York Times and the Los Angeles Times—the hometown newspapers for the content industry—both wrote editorials saying the legislation overreached. I ask unanimous consent to have printed in the RECORD copies of those articles.

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

[From the Los Angeles Times, June 7, 2011]

POLICING THE INTERNET

A Senate bill aims to cut off support for any site found by the courts to be 'dedicated' to copyright or trademark infringement. Its goals are laudable, but its details are problematic.

Hollywood studios, record labels and other U.S. copyright and trademark owners are pushing Congress to give them more protection against parasitical foreign websites that are profiting from counterfeit or bootlegged goods. The Senate Judiciary Committee has responded with a bill (S 968) that would force online advertising networks, credit card companies and search engines to cut off support for any site found by the courts to be "dedicated" to copyright or trademark infringement. Its goals are laudable, but its details are problematic.

The global nature of the Internet has spawned a profusion of websites in countries that can't or won't enforce intellectual property law. Under S 968, if a website were deemed by a court to be dedicated to infringing activities, federal agents could then tell the U.S. companies that direct traffic, process payments, serve advertisements and locate information online to end their support for the site in question. Copyright and trademark owners would be able to follow up those court orders by seeking injunctions against payment processors and advertising networks that do not comply.

Cutting off the financial lifeblood of companies dedicated to piracy and counterfeiting makes sense. A similar approach to illegal online gambling has shown that it is technically feasible for payment processors to stop directing dollars from U.S. bettors to gambling sites anywhere in the world. The operators of the largest online advertising networks say they can do the same, although they object to the bill's proposal to let copyright and trademark owners seek injunctions against them.

The main problem with the bill is in its effort to render sites invisible as well as unprofitable. Once a court determines that a site is dedicated to infringing, the measure would require the companies that operate domain-name servers to steer Internet users away from it. This misdirection, however, wouldn't stop people from going to the site, because it would still be accessible via its underlying numerical address or through overseas domain-name servers.

A group of leading Internet engineers has warned that the bill's attempt to hide piracy-oriented sites could hurt some legitimate sites because of the way domain names can be shared or have unpredictable mutual dependencies. And by encouraging Web consumers to use foreign or underground servers, the measure could undermine efforts to create a more reliable and fraud-resistant domain-name system. These risks argue for Congress to take a more measured approach to the problem of overseas rogue sites.

[From the New York Times, Nov. 26, 2011]

GOING AFTER THE PIRATES

Online piracy is the bane of the Internet. Still, bills proposed in the House and the Senate have overreached. The legislation needs to be tightened to protect intellectual property without hindering online speech and innovation.

Forty billion music files were shared illegally in 2008, according to the International Federation of the Phonographic Industry, amounting to 95 percent of all music downloads worldwide. Three-quarters of the video games released in late 2010 and early 2011 were shared illegally.

Musicians, moviemakers, authors and software designers are not the only victims. Piracy's cost is measured in less innovation and less economic activity, as creators lose hope of making a living from their creations. Still, the definition of wrongdoing in the "Stop Online Piracy Act" introduced in the House is too broad.

Under the bill, copyright owners could direct payment providers like Visa and advertising networks like Google's to cut off business to a Web site simply by filing notice that the site—or "a portion" of it—"engages in, enables or facilitates" intellectual property infringement or is being willfully blind to it.

Accused Web sites would have only five days to assert their innocence. And the payment providers and ad networks could not be sued by sites that were wrongly cut off, so their easiest course of action might be to just comply with copyright owners' requests. If copyright owners could starve a Web site of money simply by telling a payment processor that the site was infringing on intellectual property, the bill could stymie legitimate speech.

The purpose of the legislation is to stop business flowing to foreign rogue Web sites like the Pirate Bay in Sweden. But these provisions could affect domestic Web sites that are already covered by the 1998 Digital Millennium Copyright Act. That act has safe harbors protecting sites, like YouTube, that may unknowingly host pirated content, as long as they take it down when notified.

Another provision would allow the attorney general to sue foreign sites that "facilitate" piracy, and to demand that domestic search engines stop linking to them and that Internet service providers redirect traffic. Experts have said this measure could be easily overcome by users and warn that it could undermine an industrywide effort to reduce hacking. Legislators should also think hard about the message it would send to autocratic regimes like China's, which outinely block political Web sites.

The House bill is right to focus on payment systems and ad networks to cut off the money to rogue Web sites. But like its Senate companion, the "Protect IP" bill, it has serious problems that must be fixed.

The bill should be made to stipulate clearly that all of its provisions are aimed only at rogue Web sites overseas. Foreign sites must be granted the same safe harbor immunity—and the bill must not open the door to punishments for domestic sites that abide by the 1998 digital copyright law. And rather than encouraging credit card companies and advertising networks to pre-emptively cut off business to Web sites accused of wrongdoing, a court order should be required before they take action.

[From the New York Times, June 8, 2011]

INTERNET PIRACY AND HOW TO STOP IT

Online piracy is a huge business. A recent study found that Web sites offering pirated digital content or counterfeit goods, like illicit movie downloads or bootleg software, record 53 billion hits per year. That robs the industries that create and sell intellectual products of hundreds of billions of dollars.

The problem is particularly hard to crack because the villains are often in faraway countries. Bad apples can be difficult to pin down in the sea of Web sites, and pirates can evade countervailing measures as easily as tweaking the name of a Web site.

Commendably, the Senate Judiciary Committee is trying to bolster the government's power to enforce intellectual property protections. Last month, the committee approved the Protect IP Act, which creates new tools to disrupt illegal online commerce.

The bill is not perfect. Its definition of wrongdoing is broad and could be abused by companies seeking to use the law to quickly hinder Web sites. Some proposed remedies could also unintentionally reduce the safety of the Internet. Senator Ron Wyden put a hold on the bill over these issues, which, he argued, could infringe on the right to free speech. The legislation is, therefore, in limbo, but it should be fixed, not discarded.

The bill defines infringing Web sites as those that have "no significant use other than engaging in, enabling, or facilitating" the illegal copying or distribution of copyrighted material in "substantially complete form"—entire movies or songs, not just snippets.

If the offender can't be found to answer the accusation (a likely occurrence given that most Web sites targeted will be overseas), the government or a private party can seek an injunction from a judge to compel advertising networks and payment systems like MasterCard or PayPal to stop doing business with the site.

The government—but not private parties—can use the injunction to compel Internet service providers to redirect traffic by not translating a Web address into the numerical

language that computers understand. And they could force search engines to stop linking to them.

The broadness of the definition is particularly worrisome because private companies are given a right to take action under the bill. In one notorious case, a record label demanded that YouTube take down a home video of a toddler jiggling in the kitchen to a tune by Prince, claiming it violated copyright law. Allowing firms to go after a Web site that ''facilitates'' intellectual property theft might encourage that kind of overreaching—and allow the government to black out a site.

Some of the remedies are problematic. A group of Internet safety experts cautioned that the procedure to redirect Internet traffic from offending Web sites would mimic what hackers do when they take over a domain. If it occurred on a large enough scale it could impair efforts to enhance the safety of the domain name system.

This kind of blocking is unlikely to be very effective. Users could reach offending Web sites simply by writing the numerical I.P. address in the navigator box, rather than the URL. The Web sites could distribute free plug-ins to translate addresses into numbers automatically.

The bill before the Senate is an important step toward making piracy less profitable. But it shouldn't pass as is. If protecting intellectual property is important, so is protecting the Internet from overzealous enforcement.

[From the New York Times, Jan. 18, 2012]

ONLINE PIRACY AND POLITICAL OVERREACH

For months, it seemed as if Congress would pass an online antipiracy bill, even though its main weapons—cutting off the financing of pirate Web sites and making them harder to find—risk censoring legitimate speech and undermining the security of the Internet. But the unmovable corporations behind those bills have run into an unstoppable force: an outcry by Internet companies led by Google and Wikipedia that culminated in an extraordinary online protest on Wednesday.

Lawmakers have begun peeling away from the bills, notably Senators Marco Rubio, the Florida Republican who cosponsored the Senate version, and John Cornyn, the powerful Texas conservative. They dropped out after Wikipedia's English language site went dark and Google put a black bar on its homepage on Wednesday.

The Protect I.P. Act would have easily passed the Senate last summer if not for a hold placed by Senator Ron Wyden, a Democrat of Oregon. The Stop Online Piracy Act, introduced in the House in October, has also lost some of its initial backers. And on Saturday, the White House released a statement warning that it would ''not support legislation that reduces freedom of expression, increases cybersecurity risk, or undermines the dynamic, innovative global Internet.''

Though we are encouraged by legislators' newfound caution about the potential consequences of the bills, Congress must keep working on ways to curtail the growing business of foreign rogue Web sites trafficking in counterfeit goods and stolen intellectual property.

The Internet industry was pitted against some of the best-honed lobbying groups, including Hollywood and the recording studios, the United States Chamber of Commerce and the A.F.L.–C.I.O. The industry has made a good case that some of the definitions of wrongdoing—like ''facilitating'' intellectual property infringement—were overly broad. They said allowing property rights owners to direct payment companies like Visa and ad networks like Google's to stop doing business with sites they deemed infringing—with no penalties if they were proved wrong—could stymie legitimate online expression.

They made the case that the proposal to make infringing Web sites ''disappear'' from the Internet by forbidding search engines from finding them or redirecting their Web addresses to other Internet domains was easy to get around and could potentially undermine efforts to stop hackers from doing exactly the same thing.

The Internet companies now have the responsibility to come up with a workable alternative that gives owners of intellectual property rights better tools to stop piracy by Web sites located in faraway countries. These sites get some 53 billion visits a year, more than Google or Wikipedia. Yet they are outside the grasp of American law.

The focus on cutting the financing of online pirates, which features in the House and Senate bills, is the right way to go. Sponsors of both bills have moved to delete, at least temporarily, provisions to make rogue Web sites disappear. The legislation could be further amended to narrow the definition of criminality and clarify that it is only aimed at foreign sites. And it could tighten guarantees of due process. Private parties must first get a court order to block business with a Web site they deem infringing on their copyrights.

We are happy that the drive to pass antipiracy legislation has slowed enough that Congress might actually consider all its implications carefully. Lawmakers can now act wisely to create tools that can help combat the scourge of online piracy without excessive collateral damage.

Mr. WYDEN. Mr. President, while the 15 million are no doubt pleased, as I am, that Majority Leader REID pulled PIPA, they are waiting to see if we will now retrench into the old ways of doing things—the old way where Senators went behind closed doors and wrote legislation with the help of well-healed lobbyists, the old way that has eroded the trust America has with the Congress and the confidence that we are here on their behalf—or will the Congress instead construct legislation in a transparent way that responds to our broad collective interests? The American people want just that, and they deserve it. Among the lessons we should have learned from the events of the past few weeks is the importance of letting the public in on what we are doing.

There are serious unintended consequences when Members of Congress and staff think they have all the answers and rush to construct and pass legislation. There are clear virtues in prudence, deliberation, and even a little humility. I believe that is what our constitutional Framers had in mind for the Senate.

I know my colleagues are waiting, and I want to close with this. I harbor no doubt that this Congress on a bipartisan basis can and should construct legislation to combat international commerce in counterfeit merchandise and content that infringes on copyrights. There is no question that selling fake Nikes or movies you don't own is a problem that needs to be addressed, but it can be done in ways that do not threaten speech, that allow for the legitimate sharing of information and protect the architecture and value of the Internet. I look forward to working with my colleagues and a broad cross-section of stakeholders to do that.

I have proposed an alternative with Senator MORAN and Senator CANTWELL here in the Senate. Chairman ISSA and Congresswoman LOFGREN have proposed exactly that kind of alternative in the House. It is called the OPEN Act. It is bipartisan. It is bicameral. It would allow us to go after the problem of these rogue foreign Web sites while at the same time protecting what we value so greatly about the Internet.

We are going to have more discussions about this legislation and other approaches in the future, but we now have an opportunity to get this right. To a great extent, that is possible because of my colleague from Kansas who has joined me in this effort, the first on the other side of the aisle to step up and join our efforts. I am very appreciative of what he has done, and I look forward to his comments.

I also thank the Senator from Texas, Mr. CORNYN, for his courtesies so that Senator MORAN and I, because of our bipartisan work, could make these brief remarks.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MORAN. Mr. President, I appreciate so much the remarks of the Senator from Oregon, Mr. WYDEN.

It was a significant moment in my brief time as a Member of the Senate when, 3 months ago, Senator WYDEN and I had a conversation here on the Senate floor about this legislation, about PIPA and about SOPA and about the open Internet, and it was a moment in which Senator WYDEN found me looking for ways in which I could be engaged in the process of trying to create an environment in which entrepreneurship flourished in the United States.

I had been discouraged or disillusioned a bit by the lack of Congress's and the President's ability to find ways to reduce spending and to balance the budget, and while I don't intend ever to walk away from those important issues, it became clear to me that another way we can reach a more balanced budget is to have a growing economy. I started looking at research that would suggest how we get there. When Senator WYDEN presented this thought to me about engaging on this issue, it was one that made so much sense to me, and I am very grateful for the partnership we have developed.

Senator WYDEN and I, as he said, intended to speak this evening about our concerns about the PROTECT IP Act prior to the bill being considered this week on the Senate floor. But because of the actions of millions of Americans in voicing their concerns about this legislation, it is no longer necessary for us to throw procedural obstacles in the way of the PROTECT IP Act, and I

appreciate the majority leader withdrawing his plan to hold a vote tomorrow on this legislation.

Last week's events in which we all received so much input is a very good reminder of what a powerful tool the Internet can be. It was encouraging to see so many Americans get involved, particularly young Americans who often choose not to be involved in the process. But they saw something important to them, and they knew exactly how to communicate with elected officials. What became clear last week was that Congress, in this issue and its far-reaching implications, was not fully yet understood, and so to take a pause, to take a step back and to reconsider the direction we were going seems so appropriate to me.

Congress has the responsibility to remain engaged and up to speed on all issues, particularly those that so directly impact our economy. It is no easy task given that technology is constantly evolving, but it is an important task. Technology holds incredible promise, from strengthening education, to delivering health care more efficiently, to allowing entrepreneurs to develop products that have yet to be invented. By remaining more engaged, Congress will also be better able to enact public policies that encourage Americans to innovate, create new products, and strengthen the economy.

Last week's decision to delay consideration of PIPA was an important moment for many innovators and entrepreneurs across America, and it was an outcome that my colleagues and I—Senator WYDEN and others—sought to see occur. It is important also not just to entrepreneurs, though, but to people who are concerned about freedom and about the opportunity to use the Internet to communicate, the opportunity for free speech. And certainly we had concerns about national security. My concerns about the PROTECT IP Act can be summed up like this: Certain provisions in this legislation will threaten free speech, innovation, and our national security.

I am adamantly opposed to legislation that tampers with the Internet security, specifically the Domain Name System. Internet engineers have worked for 15 years to develop a way to authenticate the sites we visit to make sure they are secure and to enhance commerce on the Internet. At a time when our Nation faces increasing numbers of cyber attacks from abroad, PIPA and SOPA would create significant security risks and set America back more than a decade.

Second, both PIPA and SOPA would create new liabilities because of vague definitions in the bills that would drag companies into unnecessary and prolonged litigation. We don't need more legal battles. Congress should not put in place a system that would force law-abiding innovators to utilize their limited resources in the courtroom to defend themselves rather than invest in their companies, develop new products, and hire new workers.

America is a country of innovation that was founded on freedom and opportunity, and that has been true since the birth of our Nation when entrepreneurs have strengthened our country and its economy by creating new products and sharing them around the world. Americans today still want the opportunity to develop new products and to innovate in the marketplace. Because of the power of technology, ideas that were once only imaginable have now become a reality.

About 1 year ago, Google announced that it was accepting applications from cities across the United States to deploy a 1-gigabit Internet connection, which is roughly 100 times faster than what most users could experience today. Last March, much to my delight and the delight of many Kansans, Google chose Kansas City as the Nation's first Google Gigabyte City. In fact, Kansas City was selected from more than 1,100 cities that had applied and competed.

Many people in the Kansas City area were soon asking: What is actually possible with a gigabit Internet connection? What happens when you connect an entire community with a gigabit Internet connection?

An organization called Think Big Partners wanted to know the answer to those questions, so they put together a competition called Gigabit Challenge. The Gigabit Challenge was a project based on an idea and a prediction. They predicted that when Americans are given access to cutting-edge technology—in this case, one of the fastest bandwidths in the world—new innovations, new applications, and new products would be created. So they challenged entrepreneurs and innovators to come up with products that will leverage this new network capacity and offered significant cash prizes for the three best ideas.

The response was overwhelming. Mr. President, 113 ideas were submitted from 5 continents, 7 countries, and 22 States. The list was eventually narrowed down to 17 companies that presented last week to a distinguished panel of judges. I had the opportunity to join Think Big Partners in Kansas City last week for part of that event, and I was impressed, so impressed, by what I saw. I congratulate the prize winners tonight who competed, and I congratulate all who competed and brought new ideas to the table.

The Gigabit Challenge underscores the fact that Americans want to innovate, and Congress should encourage innovation rather than create new hurdles for American creators and innovators. One of the most important things Congress can do to encourage innovation is to make it easier for entrepreneurs to start a business.

Last month, Senator WARNER and I introduced bipartisan legislation called the Startup Act to jump-start the economy through creation and growth of new businesses. Data from the Kauffman Foundation in Kansas City shows that between 1980 and 2005, nearly all of the net jobs that were created in the United States were created by companies less than 5 years old. In fact, new businesses create about 3 million jobs each year.

The Startup Act recognizes the job-creating potential of entrepreneurs and is based upon five progrowth principles:

First, the Startup Act will reduce the regulatory burden on new businesses and startups.

New businesses, which are almost always small, face a tough challenge complying with the various rules and regulations that govern business behavior. According to the U.S. Small Business Administration, companies with fewer than 20 employees spend 36 percent more per employee than larger firms to comply with Federal regulations.

The president and CEO of the National Association for the Self-Employed, who endorsed the Startup Act, said this:

> The majority of small businesses are enterprises of 1–2 people. . . . Cutting down on some of the unnecessary red tape that new businesses must face means that the owner can spend more time growing their business, hiring employees, and helping to turn our Nation's economy back around. The Startup Act would help address these regulatory burdens faced by new companies.

Reducing regulatory burdens means entrepreneurs will have more time and money to invest in their business and to hire more workers.

Secondly, the Startup Act creates tax incentives to help facilitate the financing of new businesses so they can get off the ground and grow more quickly.

One of the greatest challenges for startups is accessing the necessary capital to grow their business. The Startup Act provides capital gains and income tax incentives to facilitate financing the new business at its critical juncture of firm growth. Helping entrepreneurs attract investment and retain greater share of the company's profits will lead to job growth.

Third, the Startup Act recognizes that innovation drives the American economy.

Some of the best minds in the world work and study at American universities. The innovation that occurs on campuses across the Nation contribute to the strength and vitality of our economy. To speed up the movement of new technologies to the marketplace where they can propel economic growth, the Startup Act uses a portion of existing Federal research and development funding to support innovative projects at American universities in order to accelerate and improve the commercialization of cutting-edge technologies developed through faculty research. When more good ideas make their way out of the laboratory and into the marketplace, more businesses and more jobs are created.

Fourth, the Startup Act encourages pro-growth State and local policies through the publication of reports on

new business formation and the entrepreneurial environment in States.

I am proud that Kansas City leaders recognize the importance of policies that support entrepreneurs. Last year, area leaders declared that Kansas City should be called ''America's Most Entrepreneurial City,'' given their efforts to encourage entrepreneurship.

Better policies at the State and local level will create more opportunities for entrepreneurs to open businesses and put Americans to work.

Finally, the Startup Act will help win the global battle for talent by keeping entrepreneurial-minded and highly skilled workers in the United States.

For too long, our Nation's immigration policies have turned away American-educated talent and sent highly-skilled individuals back to their home country where they competed against America. Rather than lose that talent, we need to keep those highly-skilled individuals and potential job creators in the United States.

The Startup Act recognizes the job-creating potential of entrepreneurial and highly-skilled immigrants, and provides additional opportunities for those who are here legally on a temporary basis to stay if they have the high-tech skills our economy needs or are willing and able to create jobs for Americans.

Highly-skilled workers will fuel growth at technology startups and entrepreneurial immigrants will employ Americans.

Business and industry leaders across the country are speaking out about the importance of innovation and entrepreneurship. Gary Shapiro, the President and CEO of the Consumer Electronics Association, said this:

> As a country we must do more to support and foster innovation and entrepreneurialism, and the introduction of the Startup Act is an important step forward.

Dr. Robert Atkinson, the President and Founder of the Information Technology & Innovation Foundation echoed those remarks. He said:

> The United States is at risk of losing its economic leadership and vitality and it is essential for policymakers to unite in practical ways to reverse this trend. The Startup Act is a commendable example of what is needed to restore U.S. innovation-based competitiveness.

The millions of Americans who spoke out last week against a bill that would stifle innovation on the Internet understand the importance of this too.

Fostering innovation and promoting entrepreneurship are not Republican or Democrat ideas they are American values.

What occurred last week is a reminder to all of us in this Senate about the leadership that is necessary. Again, I congratulate Senator WYDEN for providing that leadership. With good leaders in Washington, DC, and with the American people who understand in many instances better than we often do the value of entrepreneurship, of free speech and an open Internet, great things can once again happen in the United States of America. Our economy can flourish and grow.

It is so important that what occurred this week, with the legislation not proceeding, sets the stage for greater opportunities for Americans across our country to have a dream, to pursue it, to succeed, to spend their time pursuing that dream, and in achieving their dreams they have the opportunity to create success for others.

I urge my colleagues to work with me. Let us work together. Our country cannot wait until after another election to get the economy growing again.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

SENATOR MARK KIRK

Mr. CORNYN. Mr. President, I join my colleague from Illinois in expressing our concerns about the junior Senator from Illinois, Senator KIRK, who, unfortunately, suffered a medical incident, has had surgery, and is now recovering in Chicago. We know once again we are reminded that life is short and it is fragile. It could happen to any one of us or our families or anyone we care about and love. I know all of us extend our sympathy and our well wishes to Senator KIRK as he begins his convalescence and recovery from this surgery and this medical incident that he has experienced.

THE BUDGET

Mr. CORNYN. Mr. President, I wish to observe that tomorrow night the President of the United States will make his annual State of the Union Address to Congress. This signals, of course, the beginning of the annual budget and appropriations process. But what has not happened for too long is the Senate passing a budget for the Federal Government. In fact, tomorrow, the same day the President will speak to the Nation, it will be the 1,000th day since the budget was passed by the Senate. That day was April 29, 2009. As the facts would reveal, it is our Democratic friends, led by the majority leader, Senator REID, who have resisted bringing a budget to the floor for amendment and debate and a vote.

I believe with all my heart that is one of the reasons why the American people hold the Congress in such low regard. It is because we have failed in our most basic responsibilities, now for more than 1,000 days. None of us can imagine a family or small business operating without a budget. It is unthinkable. I suspect there are not many, if any, small businesses that do not sit down and do the hard work of working out a budget. A budget, after all, is a matter of priorities. As the distinguished occupant of the chair knows as a former Governor, there is no way a State, a city, a county, a small business, or a family can get by without a budget because it is the discipline that comes with a budget where you decide what is absolutely essential, you decide what you want to have that you maybe could put off for another day, and it forces you to reach the conclusion in some instances that things you would like to do are simply unaffordable. Unfortunately, the majority leader has simply resisted those hard decisions. That is regrettable.

As a member of the Budget Committee, I was especially disappointed that the Budget Committee, the very purpose of which is to debate and pass a budget, did not debate one this last year. The majority leader, when asked about this in the press, said that it would be foolish for the majority to produce a budget. I suspect he wanted to protect his Democratic Members from some tough votes and tough decisions. But that is what we were sent here for, to make hard but important decisions on behalf of our constituents and the American people, even if they are tough votes and even if they are unpopular decisions. That is our responsibility. But under the leadership of Senator REID the Senate has completely abdicated that responsibility for now 1,000 days.

Nothing could be more foolish or foolhardy than refusing to provide the Nation's job creators, investors, and, yes, the taxpayers, with a blueprint for our fiscal future. How is it that the majority can continue to shrink from the most basic responsibilities of governing? I am amazed sometimes. People say they want to serve in public office. They like the prestige, perhaps, the visibility, the power that goes along with it. Yet when it comes to actually discharging their responsibilities and making tough decisions, they may say, no, I don't want to make anybody mad.

But that is what we were sent here for. It is our responsibility. It is plain fact that the American people cannot afford to have this body continue paying just lip service to fiscal sanity while seeing our fiscal ship so off keel.

It should come as no surprise that during this period of time we have not had a budget for the Federal Government, the Nation has spent $9.4 trillion. And $4.1 trillion has been added to the national debt, if you account for the fact that the President recently asked for another $1.2 trillion in additional borrowing authority. The national debt has grown to more than $15 trillion and is now larger than the whole U.S. economy, our gross domestic product. Government spending has reached a post-World War II record and now makes up 25 percent of the economy. That is just government spending alone. The average has been somewhere around 20 percent of our gross domestic product. Now it is up to about 25 percent.

Unfortunately, because the economy is so depressed, revenues are around 15 percent, hence a 10-percent annual

budget deficit which, as it accumulates, adds to our national debt.

As we all know, our Nation has lost its triple-A credit rating from Standard & Poor's, casting further doubt about the solvency of the U.S. Government and our commitment to pay our debts. All three major rating agencies have assigned a negative outlook, something short of a downgrade, but they have issued a warning to those who lend money to the U.S. Government that they have a negative outlook on the Nation's long-term rating. This is a signal too that future downgrades are more likely in the near future. You know what happens when the rating agencies downgrade our debt; it is more expensive for the Federal Government to borrow money.

Indeed, I have read that over a 10-year period of time, a 1-percent increase in the cost of paying China or somebody to buy our debt, in terms of a return on that investment, a 1-percent increase over 10 years is roughly $1.3 trillion. So even if we were to cut $1.3 trillion, suffering a 1.3-percent increase in the cost of persuading somebody to buy our debt would negate and wipe out any savings by a cut.

I fear the failure to pass a budget is simply a recipe for more debt and more out-of-control spending. While the majority has abdicated its responsibility to pass a budget, as required by law, and even refused to bring it to the floor, the House has acted responsibly and has passed its own budget. But instead of offering their own blueprint in the Senate, the majority leader and the majority party have simply demagogued the House budget.

We have seen that from the President of the United States. Ultimately, Senator REID brought the House budget up for a vote on the floor, knowing it would fail because it actually reduced spending, it continued much-needed tax relief, and it put the Government on a diet, something the Federal Government sorely needs.

The Senate also had an opportunity to finally vote on the budget submitted by the President last year. This was something that was prompted by action of Senator MCCONNELL, the Republican leader, because our friends across the aisle did not, apparently, even want to vote on the President's proposed budget. But while there was support for the House budget, not one Senator on either side of the aisle supported the President's budget. It went down 97 to 0, which was quite a remarkable vote. Even my colleagues on the other side of the aisle realized that the budget submitted by the President was an irresponsible budget, one that would increase taxes, increase spending, and increase debt.

We know that higher debt leads to slower economic growth. Economic studies have shown that high levels of government debt inhibit economic growth by creating economic uncertainty about the economy, about tax increases, and it actually crowds out or displaces investment in the private sector. Slower economic growth means fewer jobs. According to Christina Romer, former chair of the White House Council of Economic Advisers, a 1-percent change in gross domestic product growth is equivalent to 1 million jobs a year.

I would recall, back during the time the administration proposed its stimulus to try to get the economy moving again—$787 billion plus interest, roughly $1 trillion—they projected growth of the economy during 2011–2012 to be roughly 4.3 percent of gross domestic product, a 4.3-percent growth. Unfortunately, in the third quarter of 2010, which is the last quarter for which some numbers are available, the economy grew at a rate of 1.8 percent—not 4.3 percent but 1.8 percent.

So the warning sound has clearly been heard. The fiscal tsunami that many budget experts predicted could suddenly arise is fast approaching. It is a challenge that faces the country today, not tomorrow, and we need solutions today. But it takes leadership and it takes courage. All we have to do is look across the Atlantic Ocean and watch what many of our European friends are going through today to see what happens when government spending and debt are allowed to grow unchecked. When governments and nations live beyond their means and continue to rack up debt, passing it on to their children and grandchildren, at some point the creditors of that nation, the holders of that sovereign debt, lose confidence in the ability of those nations to actually pay it back and we see the kind of sovereign debt crisis like we are seeing in Europe today.

All of these challenges require Presidential leadership, but I am confident we will not hear the President talking about these issues tomorrow. The President has had multiple opportunities to embrace bipartisan fiscal overhaul plans such as the one produced by his own bipartisan debt commission, the Simpson-Bowles commission. Unfortunately, the President has chosen to ignore the work of his own debt commission.

Over the past 2 years we have also noted an explosion in the number of Federal regulations which have further created uncertainty in the economy and caused the entrepreneurs and job creators to sit on the sidelines not knowing what the cost is going to be of their doing business, whether their business model will actually work or whether in addition to taxes, regulation, and the cost of health care they can actually break even, much less make a profit. Well, it is no coincidence because of the higher debt, runaway regulations, and the threat of higher taxes that we have experienced the weakest economic recovery since World War II, leaving millions of Americans without jobs.

My constituents—all 25 million of them in Texas—and everyone in America deserve better, and they are telling us in unequivocal terms that they think the country is on the wrong track. How could they possibly believe otherwise? When my constituents know Washington borrows 40 cents out of every dollar it spends and knows the national debt is a job-killing economic liability for the country, how would they say the country is on the right track when clearly it is not. Every man, woman, and child in my State and across the country is roughly $49,000 in debt, and that has increased by almost 40 percent since President Obama took office in 2009.

The unemployment rate in Texas, while, thankfully, is lower than the national rate, consistently remains above what it was since the last time the Senate passed a budget. The unemployment rate in Texas is 20 percent higher than it was when the administration told Texans that its stimulus plan would make sure the national rate would not go above 8 percent.

Well, if we go back and look at the projections—they said it would not go above 8 percent, and by the first quarter in 2012 it would be 6 percent—clearly, they were off the mark, and the stimulus failed to meet the administration's own stated goals.

My constituents also believe, with some justification, the national debt is a national security risk. ADM Mike Mullen, former Chairman of the Joint Chiefs of Staff, said the debt is the single biggest threat to our national security. It struck me as unusual to hear the Chairman of the Joint Chiefs of Staff saying it is our financial condition that is our national security threat. But when we think about it, if America cannot pay its debt back, if we experience a sovereign debt crisis, if the interest demanded by our creditors goes through the roof—as we have seen for Italian bonds and other bonds over in Europe—it means we will not have the money to pay not only for the safety net programs that are important for the most vulnerable of Americans and keep our commitments for Social Security and Medicare, it means we will not be able to protect the national security of the United States, which is the No. 1 responsibility of the Federal Government.

Secretary of State Hillary Clinton has said the debt ''undermines our capacity to act in our own interest . . . and it also sends a message of weakness internationally.''

My constituents know that successful debt reduction measures must rely on spending cuts, not tax increases, and that economic growth is one of the main goals. Right now, if we don't act before the end of the year, due to expiring tax provisions we will see the single highest tax bill in American history, almost $5 trillion more by some estimates.

For example, the State and local sales tax deduction—my State doesn't have an income tax, and income taxes are deductible under Federal tax law,

but State sales taxes are not right now but for the provision that will expire by the end of the year. This is an important issue to my constituents and a matter of fundamental fairness.

In 2009, 2.1 million taxpayers in Texas claimed almost $4 billion in deductions. According to tax comptroller Susan Combs, extending the sales tax deduction will benefit millions of Texans who are working hard to keep our Nation's economy vibrant.

I am proud my State has been a beacon from the economic standpoint of opportunity where people have voted with their feet, and they have moved from places where they don't have jobs and don't have opportunities to Texas where they do. It is no coincidence that as a result of the most recent reapportionment, Texas got four new congressional seats. This is primarily due to people moving to where the opportunity is. It makes perfect sense.

Why would we want to do anything that would threaten the economy of Texas or any other State of the Union? We know the President will give another speech to the American people tomorrow night, and he will send his budget—as required by law—to Congress early next month. At this time, the American people will be able to see for themselves if we have a leader who possesses the audacity to bring us together to right the ship or one who will lead us down a path that has brought the economies of Europe to the brink of economic disaster and a permanent lower standard of life.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I ask to speak as if in morning business for 2 minutes.

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

ST. CROIX BRIDGE

Ms. KLOBUCHAR. Mr. President, we are about to pass unanimously the St. Croix bill. It is something we have been working on very hard—the two Senators from Minnesota, myself, Senator FRANKEN, Senator JOHNSON, as well as Senator KOHL—to get through the Senate.

This bill allows a bridge to be built that has been waiting for 30 years. It is a bridge that exists now and is a beautiful bridge, but it is falling apart. Pieces of the bridge have fallen into the St. Croix River. It is a bridge that is expected to take 18,000 cars a day, and the Department of Transportation and the State of Minnesota believe very strongly we need a new bridge.

This legislation allows the bridge to move forward. I appreciate all of the help from my colleagues on both sides of the aisle. They have helped me to work on this legislation over the last few months. Senator COBURN had some changes at the end, and we worked with every single Senator to get this done.

The bill now moves to the House where it also enjoys bipartisan support, and both Governors of both States support this bill. They will then be allowed to build the bridge they want.

There has been questions raised about whether this creates some kind of precedent under the Scenic Rivers Act. This is a very unique situation. It has taken us a year to pass. We are in a situation where any new bridge would need an exemption to the Scenic Rivers Act.

We are pleased this bill is getting passed today. I don't believe anyone believed we could have done this unanimously after 30 years of work, but tonight we are getting it done.

I yield the floor.

TRIBUTE TO ADRIENNE POWERS

Mr. REID. Mr. President, I rise today to honor Adrienne Powers, who recently retired as Head Interior Designer for the Architect of the Capitol at the end of last year.

Many on Capitol Hill join my wife, Landra, and me in expressing a sincere and warm congratulations on a well-earned retirement to Adrienne. Although her stylistic genius and sensitivity to the integrity and history of the walls and floors of the Capitol will be missed, she has left an indelible mark that will not be forgotten.

In 1984, after receiving her Bachelor's degree in interior design from American University, Adrienne began her career as an interior designer with the Architect of the Capitol. Her first assignment was to style the legendary Senator Moynihan's third floor office in the Russell Senate Office Building. After impressing Senator Moynihan with her ornate style and keen eye for fine art, other Senators quickly sought her services for their offices as well. This trend continued until she recently retired, making her one of the most popular figures among Members on both sides of the aisle and Capitol.

One would struggle to find some part of the Capitol that has not been improved by Adrienne's immense talent and impeccable taste. After 27 remarkable years balancing history and purpose, she leaves behind an indebted community on Capitol Hill that will forever remember her friendship, professionalism and dedication.

RECOGNIZING THE FINANCIAL GUIDANCE CENTER

Mr. REID. Mr. President, I rise today to honor the Financial Guidance Center, FGC, a nonprofit organization that has remained steadfast in its commitment to providing financial literacy services to all Nevadans.

This year marks 40 years of empowering Nevadans by providing quality financial and credit counseling. FGC is a HUD-approved housing counseling agency, accredited by the Council of Accreditation and a member of the National Foundation for Credit Counseling.

More than ever, their services are crucial to countless homeowners in Nevada. FGC provides access to free financial, housing, and bankruptcy counseling, debt management, downpayment assistance, and financial literacy programs that are essential to making our communities more financially sound. The Financial Guidance Center should be proud of its enduring resolve to provide families with the important tools that contribute to a healthy community.

Selected by the Las Vegas Chamber of Commerce as the 2010 Non-Profit of the Year, FGC has remained dedicated to helping Americans get back on their feet, reach their housing goals, and attain much needed financial sustainability in trying economic times.

I am pleased to stand today in recognition of the Financial Guidance Center and their many contributions to Nevada and Utah, and I wish them continued success in the years to come.

TRIBUTE TO JHETT JOHNSON

Mr. BARRASSO. Mr. President, today I wish to honor a true American Cowboy, Jhett Johnson. At the Wrangler National Finals Rodeo in Las Vegas, Jhett and his teammate, Turtle Powell, took home the gold buckle in the team roping competition after 10 rounds of competition against the best of the best.

Those of us in Wyoming talk about the Code of the West. As a sixth-generation Wyoming rancher and now a world champion rodeo cowboy, Jhett Johnson personifies the code. He lives each day with courage, takes pride in his work, and rides for the brand. Jhett has demonstrated this in all aspects of his life, not just his rodeo career. When still in his twenties, Jhett survived cancer. He approached his illness, and his recovery, by living the code. He wanted to finish what he started, and he intended to do what needed to be done. He knew that there were hundreds of rodeos ahead of him, and he wasn't going to let cancer slow him down.

We can all learn from Jhett Johnson and his teammate, Turtle Powell. Team roping is not an individual sport. You must trust your partner. Team roping takes in incredible amount of practice and skill, but you must acknowledge that sometimes you catch one and sometimes you don't. Competing requires miles and miles of travel to rodeos across our great Nation, which means time away from family and loved ones.

When he is not rodeoing, Jhett enjoys training horses on the family ranch near Casper, WY. He is the devoted husband to Jenny and father to three sons, Kellan, Carson, and Cress.

Mr. President, join me in congratulating Wyoming's world champion cowboy, Jhett Johnson, on his terrific accomplishments.

ADDITIONAL STATEMENTS

RECOGNIZING THE 100TH ANNIVERSARY OF THE HAWAIIAN VOLCANO OBSERVATORY

• Mr. AKAKA. Mr. President, today I wish to commemorate the centennial anniversary of the founding of the Hawaiian Volcano Observatory, HVO, on the island of Hawaii on January 17, 1912. Currently situated on the northwest rim of the caldera of Kilauea, one of Earth's most active—and most studied—volcanoes, HVO has collaborated with top scientists from around the world to achieve its mission: to create a detailed account of Hawaii's volcanic activity. During its 100 years of operation, HVO's pursuit of this mission has not only led to great strides in the study of volcanology, it has made living near these volcanoes safer for island residents.

Established by the late visionary geologist Thomas A. Jaggar, Jr., the observatory has been continuously monitoring Kilauea and other Hawaiian volcanoes for the past century, collecting data critical to the understanding of volcanic activity. Jaggar's work built on the pioneering contributions of the world-renowned American volcanologist, Frank A. Perret, who made his first observations on the volcanic activity at Kilauea in 1911. Jaggar used Perret's work to successfully solicit initial support and funding for the project from the Massachusetts Institute of Technology, the University of Hawaii, and the Carnegie Geophysical Laboratory. Jaggar also received essential contributions from several local businessmen, who pledged significant sums to establish the observatory at Kilauea.

Over time, the sponsorship and operation of HVO has been administered through various Federal agencies, including the United States Weather Bureau from 1919 to 1924; the United States Geological Survey, USGS, from 1924 to 1935; the National Park Service, NPS, from 1935 to 1947; and the USGS again from 1947 to the present. Throughout HVO's history, it has worked with local interests to further public safety, education and outreach, and geological science. HVO has enjoyed a longtime partnership with University of Hawaii's Hilo and Manoa campuses, as well as close working relationships with NPS at Hawaii Volcanoes National Park, the County of Hawaii, and Hawaii's news media.

The observations made from HVO have led to groundbreaking contributions in modern geological science through their precision and diligence in data collection, thorough analysis of the observatory's vast record, and innovation in monitoring devices and techniques. Today, HVO scientists analyze data collected from more than 100 field stations, which include seismic, deformation, volcanic-gas, geologic, and other monitoring tools. These stations transmit data to HVO around the clock, with a single instrument sending as much as 60 terabytes of data each year. As a result, HVO-guided efforts have successfully diverted or stopped lava flows threatening Hilo and neighboring communities, mitigated the damage caused by tsunamis by providing reliable wave predictions, and have painted a rich, detailed account of the activity of some of the world's most volatile volcanoes.

Finally, I wish HVO and USGS the best of luck and continued successes as they carry on their important work. I know that they are excited to begin the next hundred years of the observatory's work, and I look forward to the advances that will result from their efforts.•

REMEMBERING JIM CAPOOT

• Mrs. BOXER. Mr. President, I ask my colleagues to join me in honoring the life of James ''Jim'' Capoot—a dedicated husband, proud father, loving son, devoted friend and respected colleague. Officer Capoot lost his life in the line of duty while serving the Vallejo Police Department on November 17, 2011. He was 45 years old.

Jim Capoot was originally from Little Rock, AR, and served in the U.S. Marine Corps and as a California Highway Patrol Officer before joining the Vallejo Police Department in 1992. Officer Capoot was a highly decorated officer having received the Vallejo Police Department Officer of the Year award, the Medal of Merit, the Life Saving Medal, and twice awarded the Medal of Courage. In addition to his work with the Police Department, Officer Capoot was the volunteer coach of the Vallejo High School girls' basketball team and led the team to a section championship in 2010.

Officer Jim Capoot, like all those who serve in law enforcement across California, put his life on the line to protect his community. I extend my deepest condolences to his loving wife Jennifer and three daughters. My thoughts and prayers are with them. We are forever indebted to him for his courage, service and sacrifice.•

REMEMBERING OFFICER MARY ANN DONAHOU

• Mrs. BOXER. Mr. President, I ask my colleagues to join me in honoring the memory of a dedicated public servant, Officer Mary Ann Donahou of the Stanislaus County Sheriff's Department. On the morning of December 30, 2011, while gathering evidence at a crime scene in Hughson, Officer Donahou was tragically killed after being struck by a vehicle.

Officer Donahou was born in Ceres, CA. In 2002, she began her career at the Stanislaus County Sheriff's Office as a booking clerk in the county jail. As her knowledge and love of law enforcement grew, Officer Donahou eventually became a crime scene technician and dutifully served the citizens and communities of Stanislaus County with great commitment, integrity, and valor. Her devotion to helping others, along with her passion for law enforcement, enabled her to become a respected member of the Stanislaus County Sheriff's Department.

Those who knew Officer Donahou will always remember her as a caring, kind, and devoted mother, colleague, and friend. She fulfilled her oath as an officer of the law with honor, bravery, and dedication. Her contributions to public safety and commitment to the citizens she served will never be forgotten and will be an example to others who hope to one day protect and serve the public.

I extend my deepest condolences to Officer Donahou's son, Jake Lewis Hassler; her parents, Janice and Robert Pence and Jack and Mary Donahou; and her sisters, Jennifer Horne, Melinda Donahou-Sneed, Lori Donahou and Teresa Brockman.

We shall always be grateful for Officer Donahou's heroic service and the sacrifices she made while serving the community and the people she loved. She will be dearly missed.•

REMEMBERING WARREN HELLMAN

• Mrs. BOXER. Mr. President, today I ask my colleagues to join me in honoring the life and legacy of Warren Hellman, a San Francisco financier, philanthropist, and community leader who died last month at age 77 from complications of leukemia.

In addition to its spectacular beauty, the City of San Francisco is known around the world for its great heart and free spirit, its celebration of diversity, and its charm. In recent years, perhaps no San Franciscan has embodied his beloved city more than Warren Hellman. He was a fantastically successful businessman and investor who liked to dress casually, ride horses, run 100-mile races, and play bluegrass banjo.

Here is how Warren was remembered by the Bay Citizen, the free newspaper he founded when he felt that local news coverage was in decline:

> A rugged iconoclast whose views on life rarely failed to surprise, Hellman was a lifelong Republican who supported labor unions, an investment banker whose greatest joy was playing songs of the working class in a bluegrass band, and a billionaire who wanted to pay more taxes and preferred the company of crooners and horsemen who shared his love of music and cross-country 'ride and tie' racing.

Warren Hellman was born in New York and raised in San Francisco. He graduated from the University of California, Berkeley and earned an MBA at Harvard Business School. After becoming the youngest director in the history of Lehman Brothers, Warren moved home to California and cofounded the private equity firm of Hellman & Friedman. Though he made a lot of money, he much preferred giving it away. Warren said that money was ''like manure: If you spread it around, good things will grow—and if you pile it up, it just smells bad.''

Among the many institutions Warren helped grow were the San Francisco Free Clinic, the Hellman Fellows Program at UC Berkeley, and his Hardly Strictly Bluegrass festival, where more than half a million people come each year to hear free concerts from top entertainers and from Warren's band, the Wronglers.

He served as chairman and trustee emeritus of The San Francisco Foundation; advisory board member of the Walter A. Haas School of Business at UC Berkeley; trustee of the UC Berkeley Foundation; trustee emeritus of The Brookings Institution; board member of the Committee on JOBS; member of the Board of Directors and Executive Committee of the Jewish Community Federation; chairman of the Jewish Community Endowment Fund; board member of the San Francisco Chamber of Commerce and the Bay Area Council; and chairman of Voice of Dance.

Warren also led many efforts to support civic initiatives in San Francisco, from the underground parking garage that saved two major museums in Golden Gate Park to the broad-based campaign to reform San Francisco's city employee pension system.

On behalf of the people of California, who have benefitted so much from Warren Hellman's great generosity and public sprit, I send my deepest gratitude and condolences to his wife, Patricia Christina ''Chris'' Hellman; son Marco ''Mick'' Hellman; daughters Frances Hellman, Judith Hellman, and Patricia Hellman Gibbs; his sister, Nancy Hellman Bechtle; and his 12 grandchildren. Warren's passing is a great loss to his family, his friends, and the city he loved and served so well.●

RECOGNIZING THE ANNENBERG RETREAT AT SUNNYLANDS

● Mrs. BOXER. Mr. President, this year the late Walter and Leonore Annenberg's legendary California estate, Sunnylands, will open its doors to the public as the Annenberg Retreat at Sunnylands. I ask my colleagues to join me in honoring the Annenbergs' remarkable legacy and saluting the new institution's noble goals.

Sunnylands was designed and built in the mid-1960s as the Annenbergs' desert home in Rancho Mirage. It served as their winter residence and as a tranquil retreat and meeting place for Presidents of the United States, U.S. Supreme Court Justices, scholars, historians, former diplomats, Governors, State legislators as well as bipartisan coalitions of the U.S. Senate and House of Representatives. Among many other notable guests, President Nixon wrote his 1974 State of the Union speech there, and Queen Elizabeth II and Prince Charles visited in 1983.

In 2001, the Annenberg Foundation Trust at Sunnylands was founded to continue Sunnylands' role as a conference center and retreat for national and international leaders to address the world's most pressing concerns. Throughout their lifetimes, Ambassador and Mrs. Annenberg hosted and sponsored a number of solution-driven retreats that fostered positive diplomatic, judicial, and legislative progress.

Now, the new Annenberg Retreat at Sunnylands will be available for the President of the United States and the Secretary of State to bring together world leaders to promote and facilitate peaceful international agreements; for the President and the Cabinet, the Supreme Court, and the bipartisan leadership of the Congress to meet to focus on ways to improve the functioning of the three branches of government; and for leaders of major social institutions, such as universities, colleges, public schools, charities, and government agencies, to meet and determine how these institutions might better serve the public good.

I invite all of my colleagues to join me in congratulating the Annenberg Retreat at Sunnylands for realizing the Annenbergs' dream of creating a world-class center that provides our leaders with an atmosphere to discuss vital issues, promote cooperation, and craft solutions for our Nation and the world.●

TRIBUTE TO LILY TOMLIN AND JANE WAGNER

● Mrs. BOXER. Mr. President, on March 16th, two of the Nation's great theatrical talents will be recognized when my friends Lily Tomlin and Jane Wagner are added to the Palm Springs Walk of Stars.

As we all know, Lily Tomlin is a dazzling star of stage, screen, and television. She first won the hearts of millions of Americans more than 40 years ago on ''Rowan and Martin's Laugh-In,'' where she created unforgettable characters such as the world famous telephone operator Ernestine and the precocious young child Edith Ann. Lily said of these characters, ''I don't necessarily admire them, but I do them all with love.'' From the beginning, audiences fell in love with Lily Tomlin.

In 1971, Lily began working on an Edith Ann comedy album with a brilliant, award-winning young playwright named Jane Wagner. They produced acclaimed hit recordings and television specials and went on to further triumphs on Broadway and in Hollywood.

It is fitting that Lily and Jane will be honored together on the Palm Springs Walk of Stars, not only because of their long personal and professional partnership, but because they have formed one of the most fruitful creative collaborations in the history of American performing arts. Over the past four decades, Jane Wagner has created unforgettable characters, and Lily has inhabited these characters and brought them fully to life.

Since 1985, much of their creative energy has focused on various productions of Jane's play ''The Search for Signs of Intelligent Life in the Universe''. Through this timeless yet dynamic work of art—with insight, humor, and love for all that makes us human—these two extraordinary artists have expanded both the bounds of performance art and our understanding of the human condition.

I have known Lily Tomlin and Jane Wagner for many years. I am pleased to call them my friends, and I will be honored to join the Palm Springs Walk of Stars next month in paying tribute to their tremendous contributions to the Palm Springs area and to American culture.●

TRIBUTE TO STEVEN D. GARBARINO

● Mr. CARDIN. Mr. President, I wish to take this opportunity to congratulate Mr. Steven D. Garbarino of Owings Mills, MD, on the completion of a highly successful 27-year career as a civilian employee within the Department of the Army, U.S. Army Corps of Engineers Baltimore District, on January 31, 2012. Mr. Garbarino's entire career was marked by his daily demonstration of the Army's values. His performance reflected a strong loyalty to the organization and its members; a selfless dedication to duty, his customers and the Corps' public service mission; and a no-nonsense ''can-do'' attitude built upon honor, integrity, superior competence, and the personal courage to strive for excellence in his job performance. I applaud his commitment to public service and recognize the sacrifices he has made for the good of our Nation. Mr. Garbarino highlights the importance of hard-working Federal workers who strive to keep us healthy, safe, informed, and free to enjoy the lifestyle that we, as Americans, have grown to appreciate and expect. He is a model Federal employee who readily deserves recognition for his distinguished career as a professional member of the U.S. Army Corps of Engineers.

As a project manager, Mr. Garbarino made significant personal efforts to become a subject matter expert on policy, procedures, and processes associated with the Civil Works Program and projects. This expertise led him to serve as a mentor to project team members and other Civil Works project managers.

Mr. Garbarino has also authored several environmental technical report/papers and made numerous presentations related to his work. Forums for these presentations have included numerous workshops, conferences, public meetings, televised interviews, radio talk shows, and the United Nations 1995 conference on environmental restoration. Over his career he has developed a strong public speaking presence and is recognized for his outstanding professional representation of the Corps.

I also want to thank Diane, Steve's wife of over 30 years, and their two

sons, Garret and Zachery. The families of outstanding Federal employees have to make sacrifices, too, as they share their loved ones with a job serving the American people. I know they join me in my best wishes to Steve for a happy and well-earned retirement.

Mr. President, it is my sincere pleasure to congratulate Mr. Garbarino on the occasion of his retirement. He was a highly valued employee of the Baltimore District and well deserves recognition in 2012 for his outstanding public service career as a distinguished member of the Federal workforce. He is an outstanding example of the Federal workforce who worked tirelessly day in and day out for the American people.●

REMEMBERING ROGER DOUGLAS KOTTER

● Mr. CRAPO. Mr. President, today I wish to honor the life of Roger Kotter, a husband, father, community leader, businessman, and exemplary Idahoan.

At the core of Roger Kotter's accomplishments were his dedication to family, strong sense of community, and his ability to connect with his customers. Roger served a mission for the Church of Jesus Christ of Latter-day Saints in Santiago, Chile, from 1966 to 1968, married his wife of 43 years, Karen, and graduated from Brigham Young University in 1971. After graduating, Roger moved back to Nampa and started working for Stone Lumber in 1972 and became part owner in 1980. Stone Lumber has been a staple of Nampa since 1906, and under the direction of Roger and Monte Schlerf, it has continued in the tradition of providing jobs and exceptional customer service. Roger also devoted decades of service and was involved in various organizations, including Nampa Exchange Club past president—Nampa Boys and Girls Club, Nampa Schools Foundation, Boy Scouts of America, and, through Stone Lumber, worked with Habitat for Humanity. Roger was active in supporting the local Hispanic community acting as a mentor and teaching English. He was also actively involved with his church and served in stake presidencies, bishoprics, and was most recently a counselor in the Boise Idaho Mission presidency. Roger has been recognized for his commendable skills through honors, such as his selection as Idaho Businessman of the Year in 2000.

I join Rogers's wife Karen; five children, Kristin, Jason, Brent, Matthew, and Amy; 12 grandchildren; father, James; 6 siblings; other family members; many friends; the Nampa community, and the numerous people he inspired in mourning his loss and expressing gratitude for his contribution. Roger Kotter will be missed, and his legacy of devotion to his family and community will not be forgotten.●

TRIBUTE TO REAR ADMIRAL KAREN A. FLAHERTY

● Mr. INOUYE. Mr. President, I rise today to recognize a great American and a true military visionary who has humbly served our country for close to 40 years in the Navy Nurse Corps, both Active and Reserve components: RADM Karen A. Flaherty. A native of Winsted, CT, she joined the U.S. Navy as a Nurse Corps candidate in July 1973. Upon graduation from Skidmore College, she attended Officer Indoctrination School in Newport, RI, in August 1974.

Admiral Flaherty's first assignment was Quantico Naval Hospital, where she served as a staff nurse and charge nurse of the Surgical Ward, Orthopedic Ward, and the Maximum Care Unit. Upon transfer to the Philadelphia Naval Medical Center in 1977, she assumed the duties as charge nurse for the General Surgery Unit and the Obstetrics and Gynecology Clinic. Admiral Flaherty reported for duty as the officer programs officer for Naval Recruiting Command, Navy Recruiting District New Jersey in 1979. She transitioned to the Naval Reserve in 1982.

Admiral Flaherty's subsequent reserve tours included assignments to numerous naval hospitals and fleet hospital commands. In her distinguished career she has served as commanding officer, Fleet Hospital, Fort Dix, executive officer, director of nursing services, officer-in-charge, and training officer. In February 1991, she was recalled to serve with Fleet Hospital 15, Al Jubail, Saudi Arabia, in support of Operation Desert Shield/Storm. She served as commanding officer of the OPNAV 093 Reserve Unit prior to assuming Flag duties as the Deputy Commander Force Integration National Capital Area and the deputy chief for health care operations at the Bureau of Medicine and Surgery. In each assignment, she excelled and overcame every challenge and was rewarded with greater responsibility and opportunities.

Admiral Flaherty has served at the Navy Bureau of Medicine and Surgery as the deputy surgeon general, deputy chief, wounded, ill, and injured, and the 22nd director of the Navy Nurse Corps. Her visionary leadership and executive management skills have played vital roles in forging new frontiers between the Department of Defense, Veterans Affairs, and the private sector to improve care for sailors, marines, veterans, and their families.

Admiral Flaherty received her master of science degree from the University of Pennsylvania and has held senior executive leadership positions at Thomas Jefferson University Hospital in Philadelphia, PA, St. Francis Hospital in Wilmington, DE, and the Philadelphia Veterans Affairs Medical Center in Philadelphia, PA.

Admiral Flaherty's career has encompassed the full spectrum of public, private, academic, and military service. Focusing on quality, access, and reliability of wounded warrior care, she is the embodiment of joint, interagency, academic, public, and private collaboration. Through far-reaching vision, dedication, and inspired leadership she improved health care operations across Navy Medicine and built relationships between Department of Veterans Affairs and Department of Defense Health Systems. Her sustained performance reflects greatly on herself, the Department of Defense, and the United States of America. I extend my deepest appreciation on behalf of a grateful nation for her dedicated military service. Rear Admiral Flaherty, on the occasion of your retirement, I congratulate and thank you for your service.●

REMEMBERING CHARLES M. PALLESEN, JR.

● Mr. NELSON of Nebraska. Mr. President, today I wish to pay tribute to a good friend who can quite aptly be called a gentleman and a scholar, as well as one very likeable person who touched the lives of many of my fellow Nebraskans. Charles M. ''Chuck'' Pallesen, Jr., passed away on November 26, 2011, at the age of 74.

First and foremost a loving husband and father, Chuck married his college sweetheart, Lorraine Sysel; and two sons, Mike and Ed, together with their families, blessed this union. He was also a former Boy Scout; a U.S. Army veteran who served in the Judge Advocate General's Corps; and a partner for more than 40 years in a successful law practice—Cline Williams Wright Johnson & Oldfather, L.L.P.—specializing in health care and business law.

Chuck was one of the most active people in civic and political matters that I have ever met. He was engaged in the Nebraska efforts of every Presidential campaign from John F. Kennedy to Barack Obama. He was a key adviser not only to me, but also to former Nebraska Governors and Senators Jim Exon and Bob Kerrey.

Yet Chuck was so much more than his résumé. A good friend of his, Gerry Finnegan, said recently that:

> Chuck was at his best, both professionally and politically, lodged between disagreeing parties coaxing them to resolve their conflict—a masterful mediator blessed with an innate sense of how much ground each adversary could give and how hard he could push for a resolution.

This ability, combined with an outgoing personality and a keen eye for details, made him invaluable to Senators Exon, Kerrey, and myself.

Always a very busy guy, Chuck and a colleague, former Judge Samuel Van Pelt, Jr., had been in the process of authoring a book about Senator Exon. Chuck spoke to me several times, both for and about his upcoming book. Those interviews were extremely enjoyable, and I looked forward to every opportunity to walk down memory lane and swap stories about ''Big Jim,''

one of the greatest Nebraskans to ever serve my home State. Chuck's untimely passing has made me look forward even more to reading his labor of love when it is published, and when I do, I will be remembering not only the great J. James Exon, but Charles Pallesen, Jr., as well—on every page and throughout every chapter.

In closing, Chuck Pallesen was a man who will be missed by all who knew him and remembered as an individual who served his community, State and country well. A true statesman, we are all the better for Chuck's countless contributions, his enthusiasm, his dedication, and most of all, his compassion. He was truly a giant among men.●

CATHOLIC SCHOOLS WEEK

● Mr. VITTER. Mr. President today, I would like to recognize and honor the valuable contributions of Catholic schools in educating our young people throughout our great Nation. This year from January 29 to February 5, we will celebrate Catholic Schools Week to recognize the exceptional work of Catholic education programs across the country.

Our Nation's Catholic schools have received international praise for academic excellence and have provided students with lessons that extend far beyond the classroom. These schools have continued to impart comprehensive curriculums that emphasize moral, intellectual, and physical development in young people.

In Louisiana, our Catholic schools maintain high academic standards, foster a healthy learning environment for students, and encourage family involvement in the ongoing education of children.

Today, more than two million students attend Catholic schools in the United States, and Catholic schools nationally graduate 99 percent of students with more than 97 percent pursuing college degrees.

The National Conference of Catholic Bishops stated, ''Education is one of the most important ways by which the Church fulfills its commitment to the dignity of the person and building of community. Community is central to education ministry, both as a necessary condition and an ardently desired goal. The educational efforts of the Church, therefore, must be directed to forming persons-in-community; for the education of the individual Christian is important not only to his solitary destiny, but also the destinies of the many communities in which he lives.''

This statement not only stresses the importance of education as part of the mission of the Catholic Church, but also the importance of community and schools in shaping our young people as they go out in to the world to become valuable members of society and their community.

This week, we recognize the students, their families, teachers, administrators, all of our parish leaders, and our communities for their efforts to support our Catholic schools and continued achievement towards the education of our young people.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT RELATIVE TO THE DEBT LIMIT, RECEIVED DURING ADJOURNMENT OF THE SENATE ON JANUARY 12, 2012—PM 36

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

THE WHITE HOUSE,
Washington, January 12, 2012.

Hon. JOSEPH R. BIDEN, Jr.,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Pursuant to section 3101A(a)(2)(A) of title 31, United States Code, I hereby certify that the debt subject to limit is within $100,000,000,000 of the limit in 31 U.S.C. 3101(b) and that further borrowing is required to meet existing commitments.

Sincerely,

BARACK OBAMA.

MESSAGE FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 5, 2011, the Secretary of the Senate, on January 18, 2012, during the adjournment of the Senate, received a message from the House of Representatives announcing that the House has agreed to the following resolutions:

H. Res. 511. Resolution that Paul D. Irving of the State of Florida, be, and is hereby, chosen Sergeant-at-Arms of the House of Representatives.

H. Res. 513. Resolution that the Clerk of the House inform the Senate that a quorum of the House is present and that the House is ready to proceed with business.

The message also announced that pursuant to House Resolution 512, the Speaker appoints the following Members of the House of Representatives to join a committee on the part of the Senate to notify the President of the United States that a quorum of each House has assembled and that Congress is ready to receive any communication that he may be pleased to make: Mr. CANTOR of Virginia and Ms. PELOSI of California.

MESSAGE FROM THE HOUSE

At 2:03 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following joint resolution, without amendment:

H.J. Res. 98. Joint resolution relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on January 12, 2012.

The message also announced the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 96. Concurrent resolution providing for a joint session of Congress to receive a message from the President.

The message further announced that pursuant to section 214(a) of the Help America Vote Act of 2002 (42 U.S.C. 15344), the Minority Leader appoints the following member on the part of the House of Representatives to the Election Assistance Commission Board of Advisors: Mr. Gregory T. Moore of Washington, DC.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

H.R. 440. An act to provide for the establishment of the Special Envoy to Promote Religious Freedom of Religious Minorities in the Near East and South Central Asia.

H.R. 3012. An act to amend the Immigration and Nationality Act to eliminate the per-country numerical limitation for employment-based immigrants, to increase the per-country numerical limitation for family-sponsored immigrants, and for other purposes.

The following joint resolutions were read the first and second times by unanimous consent, and placed on the calendar:

S.J. Res. 34. Joint resolution relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on January 12, 2012

H.J. Res. 98. Joint resolution relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on January 12, 2012.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on December 20, 2011, she had presented to the President of the United States the following enrolled bill:

S. 278. An act to provide for the exchange of certain land located in the Arapaho-Roosevelt National Forests in the State of Colorado, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with

accompanying papers, reports, and documents, and were referred as indicated:

EC–4401. A communication from the Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, transmittal number: DDTC 11–137, of the proposed sale or export of defense articles and/or defense services to a Middle East country regarding any possible affects such a sale might have relating to Israel's Qualitative Military Edge over military threats to Israel; to the Committee on Armed Services.

EC–4402. A communication from the Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, transmittal number: DDTC 11–124, of the proposed sale or export of defense articles and/or defense services to a Middle East country regarding any possible affects such a sale might have relating to Israel's Qualitative Military Edge over military threats to Israel; to the Committee on Armed Services.

EC–4403. A communication from the Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, transmittal number: DDTC 11–120, of the proposed sale or export of defense articles and/or defense services to a Middle East country regarding any possible affects such a sale might have relating to Israel's Qualitative Military Edge over military threats to Israel; to the Committee on Armed Services.

EC–4404. A communication from the Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, transmittal number: DDTC 11–134, of the proposed sale or export of defense articles and/or defense services to a Middle East country regarding any possible affects such a sale might have relating to Israel's Qualitative Military Edge over military threats to Israel; to the Committee on Armed Services.

EC–4405. A communication from the Acting Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, Selected Acquisition Reports (SARs) for the quarter ending September 30, 2011 (DCN OSS 2011–1935); to the Committee on Armed Services.

EC–4406. A communication from the Secretary of Defense, transmitting a report on the approved retirement of Lieutenant General Ricky Lynch, United States Army, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–4407. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of General Peter W. Chiarelli, United States Army, and his advancement to the grade of general on the retired list; to the Committee on Armed Services.

EC–4408. A communication from the Acting Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Lieutenant General Edgar E. Stanton III, United States Army, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–4409. A communication from the Acting Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Lieutenant General Carroll F. Pollett, United States Army, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–4410. A communication from the Acting Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Vice Admiral Michael C. Vitale, United States Navy, and his advancement to the grade of vice admiral on the retired list; to the Committee on Armed Services.

EC–4411. A communication from the Acting Under Secretary of Defense (Personnel and Readiness), transmitting the report of an officer authorized to wear the insignia of the grade of major general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

EC–4412. A communication from the Acting Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Lieutenant General Jeffrey A. Remington, United States Air Force, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–4413. A communication from the Acting Under Secretary of Defense (Personnel and Readiness), Department of Defense, transmitting, pursuant to law, a report relative to the Foreign Language Skill Proficiency Bonus program; to the Committee on Armed Services.

EC–4414. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Difenoconazole; Pesticide Tolerances'' (FRL No. 9328–6) received during adjournment of the Senate in the Office of the President of the Senate on December 28, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4415. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Cyhalofop-butyl; Pesticide Tolerances'' (FRL No. 9330–1) received during adjournment of the Senate in the Office of the President of the Senate on December 28, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4416. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Tepraloxydim; Pesticide Tolerances'' (FRL No. 9330–2) received during adjournment of the Senate in the Office of the President of the Senate on December 28, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4417. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards'' (FRL No. 9614–4) received during adjournment of the Senate in the Office of the President of the Senate on December 28, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4418. A communication from the Acting Director of the Policy Issuances Division, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Classes of Poultry'' (RIN0583–AC83) received during adjournment of the Senate in the Office of the President of the Senate on December 21, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4419. A communication from the Secretary of the Commission, Division of Clearing and Risk, Commodity Futures Trading Commission, transmitting, pursuant to law, the report of a rule entitled ''Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions'' (RIN3038–AC79) received during adjournment of the Senate in the Office of the President of the Senate on December 19, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4420. A communication from the Secretary of the Commission, Division of Market Oversight, Commodity Futures Trading Commission, transmitting, pursuant to law, the report of a rule entitled ''Registration of Foreign Boards of Trade'' (RIN3038–AD19) received during adjournment of the Senate in the Office of the President of the Senate on December 19, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4421. A communication from the Chief Counsel of the Fiscal Service, Bureau of Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''United States Savings Bonds, Series EE and I'' (31 CFR Parts 351, 359, and 363) received during adjournment of the Senate in the Office of the President of the Senate on December 30, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–4422. A communication from the Deputy Secretary, Division of Trading and Markets, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Temporary Registration as a Municipal Advisor; Required Amendments; and withdrawal from temporary registration'' (RIN3235–AK69) received during adjournment of the Senate in the Office of the President of the Senate on December 27, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–4423. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to the Republic of Korea; to the Committee on Banking, Housing, and Urban Affairs.

EC–4424. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to the Western Balkans that was declared in Executive Order 13219 of June 26, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–4425. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to North Korea that was declared in Executive Order 13466 of June 26, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–4426. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the Financial Stability Oversight Council's report relative to prompt corrective action; to the Committee on Banking, Housing, and Urban Affairs.

EC–4427. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report on the continuation of the national emergency that was originally declared in Executive Order 13405 of June 16, 2006, with respect to Belarus; to the Committee on Banking, Housing, and Urban Affairs.

EC–4428. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' ((44 CFR Part 64) (Docket No. FEMA–2011–0002)) received during adjournment of the Senate in the Office of the President of the Senate on December 21, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–4429. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; State of New

Jersey; Regional Haze State Implementation Plan'' (FRL No. 9611–2) received during adjournment of the Senate in the Office of the President of the Senate on December 28, 2011; to the Committee on Environment and Public Works.

EC–4430. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; California; Determinations of Failure to Attain the One-Hour Ozone Standard'' (FRL No. 9612–8) received during adjournment of the Senate in the Office of the President of the Senate on December 28, 2011; to the Committee on Environment and Public Works.

EC–4431. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emissions Standard for Hazardous Air Pollutants From Secondary Lead Smelting'' (FRL No. 9610–9) received during adjournment of the Senate in the Office of the President of the Senate on December 28, 2011; to the Committee on Environment and Public Works.

EC–4432. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; State of Kansas: Regional Haze'' (FRL No. 9611–3) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4433. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Oregon: New Source Review/Prevention of Significant Deteriorations Rule Revisions and Air Quality Permit Streamlining Rule Revisions'' (FRL No. 9494–9) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4434. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans and Designation of Area for Air Quality Planning Purposes; Ohio and Indiana; Redesignation of the Ohio and Indiana Portions of the Cincinnati-Hamilton 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment'' (FRL No. 9610–3) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4435. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Prepared Feeds Manufacturing; Amendments'' (FRL No. 9610–2) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4436. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone'' (FRL No. 9609–9) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4437. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; West Virginia; revised Motor Vehicle Emission Budgets for the Charleston, Huntington, Parkersburg, Weirton, and Wheeling 8-Hour Ozone Maintenance Areas; correction'' (FRL No. 9609–1) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4438. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Oklahoma; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determinations'' (FRL No. 9608–4) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4439. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to Final Response to Petition From New Jersey Regarding SO2 Emissions From the Portland Generating Station'' (FRL No. 9609–4) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4440. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Delaware; Adhesives and Sealants Rule'' (FRL No. 9609–2) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4441. A communication from the Chief of Consultation, Recovery, HCP and State Grants, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Reinstatement of Listing Protections for the Preble's Meadow Jumping Mouse'' (RIN1018–AX93) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4442. A communication from the Biologist, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Removal of the Concho Water Snake From the Federal List of Endangered and Threatened Wildlife Removal of Designated Critical Habitat'' (RIN1018–AU97) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4443. A communication from the Chief of Permits and Regulations, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Permits; States Delegated Falconry Permitting Authority; Technical Corrections to the Regulations'' (RIN1018–AX98) received during adjournment of the Senate in the Office of the President of the Senate on December 20, 2011; to the Committee on Environment and Public Works.

EC–4444. A communication from the Secretary of the Interior, transmitting, pursuant to law, a legislative proposal relative to the Migratory Bird Hunting and Conservation Stamp Act to provide for a price increase for the Migratory Bird Hunting and Conservation Stamp, popularly known as the Duck Stamp; to the Committee on Environment and Public Works.

EC–4445. A communication from the Director of the Regulatory Review Group, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Highly Erodible Land and Wetland Conservation'' (RIN0560–AH97) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Environment and Public Works.

EC–4446. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Employee Plans Determination Letter Program Changes'' (Announcement 2011–82) received during adjournment of the Senate in the Office of the President of the Senate on December 21, 2011; to the Committee on Finance.

EC–4447. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Modification of Revenue Ruling 2011–1'' (Notice 2012–6) received during adjournment of the Senate in the Office of the President of the Senate on December 21, 2011; to the Committee on Finance.

EC–4448. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—January 2012'' (Rev. Rul. 2012–2) received during adjournment of the Senate in the Office of the President of the Senate on December 21, 2011; to the Committee on Finance.

EC–4449. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 482: Methods to Determine Taxable Income in Connection with a Cost Sharing Arrangement'' (RIN1545–BI46) received during adjournment of the Senate in the Office of the President of the Senate on December 21, 2011; to the Committee on Finance.

EC–4450. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Use of Differential Income Streams as a Consideration in Assessing the Best Method'' ((RIN1545–BK72) (TD 9569)) received during adjournment of the Senate in the Office of the President of the Senate on December 21, 2011; to the Committee on Finance.

EC–4451. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Update of Weighted Average Interest Rates, Yield Curves, and Segment Rates'' (Notice 2011–100) received during adjournment of the Senate in the Office of the President of the Senate on December 18, 2011; to the Committee on Finance.

EC–4452. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the

Treasury, transmitting, pursuant to law, the report of a rule entitled ''2011 Cumulative List of Changes in Plan Qualifications Requirements'' (Notice 2011–97) received during adjournment of the Senate in the Office of the President of the Senate on December 18, 2011; to the Committee on Finance.

EC–4453. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Reporting of Specified Foreign Financial Assets'' ((RIN1545–BK17) (TD 9567)) received during adjournment of the Senate in the Office of the President of the Senate on December 18, 2011; to the Committee on Finance.

EC–4454. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Corporate Reorganizations; Guidance on the Measurement of Continuity of Interest'' ((RIN1545–BG15) (TD 9565)) received during adjournment of the Senate in the Office of the President of the Senate on December 18, 2011; to the Committee on Finance.

EC–4455. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tax Return Preparer Penalties Under Section 6695'' ((RIN1545–BK16) (TD 9570)) received during adjournment of the Senate in the Office of the President of the Senate on December 18, 2011; to the Committee on Finance.

EC–4456. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance Regarding Foreign Base Company Sales Income'' ((RIN1545–BI45) (TD 9563)) received during adjournment of the Senate in the Office of the President of the Senate on December 18, 2011; to the Committee on Finance.

EC–4457. A communication from the Senior Advisor, Office of Regulations, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Revisions to Rules of Conduct and Standards of Responsibility for Representative'' (RIN0960–AH32) received during adjournment of the Senate in the Office of the President of the Senate on December 27, 2011; to the Committee on Finance.

EC–4458. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, an annual report on the Child Support Enforcement Program for fiscal year 2009; to the Committee on Finance.

EC–4459. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Relief for IRA Owners Subject to Certain Broker Agreements'' (Announcement 2011–81) received during adjournment of the Senate in the Office of the President of the Senate on December 18, 2011; to the Committee on Finance.

EC–4460. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration's Competitive Sourcing Report for fiscal year 2011; to the Committee on Finance.

EC–4461. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Ronald Andrew Mayo and Leslie Archer Mayo v. Commissioner, 136 T.C. 81 (2011)'' (AOD–2011–06) received during adjournment of the Senate in the Office of the President of the Senate on December 18, 2011; to the Committee on Finance.

EC–4462. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2011–0202—2011–0226); to the Committee on Foreign Relations.

EC–4463. A communication from the Chairman of the Joint Chiefs of Staff, relative to the need for implementing improvements to the current consultation and notifications processes for Foreign Military Sales, Direct Commercial Sales, and changes to U.S. export controls; to the Committee on Foreign Relations.

EC–4464. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to proposed amendments to parts 120, 122, 126, 127, and 129 of the International Traffic in Arms Regulations (ITAR); to the Committee on Foreign Relations.

EC–4465. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the Chemical Weapons Convention and the Australia Group; to the Committee on Foreign Relations.

EC–4466. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to a proposed revision of the U.S. Munitions List Category XX in part 121 of the International Traffic in Arms Regulations (ITAR); to the Committee on Foreign Relations.

EC–4467. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to a proposed revision of the U.S. Munitions List Category VI in part 121 of the International Traffic in Arms Regulations (ITAR); to the Committee on Foreign Relations.

EC–4468. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to U.S. military personnel and U.S. civilian contractors involved in the anti-narcotics campaign in Colombia (DCN OSS 2011–1936); to the Committee on Foreign Relations.

EC–4469. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers from the Pantex Plant in Amarillo, Texas, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–4470. A communication from the Inspector General, Department of Health and Human Services, transmitting, pursuant to law, a report entitled ''Community Living Assistance Services and Supports Program: 2011 Report to Congress''; to the Committee on Health, Education, Labor, and Pensions.

EC–4471. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Report to Congress on the Head Start Designation Renewal System''; to the Committee on Health, Education, Labor, and Pensions.

EC–4472. A communication from the Chief of the Branch of Policy, Regulations and Procedures Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels'' (RIN1240–AA02) received during adjournment of the Senate in the Office of the President of the Senate on December 30, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–4473. A communication from the Deputy Secretary, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Mine Safety Disclosure'' (RIN3235–AK83) received during adjournment of the Senate in the Office of the President of the Senate on December 27, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–4474. A communication from the Executive Secretary, National Labor Relations Board, transmitting, pursuant to law, the report of a rule entitled ''Representation-Case Procedures'' (RIN3142–AA08) received during adjournment of the Senate in the Office of the President of the Senate on December 27, 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–4475. A communication from the Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2010–005, Updated Financial Accounting Standards Board of Accounting References'' ((RIN9000–AM00) (FAC 2005–55)) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4476. A communication from the Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Technical Amendments'' (FAC 2005–55) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4477. A communication from the Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2005–55, Small Entity Compliance Guide'' (FAC 2005–55) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4478. A communication from the Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2005–55; Introduction'' (FAC 2005–55) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4479. A communication from the Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2008–032, Preventing Abuse of Interagency Contracts'' ((RIN9000–AL69) (FAC 2005–55)) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4480. A communication from the Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2010–016, Public Access to the

Federal Awardee Performance and Integrity Information System'' ((RIN9000–AL94) (FAC 2005–55)) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4481. A communication from the Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2009–043, Time-and-Materials and Labor-Hour Contracts for Commercial Items'' ((RIN9000–AL74) (FAC 2005–55)) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4482. A communication from the Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2005–037, Brand-Name Specifications'' ((RIN9000–AK55) (FAC 2005–55)) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4483. A communication from the Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Case 2011–021, Transition to the System for Award Management (SAM)'' ((RIN9000–AM14) (FAC 2005–55)) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4484. A communication from the General Counsel, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a rule entitled ''Cost Accounting Standards Pension Harmonization'' (48 CFR Part 9904) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4485. A communication from the General Counsel, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a rule entitled ''Cost Accounting Standards Applicability Threshold'' (48 CFR Parts 9901 and 9903) received during adjournment of the Senate in the Office of the President of the Senate on January 3, 2012; to the Committee on Homeland Security and Governmental Affairs.

EC–4486. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled, ''Audit of the District of Columbia Lottery and Charitable Games Control Board From Fiscal Year (FY) 2007 to FY 2009''; to the Committee on Homeland Security and Governmental Affairs.

EC–4487. A communication from the Federal Co-Chair, Appalachian Regional Commission, transmitting, pursuant to law, the Commission's Semiannual Report of the Inspector General for the period from April 1, 2011 through September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4488. A communication from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, a report entitled ''Performance and Accountability Report Fiscal Year 2011''; to the Committee on Homeland Security and Governmental Affairs.

EC–4489. A communication from the Administrator of the Small Business Administration, transmitting, pursuant to law, the Semiannual Report from the Office of the Inspector General for the period from April 1, 2011 through September 30, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4490. A communication from the Administrator, Transportation Security Administration, Department of Homeland Security, transmitting, pursuant to law, a report entitled ''2011 Sector Critical Infrastructure Protection Annual Report for the Transportation Systems Sector''; to the Committee on Homeland Security and Governmental Affairs.

EC–4491. A communication from the Administrator, Transportation Security Administration, Department of Homeland Security, transmitting, pursuant to law, a report entitled ''2011 Sector Critical Infrastructure Protection Annual Report for the Postal and Shipping Sector''; to the Committee on Homeland Security and Governmental Affairs.

REPORTS OF COMMITTEES DURING ADJOURNMENT

Under the authority of the order of the Senate of December 17, 2011, the following reports of committees were submitted on January 13, 2012:

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 114. A bill to authorize the Secretary of the Interior to enter into a cooperative agreement for a park headquarters at San Antonio Missions National Historical Park, to expand the boundary of the Park, to conduct a study of potential land acquisitions, and for other purposes (Rept. No. 112–103).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

S. 140. A bill to designate as wilderness certain land and inland water within the Sleeping Bear Dunes National Lakeshore in the State of Michigan, and for other purposes (Rept. No. 112–104).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with amendments:

S. 247. A bill to establish the Harriet Tubman National Historical Park in Auburn, New York, and the Harriet Tubman Underground Railroad National Historical Park in Caroline, Dorchester, and Talbot Counties, Maryland, and for other purposes (Rept. No. 112–105).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment:

S. 264. A bill to direct the Secretary of the Interior to convey to the State of Mississippi 2 parcels of surplus land within the boundary of the Natchez Trace Parkway, and for other purposes (Rept. No. 112–106).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

S. 302. A bill to authorize the Secretary of the Interior to issue right-of-way permits for a natural gas transmission pipeline in nonwilderness areas within the boundary of Denali National Park, and for other purposes (Rept. No. 112–107).

S. 322. A bill to expand the Alpine Lakes Wilderness in the State of Washington, to designate the Middle Fork Snoqualmie River and Pratt River as wild and scenic rivers, and for other purposes (Rept. No. 112–108).

S. 323. A bill to establish the First State National Historical Park in the State of Delaware, and for other purposes (Rept. No. 112–109).

S. 499. A bill to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project (Rept. No. 112–110).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with amendments:

S. 500. A bill to direct the Secretary of the Interior to convey certain Federal features of the electric distribution system to the South Utah Valley Electric Service District, and for other purposes (Rept. No. 112–111).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 526. A bill to provide for the conveyance of certain Bureau of Land Management land in Mohave County, Arizona, to the Arizona Game and Fish Commission, for use as a public shooting range (Rept. No. 112–112).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

S. 667. A bill to establish the Rio Grande del Norte National Conservation Area in the State of New Mexico, and for other purposes (Rept. No. 112–113).

S. 765. A bill to modify the boundary of the Oregon Caves National Monument, and for other purposes (Rept. No. 112–114).

S. 766. A bill to provide for the designation of the Devil's Staircase Wilderness Area in the State of Oregon, to designate segments of Wasson and Franklin Creeks in the State of Oregon as wild rivers, and for other purposes (Rept. No. 112–115).

S. 779. A bill to authorize the acquisition and protection of nationally significant battlefields and associated sites of the Revolutionary War and the War of 1812 under the American Battlefield Protection Program (Rept. No. 112–116).

S. 802. A bill to authorize the Secretary of the Interior to allow the storage and conveyance of nonproject water at the Norman project in Oklahoma, and for other purposes (Rept. No. 112–117).

S. 883. A bill to authorize National Mall Liberty Fund D.C. to establish a memorial on Federal land in the District of Columbia to honor free persons and slaves who fought for independence, liberty, and justice for all during the American Revolution (Rept. No. 112–118).

S. 888. A bill to amend the Wild and Scenic Rivers Act to designate a segment of Illabot Creek in Skagit County, Washington, as a component of the National Wild and Scenic Rivers System (Rept. No. 112–119).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with amendments:

S. 896. A bill to amend the Public Land Corps Act of 1993 to expand the authorization of the Secretaries of Agriculture, Commerce, and the Interior to provide service opportunities for young Americans; help restore the nation's natural, cultural, historic, archaeological, recreational and scenic resources; train a new generation of public land managers and enthusiasts; and promote the value of public service (Rept. No. 112–120).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

S. 970. A bill to designate additional segments and tributaries of White Clay Creek, in the States of Delaware and Pennsylvania, as a component of the National Wild and Scenic Rivers System (Rept. No. 112–121).

S. 1047. A bill to amend the Reclamation Projects Authorization and Adjustment of 1992 to require the Secretary of the Interior, acting through the Bureau of Reclamation, to take actions to improve environmental conditions in the vicinity of the Leadville Mine Drainage Tunnel in Lake County, Colorado, and for other purposes (Rept. No. 112–122).

S. 1090. A bill to designate as wilderness certain public land in the Cherokee National Forest in the State of Tennessee, and for other purposes (Rept. No. 112–123).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources:

Report to accompany S. 1134, A bill to authorize the St. Croix River Crossing Project with appropriate mitigation measures to promote river values (Rept. No. 112–124).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1325. A bill to direct the Secretary of the Interior to study the suitability and feasibility of designating sites in the Lower Mississippi River Area in the State of Louisiana as a unit of the National Park System, and for other purposes (Rept. No. 112–125).

S. 1344. A bill to direct the Secretary of Agriculture to take immediate action to recover ecologically and economically from a catastrophic wildfire in the State of Arizona, and for other purposes (Rept. No. 112–126).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

S. 1421. A bill to authorize the Peace Corps Commemorative Foundation to establish a commemorative work in the District of Columbia and its environs, and for other purposes (Rept. No. 112–127).

S. 1478. A bill to modify the boundary of the Minuteman Missile National Historic Site in the State of South Dakota, and for other purposes (Rept. No. 112–128).

H.R. 441. To authorize the Secretary of the Interior to issue permits for microhydro projects in nonwilderness areas within the boundaries of Denali National Park and Preserve, to acquire land for Denali National Park and Preserve from Doyon Tourism, Inc., and for other purposes (Rept. No. 112–129).

H.R. 461. A bill to direct the Secretary of the Interior to convey certain Federal features of the electric distribution system to the South Utah Valley Electric Service District, and for other purposes (Rept. No. 112–130).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DURBIN (for himself and Mr. HARKIN):

S. 2032. A bill to amend the Higher Education Act of 1965 regarding proprietary institutions of higher education in order to protect students and taxpayers; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEVIN:

S. 2033. A bill to amend the Internal Revenue Code of 1986 to end the costly derivatives blended rate loophole, and for other purposes; to the Committee on Finance.

By Mr. MCCONNELL (for himself, Mrs. HUTCHISON, Mr. LEE, Mr. HATCH, Mr. BARRASSO, Mr. CORNYN, Ms. AYOTTE, Mr. MORAN, Mr. ALEXANDER, Mr. CRAPO, Mr. RUBIO, Mr. COATS, Mr. ENZI, Mr. SESSIONS, Mr. BURR, Mr. VITTER, Mr. ISAKSON, Mr. BLUNT, Mr. BOOZMAN, Mr. KYL, Mr. MCCAIN, Mr. SHELBY, Mr. WICKER, Mr. CHAMBLISS, Mr. LUGAR, Mr. RISCH, Mr. ROBERTS, Mr. INHOFE, Mr. GRASSLEY, Mr. KIRK, and Mr. GRAHAM):

S.J. Res. 34. A joint resolution relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on January 12, 2012; placed on the calendar.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. GILLIBRAND:

S. Res. 352. A resolution expressing the sense of the Senate that the United States should work with the Government of Haiti to address gender-based violence against women and children; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 20

At the request of Mr. HATCH, the name of the Senator from Arkansas (Mr. BOOZMAN) was added as a cosponsor of S. 20, a bill to protect American job creation by striking the job-killing Federal employer mandate.

S. 296

At the request of Ms. KLOBUCHAR, the names of the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 296, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide the Food and Drug Administration with improved capacity to prevent drug shortages.

S. 381

At the request of Mr. TESTER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 381, a bill to amend the Arms Export Control Act to provide that certain firearms listed as curios or relics may be imported into the United States by a licensed importer without obtaining authorization from the Department of State or the Department of Defense, and for other purposes.

S. 412

At the request of Mr. LEVIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 412, a bill to ensure that amounts credited to the Harbor Maintenance Trust Fund are used for harbor maintenance.

S. 418

At the request of Mr. HARKIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 418, a bill to award a Congressional Gold Medal to the World War II members of the Civil Air Patrol.

S. 506

At the request of Mr. CASEY, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 506, a bill to amend the Elementary and Secondary Education Act of 1965 to address and take action to prevent bullying and harassment of students.

S. 547

At the request of Mrs. MURRAY, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 547, a bill to direct the Secretary of Education to establish an award program recognizing excellence exhibited by public school system employees providing services to students in pre-kindergarten through higher education.

S. 567

At the request of Ms. COLLINS, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 567, a bill to amend the small, rural school achievement program and the rural and low-income school program under part B of title VI of the Elementary and Secondary Education Act of 1965.

S. 634

At the request of Mr. SCHUMER, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 634, a bill to ensure that the courts of the United States may provide an impartial forum for claims brought by United States citizens and others against any railroad organized as a separate legal entity, arising from the deportation of United States citizens and others to Nazi concentration camps on trains owned or operated by such railroad, and by the heirs and survivors of such persons.

S. 665

At the request of Mr. BROWN of Ohio, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 665, a bill to promote industry growth and competitiveness and to improve worker training, retention, and advancement, and for other purposes.

S. 752

At the request of Mrs. FEINSTEIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 752, a bill to establish a comprehensive interagency response to reduce lung cancer mortality in a timely manner.

S. 829

At the request of Mr. CARDIN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 829, a bill to amend title XVIII of the Social Security Act to repeal the Medicare outpatient rehabilitation therapy caps.

S. 968

At the request of Mr. HATCH, his name and the names of the Senator from Missouri (Mr. BLUNT), the Senator from Florida (Mr. RUBIO), the Senator from Arkansas (Mr. BOOZMAN), the Senator from New Hampshire (Ms. AYOTTE) and the Senator from Idaho (Mr. RISCH) were withdrawn as cosponsors of S. 968, a bill to prevent online threats to economic creativity and theft of intellectual property, and for other purposes.

At the request of Mr. BENNET, his name was withdrawn as a cosponsor of S. 968, supra.

S. 1018

At the request of Mr. KERRY, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor

of S. 1018, a bill to amend title 10, United States Code, and the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 to provide for implementation of additional recommendations of the Defense Task Force on Sexual Assault in the Military Services.

S. 1039

At the request of Mr. CARDIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1039, a bill to impose sanctions on persons responsible for the detention, abuse, or death of Sergei Magnitsky, for the conspiracy to defraud the Russian Federation of taxes on corporate profits through fraudulent transactions and lawsuits against Hermitage, and for other gross violations of human rights in the Russian Federation, and for other purposes.

S. 1241

At the request of Mr. RUBIO, the name of the Senator from North Dakota (Mr. HOEVEN) was added as a cosponsor of S. 1241, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 1245

At the request of Mr. BLUNT, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 1245, a bill to provide for the establishment of the Special Envoy to Promote Religious Freedom of Religious Minorities in the Near East and South Central Asia.

S. 1299

At the request of Mr. MORAN, the names of the Senator from Iowa (Mr. GRASSLEY), the Senator from Hawaii (Mr. AKAKA) and the Senator from Nebraska (Mr. JOHANNS) were added as cosponsors of S. 1299, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the establishment of Lions Clubs International.

S. 1355

At the request of Mrs. FEINSTEIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1355, a bill to regulate political robocalls.

S. 1591

At the request of Mrs. GILLIBRAND, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 1591, a bill to award a Congressional Gold Medal to Raoul Wallenberg, in recognition of his achievements and heroic actions during the Holocaust.

S. 1597

At the request of Mr. BROWN of Ohio, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1597, a bill to provide assistance for the modernization, renovation, and repair of elementary school and secondary school buildings in public school districts and community colleges across the United States in order to support the achievement of improved educational outcomes in those schools, and for other purposes.

S. 1607

At the request of Mr. BLUMENTHAL, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 1607, a bill to include shellfish to the list of crops eligible for the noninsured crop disaster assistance program and the emergency assistance for livestock program of the Department of Agriculture.

S. 1680

At the request of Mr. CONRAD, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 1680, a bill to amend title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health care providers under the Medicare program, and for other purposes.

S. 1707

At the request of Mr. BURR, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1707, a bill to amend title 38, United States Code, to clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes.

S. 1802

At the request of Mr. UDALL of Colorado, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1802, a bill to authorize the Secretary of the Interior to carry out programs and activities that connect Americans, especially children, youth, and families, with the outdoors.

S. 1816

At the request of Mr. LAUTENBERG, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1816, a bill to amend title 23, United States Code, to modify a provision relating to minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.

S. 1845

At the request of Mr. WYDEN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1845, a bill to amend the Internal Revenue Code of 1986 to provide for an energy investment credit for energy storage property connected to the grid, and for other purposes.

S. 1863

At the request of Mr. MENENDEZ, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1863, a bill to amend the Internal Revenue Code of 1986 to encourage alternative energy investments and job creation.

S. 1896

At the request of Ms. AYOTTE, the name of the Senator from Ohio (Mr. PORTMAN) was added as a cosponsor of S. 1896, a bill to eliminate the automatic inflation increases for discretionary programs built into the baseline projections and require budget estimates to be compared with the prior year's level.

S. 1925

At the request of Mr. LEAHY, the names of the Senator from Maryland (Mr. CARDIN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Michigan (Mr. LEVIN) and the Senator from Vermont (Mr. SANDERS) were added as cosponsors of S. 1925, a bill to reauthorize the Violence Against Women Act of 1994.

S. 1930

At the request of Mr. JOHANNS, his name was added as a cosponsor of S. 1930, a bill to prohibit earmarks.

At the request of Mr. TOOMEY, the name of the Senator from Ohio (Mr. PORTMAN) was added as a cosponsor of S. 1930, supra.

S. 1941

At the request of Mrs. HUTCHISON, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1941, a bill to amend the securities laws to establish certain thresholds for shareholder registration, and for other purposes.

S. 1963

At the request of Mr. ISAKSON, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of S. 1963, a bill to revoke the charters for the Federal National Mortgage Corporation and the Federal Home Loan Mortgage Corporation upon resolution of their obligations, to create a new Mortgage Finance Agency for the securitization of single family and multifamily mortgages, and for other purposes.

S. 1994

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1994, a bill to prohibit deceptive practices in Federal elections.

S. 2003

At the request of Mrs. FEINSTEIN, the names of the Senator from California (Mrs. BOXER), the Senator from Maryland (Ms. MIKULSKI) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 2003, a bill to clarify that an authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States and for other purposes.

S. 2006

At the request of Mr. LAUTENBERG, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 2006, a bill to amend the Surface Transportation and Uniform Relocation Assistance Act of 1987 to authorize the Secretary of Transportation to permit Federal regulation and review of tolls and toll increases on certain surface transportation facilities, and for other purposes.

S. 2010

At the request of Mr. KERRY, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 2010, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S.J. RES. 29

At the request of Mr. UDALL of New Mexico, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S.J. Res. 29, a joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

S. RES. 232

At the request of Mr. MENENDEZ, the name of the Senator from Wisconsin (Mr. JOHNSON) was added as a cosponsor of S. Res. 232, a resolution recognizing the continued persecution of Falun Gong practitioners in China on the 12th anniversary of the campaign by the Chinese Communist Party to suppress the Falun Gong movement, recognizing the Tuidang movement whereby Chinese citizens renounce their ties to the Chinese Communist Party and its affiliates, and calling for an immediate end to the campaign to persecute Falun Gong practitioners.

S. RES. 310

At the request of Ms. COLLINS, the name of the Senator from Massachusetts (Mr. BROWN) was added as a cosponsor of S. Res. 310, a resolution designating 2012 as the ''Year of the Girl'' and Congratulating Girl Scouts of the USA on its 100th anniversary.

At the request of Ms. MIKULSKI, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. Res. 310, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself and Mr. HARKIN):

S. 2032. A bill to amend the Higher Education Act of 1965 regarding proprietary institutions of higher education in order to protect students and taxpayers; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2032

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting Our Students and Taxpayers Act'' or ''POST Act''.

SEC. 2. 85/15 RULE.

(a) IN GENERAL.—Section 102(b) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking ''and'' after the semicolon;

(B) in subparagraph (E), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(F) meets the requirements of paragraph (2).'';

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

''(2) REVENUE SOURCES.—

''(A) IN GENERAL.—In order to qualify as a proprietary institution of higher education under this subsection, an institution shall derive not less than 15 percent of the institution's revenues from sources other than Federal funds, as calculated in accordance with subparagraphs (B) and (C).

''(B) FEDERAL FUNDS.—In this paragraph, the term 'Federal funds' means any Federal financial assistance provided, under this Act or any other Federal law, through a grant, contract, subsidy, loan, guarantee, insurance, or other means to a proprietary institution, including Federal financial assistance that is disbursed or delivered to an institution or on behalf of a student or to a student to be used to attend the institution, except that such term shall not include any monthly housing stipend provided under the Post-9/11 Veterans Educational Assistance Program under chapter 33 of title 38, United States Code.

''(C) IMPLEMENTATION OF NON-FEDERAL REVENUE REQUIREMENT.—In making calculations under subparagraph (A), an institution of higher education shall—

''(i) use the cash basis of accounting;

''(ii) consider as revenue only those funds generated by the institution from—

''(I) tuition, fees, and other institutional charges for students enrolled in programs eligible for assistance under title IV;

''(II) activities conducted by the institution that are necessary for the education and training of the institution's students, if such activities are—

''(aa) conducted on campus or at a facility under the control of the institution;

''(bb) performed under the supervision of a member of the institution's faculty; and

''(cc) required to be performed by all students in a specific educational program at the institution; and

''(III) a contractual arrangement with a Federal agency for the purpose of providing job training to low-income individuals who are in need of such training;

''(iii) presume that any Federal funds that are disbursed or delivered to an institution on behalf of a student or directly to a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits such funds to the student's account or pays such funds directly to the student, except to the extent that the student's tuition, fees, or other institutional charges are satisfied by—

''(I) grant funds provided by an outside source that—

''(aa) has no affiliation with the institution; and

''(bb) shares no employees with the institution; and

''(II) institutional scholarships described in clause (v);

''(iv) include no loans made by an institution of higher education as revenue to the school, except for payments made by students on such loans;

''(v) include a scholarship provided by the institution—

''(I) only if the scholarship is in the form of monetary aid based upon the academic achievements or financial need of students, disbursed to qualified student recipients during each fiscal year from an established restricted account; and

''(II) only to the extent that funds in that account represent designated funds, or income earned on such funds, from an outside source that—

''(aa) has no affiliation with the institution; and

''(bb) shares no employees with the institution; and

''(vi) exclude from revenues—

''(I) the amount of funds the institution received under part C of title IV, unless the institution used those funds to pay a student's institutional charges;

''(II) the amount of funds the institution received under subpart 4 of part A of title IV;

''(III) the amount of funds provided by the institution as matching funds for any Federal program;

''(IV) the amount of Federal funds provided to the institution to pay institutional charges for a student that were refunded or returned; and

''(V) the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

''(D) REPORT TO CONGRESS.—Not later than July 1, 2012, and by July 1 of each succeeding year, the Secretary shall submit to the authorizing committees a report that contains, for each proprietary institution of higher education that receives assistance under title IV and as provided in the audited financial statements submitted to the Secretary by each institution pursuant to the requirements of section 487(c)—

''(i) the amount and percentage of such institution's revenues received from Federal funds; and

''(ii) the amount and percentage of such institution's revenues received from other sources.''.

(b) REPEAL OF EXISTING REQUIREMENTS.—Section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094) is amended—

(1) in subsection (a)—

(A) by striking paragraph (24);

(B) by redesignating paragraphs (25) through (29) as paragraphs (24) through (28), respectively;

(C) in paragraph (24)(A)(ii) (as redesignated by subparagraph (B)), by striking ''subsection (e)'' and inserting ''subsection (d)''; and

(D) in paragraph (26) (as redesignated by subparagraph (B)), by striking ''subsection (h)'' and inserting ''subsection (g)'';

(2) by striking subsection (d);

(3) by redesignating subsections (e) through (j) as subsections (d) through (i), respectively;

(4) in subsection (f)(1) (as redesignated by paragraph (3)), by striking ''subsection (e)(2)'' and inserting ''subsection (d)(2)''; and

(5) in subsection (g)(1) (as redesignated by paragraph (3)), by striking ''subsection (a)(27)'' in the matter preceding subparagraph (A) and inserting ''subsection (a)(26)''.

(c) CONFORMING AMENDMENTS.—The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 152 (20 U.S.C. 1019a)—

(A) in subsection (a)(1)(A), by striking ''subsections (a)(27) and (h) of section 487'' and inserting ''subsections (a)(26) and (g) of section 487''; and

(B) in subsection (b)(1)(B)(i)(I), by striking ''section 487(e)'' and inserting ''section 487(d)'';

(2) in section 153(c)(3) (20 U.S.C. 1019b(c)(3)), by striking ''section 487(a)(25)'' each place the term appears and inserting ''section 487(a)(24)'';

(3) in section 496(c)(3)(A) (20 U.S.C. 1099b(c)(3)(A)), by striking ''section 487(f)'' and inserting ''section 487(e)''; and

(4) in section 498(k)(1) (20 U.S.C. 1099c(k)(1)), by striking ''section 487(f)'' and inserting ''section 487(e)''.

By Mr. LEVIN:

S. 2033. A bill to amend the Internal Revenue Code of 1986 to end the costly derivatives blended rate loophole, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, the coming year is certain to be focused on two problems: the need to restore prosperity for American working families, and the need to reduce our budget deficit. Our challenge is to accomplish these goals together, and not to pursue one at the expense of the other. As I have said repeatedly to this Senate, I believe the only way we can successfully achieve both goals is to pursue deficit reduction strategies that do not rely solely on slashing federal spending and attacking programs that help build opportunity for the middle class. We must recognize that revenue, as well as spending cuts, must be part of our strategy, and we must ensure that the sacrifices that surely will be needed to reduce the deficit fall not just on middle-class Americans, but are spread equitably, and ask for contributions from those who have benefitted so greatly from policies enacted in the past.

Today I introduce the Closing the Derivatives Blended Rate Loophole Act. This bill meets the twin tests of helping to reduce the deficit while promoting the interests of American families. It would put an end to a tax loophole that epitomizes how our tax code too often favors short-term speculation over investment in economic growth and job creation. This loophole showers benefits on short-term traders of certain financial instruments, but does nothing to promote economic growth and raises the tax burden on American families.

What is the derivatives blended rate? It's an example of how the complexities of the tax code can grant breaks for the few at the expense of the many. Here is how it works.

Generally speaking, taxpayers are allowed to claim the lower long-term capital gains tax rate on earnings only if those earnings come from the sale of assets that they have held for more than a year. The reason is simple: we tax longterm capital gains at a lower rate because we want to encourage the long-term investment that helps our economy grow.

But under Section 1256 of the Internal Revenue Code, traders in certain derivatives contracts have managed to win themselves an exemption from the distinction between short-term and long-term capital gains. Under this section, traders in those derivatives can claim 60 percent of their income as long-term capital gains, no matter how briefly they hold the asset. This ''blended'' tax rate applies if the trader holds the asset for 11 months or 11 hours.

The details may be complex, but the bottom line is that this treatment bestows a substantial tax break on those who typically hold the covered derivatives for only a brief period. It encourages and rewards short-term speculation in complicated financial products and does little, if anything, to help our economy grow and create jobs. In fact, the increasing focus of our financial markets on short-term profit through trades that last just minutes or seconds threatens real damage to our economy. This speculation is hardly the sort of activity that our tax code should subsidize.

We also lose significant tax revenue by allowing this tax break—a revenue loss that means we must either ask for more from American families, or add to the deficit. What's more, this misguided policy contributes to the basic unfairness that characterizes too much of our tax code, by providing an unusual and unnecessary tax break to a small group of financial speculators. Instead of encouraging growth and investment, these loopholes contribute to what Warren Buffett has called the ''coddling'' of the wealthy and well-placed.

Closing this loophole is a commonsense, mainstream idea. I ask my colleagues to heed the advice of the tax experts at the American Bar Association's Tax Section, who wrote in December to the tax-writing committees of the House and Senate:

> We are aware of no policy reason to provide preferential treatment for these gains and losses. Lower capital gains rates are intended to encourage long-term investments in capital assets such as stock. Whatever the merits of extending preferential rates to derivative financial instruments generally, we do not believe that there is a policy basis for providing those preferential rates to taxpayers who have not made such long-term investments.

Ending this loophole by passage of the Closing the Derivatives Blended Rate Loophole Act would not solve all the problems in our tax code, nor end our deficit dilemma. But it would be another important step toward a saner, fairer tax code. It would demonstrate that Congress shares the concerns of so many Americans that the tax system is too often stacked against the interests of working families and in favor of the privileged few. It would end a policy that encourages short-term speculation over long-term investment in growth. It would provide a down-payment on the revenue we need to restore if we are to engage in serious deficit reduction and avoid slashing critical programs. I urge my colleagues to join me in the effort to pass it.

By Mr. MCCONNELL (for himself, Mrs. HUTCHISON, Mr. LEE, Mr. HATCH, Mr. BARRASSO, Mr. CORNYN, Ms. AYOTTE, Mr. MORAN, Mr. ALEXANDER, Mr. CRAPO, Mr. RUBIO, Mr. COATS, Mr. ENZI, Mr. SESSIONS, Mr. BURR, Mr. VITTER, Mr. ISAKSON, Mr. BLUNT, Mr. BOOZMAN, Mr. KYL, Mr. MCCAIN, Mr. SHELBY, Mr. WICKER, Mr. CHAMBLISS, Mr. LUGAR, Mr. RISCH, Mr. ROBERTS, Mr. INHOFE, Mr. GRASSLEY, Mr. KIRK, and Mr. GRAHAM):

S.J. Res. 34. A joint resolution relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on January 12, 2012; placed on the calendar.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the text of the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 34

Resolved by the Senate and House of Representatives of the United States of America Congress assembled, That Congress disapproves of the President's exercise of authority to increase the debt limit on January 12, 2012, as exercised pursuant to the certification under section 3101A(a) of title 31, United States Code.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 352—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES SHOULD WORK WITH THE GOVERNMENT OF HAITI TO ADDRESS GENDER-BASED VIOLENCE AGAINST WOMEN AND CHILDREN

Mrs. GILLIBRAND submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 352

Whereas, since 1993, research has shown tens of thousands of women and girls have been victims of sexual or gender-based violence in Haiti, particularly in times of conflict or natural disaster;

Whereas approximately 50 percent of the victims are adolescent girls under the age of 18, with many of the cases involving the use of weapons, gang rape, and death threats for reporting the crime;

Whereas members of many medical professions are insufficiently trained to attend to the special needs of victims of gender-based violence, whether they be children or adults;

Whereas some medical providers report as many as 20 percent of adolescent victims they have treated for sexual violence become pregnant from their rape;

Whereas some women's rights groups in Haiti have witnessed dramatic increases in rates of sexual violence in many of the displacement camps formed after the earthquake;

Whereas the January 12, 2010, earthquake in Haiti increased the economic and social vulnerabilities of many women who are now unable to protect their young children from sexual predators, thereby increasing their risk for sexual violence;

Whereas, according to data from public interest law firms litigating cases of sexual violence, significant gender-based barriers to justice continue to exist at all levels of the justice system in Haiti;

Whereas an effective, transparent, and impartial judicial system is key to the administration of justice, and the failure to ensure

proper investigations and prosecutions hampers the ability to hold perpetrators accountable for their crimes and discourages victims from formally seeking justice;

Whereas inadequate financial, human, and technical resources, as well as a lack of forensic and technical expertise, have impeded the arrest and prosecution of suspects;

Whereas members of the police, prosecutors, and judges are insufficiently trained to attend to either the special needs of women and girl victims of gender-based violence, or the special needs of boys and girls who are victims of other abuses such as forced labor, beatings, or violence;

Whereas the lack of protection measures discourages women and girls in Haiti from pursuing prosecution of perpetrators of sexual violence, for fear of reprisal or stigmatization;

Whereas rape and other forms of gender-based violence in Haiti threaten the physical and psychological health of both the victims and their families;

Whereas many countries in Latin America and the Caribbean face significant challenges in combating violence against women and girls, and violence against children, and international cooperation is essential in addressing this serious issue;

Whereas the Government of Haiti has undertaken efforts to prevent violence against women, as evidenced by its ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, adopted December 18, 1979; the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, adopted at Belem Do Para, Brazil, June 9, 1994; and other international human rights treaties, and the enactment of laws and the creation of state institutions to promote and protect the rights of women;

Whereas the Government of Haiti has been a signatory of the United Nations Convention on the Rights of the Child, adopted November 20, 1989, since December 29, 1994;

Whereas the Haitian National Police and the United Nations Mission for Stabilization of Haiti have created special police units to address sexual and other forms of gender-based violence in Haiti;

Whereas the special police unit to address gender-based violence within the Haitian National Police remains significantly under-resourced, rendering it practically ineffective to carry out its mandate;

Whereas, in March 2009, the Inter-American Commission on Human Rights issued a report recognizing Haiti's history of gender discrimination that fuels gender-based violence and gives rise to a climate of impunity;

Whereas, in December 2010, the Inter-American Commission detailed steps the Government of Haiti must take to protect women and girls from increased risk of gender-based violence in post-earthquake Haiti;

Whereas, in 2012, the Ministry for the Status of Women and Women's Rights in Haiti plans to unveil a comprehensive draft law that calls for the prevention, punishment, and elimination of violence against women;

Whereas the United Nations and donor countries, such as the United States, continue to have a prominent economic and leadership role in the stabilization and reconstruction of Haiti;

Whereas few mechanisms exist in Haiti to protect the rights of young children not living at home, such as restaveks, who are engaged in forced labor or are victims to other forms of violence; and

Whereas the lack of protection for women and girls and continuing impunity for crimes against women is a threat to the rule of law, democracy, and stability in Haiti: Now, therefore, be it

Resolved, That the Senate—

(1) sympathizes with the families of women and children victimized by sexual and other forms of gender-based violence in Haiti;

(2) urges the treatment of the issue of violence against women and children as a priority for the United States Government's humanitarian and reconstruction efforts in Haiti;

(3) asserts its support for the passage of Haiti's first comprehensive law on the prevention, punishment, and elimination of all forms of gender-based violence;

(4) calls on the Government of Haiti to establish urgent plans that address the needs of vulnerable and unprotected children who are in situations of sexual exploitation, forced labor, or face sexual and or domestic violence, and to take steps to immediately implement those plans, in consultation with grassroots organizations working specifically on the protection and promotion of the rights of children;

(5) calls on the Government of Haiti to take steps to implement the recommendations of the Inter-American Commission on Human Rights issued in response to increased levels of sexual violence in camps for internally-displaced persons on December 22, 2010, including—

(A) ensuring participation and leadership of grassroots women's groups in planning and implementing policies and practices to combat and prevent sexual violence and other forms of violence in the camps;

(B) ensuring provision of comprehensive, affordable, adequate, and appropriate medical and psychological care in locations accessible to victims of sexual violence in camps for those internally displaced, including, in particular ensuring—

(i) privacy during examinations;

(ii) availability of female medical staff members, with a cultural sensitivity and experience with victims of sexual violence;

(iii) timely issuance of free medical certificates;

(iv) availability of HIV prophylaxis, and

(v) sexual reproductive health and emergency contraception;

(C) implementing effective security measures in displacement camps, such as providing street lighting, adequate patrolling in and around the camps, and a greater number of female security forces in police patrols in the camps and in police stations in proximity to the camps;

(D) ensuring that public officials, such as police officers, prosecutors, and judges, responsible for responding to incidents of sexual violence receive specialized training from experienced Haitian and international women's organizations with a proven track record in gender-sensitive protection enabling them to respond adequately to complaints of sexual violence with appropriate sensitivity and in a nondiscriminatory manner; and

(E) maintaining effective special units within the police and the prosecutor's office investigating cases of rape and other forms of violence against women and girls;

(6) asserts its commitment to support the Haitian Ministry of Women's Affairs in its efforts to—

(A) build ministry capacity and facilitate gender-based violence sub-cluster meetings and initiatives as it transitions over to the Government of Haiti;

(B) perform decentralized meetings, consultations, and outreach to women's movements and community groups;

(C) address issues of gender-based violence country-wide, including violence in internally displaced person camps, rural peasant communities, and among children; and

(D) strengthen gender assessments, gender budgets, and gender planning in collaboration with other Haitian ministries, the Haitian Parliament, the ruling administration in Haiti, the United Nations, the Inter-American Commission on Human Rights, donors, and international nongovernmental organizations within the reconstruction process; and

(7) asserts its support for the Government of Haiti, especially the Ministry of Women's Affairs, in its efforts to assess, amend, and renew its 5-year gender protection plan, which expired in October 2011, which includes support for the Government of Haiti in its efforts—

(A) to thoroughly assess the impact of the previous 5-year protection plan, including both pre and post-earthquake analyses and perform diversified assessments in consultation with local, regional, and national women's groups throughout the country, that will help gather decentralized data in both urban and rural zones;

(B) to perform specialized surveys and interviews in a significant sampling of internally displaced person camps and impoverished neighborhoods with high rates of gender-based violence with victims of rape and violence, the community groups that support them, and local officials in order to fully understand the needs and recommendations of these different populations and integrate these findings into a revised protection plan;

(C) to revise the existing Haitian protection plan based on the results of diversified and decentralized assessments and in direct consultation with national, regional, and local government officials and grassroots organizations, including women's groups and international institutions that focus on solutions to gender-based violence; and

(D) to amend, reintroduce, and pass into law a revised Haiti gender protection plan that reflects current post-earthquake realities, the needs and recommendations of victims of gender-based violence and the community groups that support them, integrates provisions for judicial and medical services for gender-based violence victims, and reflects key findings of decentralized assessments in both urban and rural zones.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1468. Ms. KLOBUCHAR (for herself, Mr. JOHNSON of Wisconsin, and Mr. FRANKEN) submitted an amendment intended to be proposed by her to the bill S. 1134, to authorize the St. Croix River Crossing Project with appropriate mitigation measures to promote river values.

TEXT OF AMENDMENTS

SA 1468. Ms. KLOBUCHAR (for herself, Mr. JOHNSON of Wisconsin and Mr. FRANKEN) submitted an amendment intended to be proposed by her to the bill S. 1134, to authorize the St. Croix River Crossing Project with appropriate mitigation measures to promote river values; as follows:

Strike section 3 and insert the following:

SEC. 3. OFFSET.

(a) IN GENERAL.—Notwithstanding any other provision of law, amounts made available for items 676, 813, 3186, 4358, and 5132 in the table contained in section 1702 of the SAFETEA-LU (119 Stat. 1288, 1380, 1423) shall be subject to the limitation on obligations for Federal-aid highways and highway safety construction programs distributed under section 120(a)(6) of title I of division C of Public Law 112–55 (23 U.S.C. 104 note; 125 Stat. 652).

(b) RESCISSION.—Any obligation authority made available until used to a State as a result of receipt of contract authority for the items described in subsection (a) that remains available to the State as of the date of enactment of this Act is permanently rescinded.

NOTICES OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. LEVIN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs has scheduled a hearing entitled, ''Taxation of Mutual Fund Commodity Investments.'' The Subcommittee hearing will examine the issuance of over 70 private letter rulings by the Internal Revenue Service allowing mutual funds to make unlimited indirect investments in commodities through controlled foreign subsidiaries or commodity-linked notes, despite longstanding statutory restrictions on mutual fund investments in commodities. Hearing witnesses will include senior officials from the Department of the Treasury and the Internal Revenue Service.

The Subcommittee hearing has been scheduled for Thursday, January 26, 2012, at 10:00 a.m., in room 342 of the Dirksen Senate Office Building. For further information, please contact Elise Bean of the Permanent Subcommittee on Investigations at (202) 224–9505.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, January 31, 2012, at 10:00 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the U.S. and global energy outlook for 2012.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by email to Allison_Seyferth@energy.senate.gov.

For further information, please contact Tara Billingsley at (202) 224–4756 or Allison Seyferth at (202) 224–4905.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Thursday, February 2, 2012, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the final report of the Blue Ribbon Commission on America's Nuclear Future.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by email to Allison_Seyferth@energy.senate.gov.

For further information, please contact Sam Fowler at (202) 224–7571 or Allison Seyferth at (202) 224–4905.

NOTICE: REGISTRATION OF MASS MAILINGS

The filing date for the 2011 fourth quarter Mass Mailing report is Wednesday, January 25, 2012. If your office did no mass mailings during this period, please submit a form that states ''none.''

Mass mailing registrations, or negative reports, should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510–7116.

The Senate Office of Public Records will be open from 9 a.m. to 6 p.m. on the filing date to accept these filings. For further information, please contact the Senate Office of Public Records at (202) 224–0322.

THE SOAR TECHNICAL CORRECTIONS ACT

Mr. DURBIN. Mr. President, I ask unanimous consent that the Health, Education, Labor, and Pensions Committee be discharged from further consideration of H.R. 3237 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3237) to amend the SOAR Act by clarifying the scope of coverage of the Act.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 3237) was ordered to a third reading, was read the third time, and passed.

ST. CROIX RIVER CROSSING PROJECT AUTHORIZATION ACT

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 264, S. 1134.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1134) to authorize the St. Croix River Crossing Project with appropriate mitigation measures to promote river values.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment; as follows:

S. 1134

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''St. Croix River Crossing Project Authorization Act''.

SEC. 2. AUTHORIZATION OF PROJECT WITH MITIGATION MEASURES.

Notwithstanding section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(a)), the head of any Federal agency or department may authorize and assist in the construction of a new extradosed bridge crossing the St. Croix River approximately 6 miles north of the I–94 crossing if the mitigation items described in paragraph 9 of the 2006 St. Croix River Crossing Project Memorandum of Understanding for Implementation of Riverway Mitigation Items, signed by the Federal Highway Administration on March 28, 2006, and by the National Park Service on March 27, 2006 (including any subsequent amendments to the Memorandum of Understanding), are included as enforceable conditions.

SEC. 3. OFFSET.

To provide an offset for the funds made available to carry out this Act, there is rescinded from the Department of the Interior franchise fund authorized under section 113 of division A of title I of Public Law 104–208 (31 U.S.C. 501 note; 110 Stat. 3009–181) $8,000,000.

SEC. 4. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Mr. DURBIN. Mr. President, I ask unanimous consent that the committee-reported amendment be agreed to and be considered original text for the purposes of further amendment; that the Klobuchar-Johnson of Wisconsin-Franken amendment, which is at the desk, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The committee-reported amendment was agreed to.

The amendment (No. 1468) was agreed to, as follows:

(Purpose: To modify the offset)

Strike section 3 and insert the following:

SEC. 3. OFFSET.

(a) IN GENERAL.—Notwithstanding any other provision of law, amounts made available for items 676, 813, 3186, 4358, and 5132 in

the table contained in section 1702 of the SAFETEA–LU (119 Stat. 1288, 1380, 1423) shall be subject to the limitation on obligations for Federal-aid highways and highway safety construction programs distributed under section 102(a)6) of title I of division C of Public Law 112–55 (23 U.S.C. 104 note; 125 Stat. 652).

(b) RESCISSION.—Any obligation authority made available until used to a State as a result of receipt of contract authority for the items described in subsection (a) that remains available to the State as of the date of enactment of this Act is permanently rescinded.

The bill (S. 1134), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1134

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''St. Croix River Crossing Project Authorization Act''.

SEC. 2. AUTHORIZATION OF PROJECT WITH MITIGATION MEASURES.

Notwithstanding section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(a)), the head of any Federal agency or department may authorize and assist in the construction of a new extradosed bridge crossing the St. Croix River approximately 6 miles north of the I–94 crossing if the mitigation items described in paragraph 9 of the 2006 St. Croix River Crossing Project Memorandum of Understanding for Implementation of Riverway Mitigation Items, signed by the Federal Highway Administration on March 28, 2006, and by the National Park Service on March 27, 2006 (including any subsequent amendments to the Memorandum of Understanding), are included as enforceable conditions.

SEC. 3. OFFSET.

(a) IN GENERAL.—Notwithstanding any other provision of law, amounts made available for items 676, 813, 3186, 4358, and 5132 in the table contained in section 1702 of the SAFETEA–LU (119 Stat. 1288, 1380, 1423) shall be subject to the limitation on obligations for Federal-aid highways and highway safety construction programs distributed under section 120(a)(6) of title I of division C of Public Law 112–55 (23 U.S.C. 104 note; 125 Stat. 652).

(b) RESCISSION.—Any obligation authority made available until used to a State as a result of receipt of contract authority for the items described in subsection (a) that remains available to the State as of the date of enactment of this Act is permanently rescinded.

SEC. 4. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

PROVIDING FOR A JOINT SESSION OF CONGRESS TO RECEIVE A MESSAGE FROM THE PRESIDENT

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 96, which was received from the House and is at the desk; that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The concurrent resolution (H. Con. Res. 96) was agreed to.

APPOINTMENTS

The PRESIDING OFFICER. The Chair announces the following appointments made pursuant to the unanimous consent agreement of December 17, 2011, by the President pro tempore and the majority leader during the adjournment of the Senate:

Pursuant to the provisions of Public Law 106–398, as amended by Public Law 108–7, upon the recommendation of the majority leader, and in consultation with the Chairmen of the Senate Committee on Armed Services and the Senate Committee on Finance, the Chair on behalf of the President pro tempore, announces the reappointment and appointment of the following individuals to the United States-China Economic Security Review Commission: William A. Reinsch, of Maryland, for a term beginning January 1, 2012 and expiring December 31, 2013 (reappointment), and Carte P. Goodwin, of West Virginia, for a term beginning January 1, 2012 and expiring December 31, 2013, vice Patrick A. Mulloy of Virginia.

ORDERS FOR TUESDAY, JANUARY 24, 2012

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Tuesday, January 24, 2012; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate be in a period of morning business until 4 p.m. with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the first 30 minutes controlled by the majority leader or his designee and the second 30 minutes controlled by the Republican leader or his designee; and that at 12:30 p.m. the Senate be in recess until 2:15 p.m. to allow for the weekly caucus meetings.

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

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. DURBIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 6:56 p.m., adjourned until Tuesday, January 24, 2012, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

THE JUDICIARY

ROBERT E. BACHARACH, OF OKLAHOMA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT, VICE ROBERT HARLAN HENRY, RESIGNED.

WILLIAM J. KAYATTA, JR., OF MAINE, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIRST CIRCUIT, VICE KERMIT LIPEZ, RETIRED.

MICHAEL A. SHIPP, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE MARY LITTLE PARELL, RETIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. HERBERT J. CARLISLE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. CRAIG A. FRANKLIN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. STEPHEN P. MUELLER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. MARK A. EDIGER

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be brigadier general

COL. ROBERT T. BROOKS, JR.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. DANIEL B. ALLYN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIGADIER GENERAL ROBERT P. ASHLEY, JR.
BRIGADIER GENERAL JEFFREY L. BAILEY
BRIGADIER GENERAL JEFFREY N. COLT
BRIGADIER GENERAL KENNETH R. DAHL
BRIGADIER GENERAL GORDON B. DAVIS, JR.
BRIGADIER GENERAL JOSEPH P. DISALVO
BRIGADIER GENERAL ROBERT M. DYESS, JR.
BRIGADIER GENERAL KAREN E. DYSON
BRIGADIER GENERAL PAUL E. FUNK II
BRIGADIER GENERAL HAROLD J. GREENE
BRIGADIER GENERAL WILLIAM C. HIX
BRIGADIER GENERAL STEPHEN R. LYONS
BRIGADIER GENERAL HERBERT R. MCMASTER, JR.
BRIGADIER GENERAL JOHN M. MURRAY
BRIGADIER GENERAL RICHARD P. MUSTION
BRIGADIER GENERAL MICHAEL K. NAGATA
BRIGADIER GENERAL BRYAN R. OWENS
BRIGADIER GENERAL JAMES F. PASQUARETTE
BRIGADIER GENERAL LAWARREN V. PATTERSON
BRIGADIER GENERAL AUNDRE F. PIGGEE
BRIGADIER GENERAL ROSS E. RIDGE
BRIGADIER GENERAL JOHN G. ROSSI
BRIGADIER GENERAL THOMAS C. SEAMANDS
BRIGADIER GENERAL MICHAEL H. SHIELDS
BRIGADIER GENERAL LESLIE C. SMITH
BRIGADIER GENERAL JOHN UBERTI
BRIGADIER GENERAL BRYAN G. WATSON
BRIGADIER GENERAL DARRELL K. WILLIAMS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. LESLIE A. PURSER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. KRISTIN K. FRENCH
COL. WALTER E. PIATT

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. MARY E. LINK

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 156 AND 3064:

To be brigadier general, judge advocate general's corps

COL. RICHARD C. GROSS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be brigadier general

COL. JOHN M. CHO
COL. JEFFREY B. CLARK

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be admiral

ADM. SAMUEL J. LOCKLEAR III

CONFIRMATION

Executive nomination confirmed by the Senate January 23, 2012:

THE JUDICIARY

JOHN M. GERRARD, OF NEBRASKA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA.