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Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. LEAHY).

PRAYER

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

Let us pray.

Our Father, we wait in reverence before Your throne. Cleanse us from our sins, creating in us clean hearts while renewing a right spirit within us.

Lord, help our lawmakers today to discern Your voice and do Your will. Give them the ability to differentiate your guidance from all others, permitting You to lead them to Your desired destination. Speak to them through Your word, guide them with Your spirit, and sustain them with Your might. Let all they do be well done, fit for Your eyes to see and receiving Your divine approbation.

And, Lord, we ask You to comfort Senator and Mrs. Inhofe as they grieve the death of their son.

We pray in Your merciful Name.

Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore 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.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

DRUG QUALITY AND SECURITY ACT—MOTION TO PROCEED

Mr. REID. Mr. President, I move to proceed to Calendar No. 236, H.R. 3204, the drug compounding legislation.

The legislative clerk read as follows:

Motion to proceed to the bill (H.R. 3204) to amend the Federal Food, Drug, and Cosmetic Act with respect to human drug compounding and drug supply chain security, and for other purposes.

SCHEDULE

Mr. REID. Mr. President, following leader remarks the Senate will be in a period of morning business until 4:30 p.m. At 4:30 p.m. the Senate will proceed to executive session to consider the nomination of Cornelia Pillard to be U.S. circuit judge for the District of Columbia Circuit. At 5:30 p.m. there will be a cloture vote on the Pillard nomination. If cloture is not invoked, there will be a second cloture vote on the motion to proceed to the drug compounding bill.

MEASURE PLACED ON THE CALENDAR—S. 1661

Mr. REID. Mr. President, I am told S. 1661 is due for a second reading.

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

The legislative clerk read as follows:

A bill (S. 1661) to require the Secretary of State to offer rewards of up to $5,000,000 for information regarding the attacks on the United States diplomatic mission at Benghazi, Libya that began on September 11, 2012.

Mr. REID. Mr. President, I would object to any further proceedings with respect to this legislation.

The PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

CONDOLENCES TO THE INHOFE FAMILY

Mr. REID. Mr. President, I extend my condolences to JIM INHOFE, the senior Senator from Oklahoma, and his wife Kay on the loss of their son Perry. The entire Senate family was saddened to hear of Dr. Inhofe's death. He was a young man, 52 years of age, killed in a plane crash early Sunday.

Flying airplanes is in the blood of JIM INHOFE and his family. I truly care a lot about JIM INHOFE. He and I are unquestionably friends. We may not agree on all political issues, but we agree we are friends.

I have had the good fortune of working to get to know this good man. I have helped him when I could, and he has helped me when he could. We are able to put all the disagreements to one side and look at each other for what we are outside of our politics.

I have confidence that he is going to do well. He is a man of great faith, and I feel comfortable that he will be able to work his way through this loss.

(Ms. BALDWIN assumed the Chair.)

FILIPINO TYPHOON

Madam President, my heart also goes out to the residents of the Philippines who were drastically affected by this terrible storm that hit one or two or three of their islands over the weekend. The Philippines has 7,000 islands.

The heavily populated area of Manila was not hit—at least not very badly. We know there are thousands of Filipinos dead and missing. Relief and construction efforts will be long and difficult. My thoughts are with the approximately 3½ million Filipino Americans who are living with us—including in Nevada about 100,000 Filipino Americans. They are involved in so many important endeavors, such as the health care field, business field, and hotel business.

They may not have lost family members, but they are a community that is concerned with what is going on in the Philippines. I was happy to hear the administration has already moved in with support and aid for this beleaguered nation.

DC CIRCUIT COURT

Madam President, later today we are going to again attempt to break a filibuster on the highly qualified person who has been asked by the President to serve on the DC Circuit. It is often said the DC Circuit is the second highest court in the land after the Supreme Court, and that is true. It is unfortunate the Republicans have chosen to filibuster a nomination of yet another talented female jurist and dedicated public servant to fill a vacant seat on this court.

The nominee, Georgetown law professor Nina Pillard, has argued nine

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

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cases before the Supreme Court and briefed more than a score of cases. In one case she argued before the Supreme Court, it involved a male employee of the State of Nevada who was fired after taking unpaid leave to care for his wife who was sick. It was an important case, a landmark case. The Court ruled 6 to 3 in favor of her client, upholding an important protection under the Family and Medical Leave Act.

Support for Professor Pillard's nomination is bipartisan—at least outside the Senate. Yet Senate Republicans seem poised to block confirmation of this eminently qualified woman for a blatantly political reason: deny President Obama his constitutional right to appoint judges.

The DC Circuit is currently operating with a very bad ratio. We have three vacancies on this very important court. For the Republicans to now claim we don't need 11 judges is a little strange because that is not what they said when President Bush was President. When he needed these vacancies filled, they were filled. They happily filled the 9th, 10th, and 11th seats on the DC Circuit—the same three seats President Obama seeks to fill—even though the court had a significantly smaller caseload at the time. The Supreme Court Chief Justice John Roberts was one of the judges confirmed to the DC Circuit during George Bush's Presidency.

Since a Democrat was elected to the White House, Republicans have blocked two exceedingly qualified female nominees to the DC Circuit, Caitlin Halligan and Patricia Millett. In the last 19 years, five men have been confirmed to the DC Circuit and one woman.

Today the Senate has an opportunity to help shape a court that better reflects our country, so I hope they will not block another qualified female nominee for nakedly partisan reasons. The least Senate Republicans owe Professor Pillard is the same fair confirmation process Chief Justice Roberts enjoyed when he was nominated to the DC Circuit.

DRUG COMPOUNDING

Madam President, should Republicans block her confirmation, as I fear they will, the Senate will then vote on cloture on the motion to proceed to a bill to enhance safeguards at compounding pharmacies which create custom-tailored medication for patients with unique health needs.

This bipartisan legislation will ensure drugs manufactured in factories and mixed in pharmacies across the country are safe for consumers. The measure will also implement tracking of medicines from the factory to the drug store itself.

Last year unsanitary conditions at a compounding pharmacy led to a fungal meningitis outbreak that killed 64 people and very badly sickened more than 750 others. Contaminated medicine mixed at that pharmacy was sent to 75 medical facilities in 23 States and given to 14,000 patients. The facility in question was actually skirting existing law and acting as a large-scale drug manufacturer rather than creating custom medications for individuals using products manufactured by other companies.

By avoiding stricter regulations on drug manufacturers, companies such as this one boost their profits by putting patients at risk. This legislation will end this dangerous practice and ensure that drugs manufactured and mixed in America are completely safe from the assembly line to the drug store.

This bill could pass the Senate right now, but it has been stalled by Republicans for more than 1 month. This legislation truly is a matter of life and death.

DEFENSE AUTHORIZATION

Madam President, we must finish this legislation quickly so we can wrap up consideration of the crucial Defense authorization bill before Thanksgiving.

I put Senators on notice last week and the week before that we are going to do whatever it takes to accomplish exactly that in order to finish this bill—even if it means working this coming weekend and hopefully not the next weekend but possibly that too.

Further, we must ensure that debate on the Defense authorization bill is about our Nation's defense and not extraneous issues. No Senators should be allowed to jump the line and get a vote on his or her own amendment by threatening delay action on the underlying bill, nor should the Senate waste time debating amendments that are not relevant to defense.

This measure ensures the safety of this Nation and is dedicated to servicemembers, and it is more important than any one Senator's or Senators' parochial or political pet issues.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

HEARTFELT SYMPATHY TO THE INHOFES

Mr. MCCONNELL. Madam President, I will start with a word of sympathy about the heartbreaking loss of Perry Inhofe, the son of our colleague, JIM INHOFE, killed in a plane crash on Sunday. Of course, we are all thinking of JIM and Kay, and the heartfelt prayers of the entire Senate family are with them and the entire Inhofe family at this very, very difficult time.

DC CIRCUIT

Madam President, despite the repeated promises of President Obama, millions of people are losing their health insurance—health insurance they very much liked and were assured they could keep. It has been reported that so far 3.5 million Americans have lost their health insurance under ObamaCare. That includes over a quarter of a million in my State of Kentucky, a third of a million in Florida, and almost a million people in California.

This is a serious problem the President and congressional Democrats need to do something about. The obvious answer is repeal, but in the meantime the legislation offered by Senator RON JOHNSON would help Americans keep the plans they have and like. If the President and Senate Democrats are serious about helping the millions of Americans who have unexpectedly lost their insurance over the past several weeks, then they should support it.

Unfortunately, they appear ready to ignore the problem. Rather than focusing on keeping their commitment to the American people, they are focusing on issues that appeal to their base. Rather than change the law that is causing so many problems for so many, they want to change the subject.

According to a recent press report, our Democratic friends want to divert as much attention as possible away from the problem-plagued ObamaCare rollout at this formative stage of the 2014 campaign, which brings us to the vote we are going to have later today.

We will not be voting on legislation to allow Americans to keep their health insurance if they like it, as they were promised again and again; rather, we will be voting on a nominee to a court that doesn't have enough work to do. A court that is so underworked, it regularly cancels oral argument days. It is a court whose judges tell us that if any more judges were put on the court, there wouldn't be enough work to go around. It is a court that is less busy now than it was when Senate Democrats pocket-filibustered President Bush's nominee to the court, Peter Keisler, for 2 whole years—2 long years. And it is less busy based upon the very standards Democrats themselves set forth when they blocked Mr. Keisler's nomination for 2 years. By the way, it is also less busy now than it was then, according to an analysis provided by the chief judge of that court.

The Senate ought to be spending its time dealing with a real crisis, not a manufactured one. We ought to be dealing with an ill-conceived law that is causing millions of Americans to lose their health insurance. Instead, we will spend our time today on a political exercise designed to distract the American people from the mess that is ObamaCare rather than trying to fix it.

If our Democratic colleagues are going to ignore the fact that millions of people are losing their health insurance plans, they should at least be working with us to fill judicial emergencies that actually exist rather than complaining about fake ones. There are nominees on the Executive Calendar who would fill actual judicial emergencies, unlike the Pillard nomination.

Some of them, in fact, have been pending on the calendar longer than the Pillard nomination. But rather than work with us to schedule votes on those nominations in an orderly manner, as we have been doing all year long, the majority prefers to concoct a crisis on the DC Circuit so it can try to distract the American people from the failings of ObamaCare.

Unfortunately, our friends appear to be more concerned with playing politics than actually solving real problems. So I will be voting no on this afternoon's political exercise. I hope the Senate in the future will focus on what the American people care about rather than spend its time trying to distract them.

CONGRATULATING ARCHBISHOP JOSEPH KURTZ

Finally, I congratulate Archbishop Joseph Kurtz, the Catholic archbishop of Louisville, on his election as president of the U.S. Conference of Catholic Bishops. Archbishop Kurtz is not a native Kentuckian—he is originally from Pennsylvania—but we have adopted him as one of our own since he was appointed head of the Louisville Archdiocese in June 2007. I wish him all the best as he seeks to promote the church's mission in the United States.

Congratulations.

Madam President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business until 4:30 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Iowa.

PILLARD NOMINATION

Mr. GRASSLEY. Madam President, I come to the floor to speak in opposition to the motion to invoke cloture on the nomination for the DC Circuit nominee Cornelia Pillard. Although her record makes clear that her views are well outside the mainstream on a host of issues, I am not going to focus any attention on those concerns today. I am going to focus instead on the standard the Democrats established in 2006. Based on that standard, the court's caseload makes it clear that the workload simply doesn't justify additional judges, particularly when those additional judges cost approximately $1 million per year per judge.

I have walked through these statistics several times now, and I am not going to go in depth again. The bottom line is the data overwhelmingly supports the conclusion that the DC Circuit is underworked. Everyone knows this is true. That circuit does not need any more judges. Take, for instance, the appeals filed and appeals terminated. In both categories the DC Circuit ranks last, and in both categories the DC Circuit is less than half the national average. To provide some perspective on this point, compare the DC Circuit to the Eleventh. After another judge took senior status about a week ago, both the DC Circuit and the Eleventh Circuit have eight active judges. If we don't confirm any more judges to either court, the numbers remain the same as last year. The Eleventh Circuit will have 875 appeals per active judge compared to the 149 appeals filed per active judge in DC, which also has 8 active judges. Again, that is 875 cases for the Eleventh compared to 149 for DC.

Some might argue that we shouldn't look only at active judges because those averages will change if and when we confirm more judges to the Eleventh Circuit. Suppose we fill each judgeship on the Eleventh Circuit and each judgeship on the DC Circuit, as the Democrats want to do. If we fill them all, there would be 583 appeals filed per judge for the Eleventh Circuit and only 108 for the DC Circuit. The Eleventh Circuit, then, would have over five times the caseload. This is why everyone who has looked at this objectively understands that the caseload for the DC Circuit is stunningly low. That is why current judges on the court have written to me and said things such as this—and I will quote from one of the letters: ''If any more judges were added now, there wouldn't be enough work to go around.''

Some of my friends on the other side recognize that the DC Circuit's caseload is low, and they claim then that the caseload numbers don't take into account the ''complexity'' of the court's docket. They argue that the DC Circuit hears more administrative appeals than other circuits do, and they claim these administrative appeals are more complex. This argument is nonsense, and I will tell my colleagues why it is nonsense.

I have heard my colleagues argue repeatedly that the DC Circuit's docket is complex because 43 percent of the docket is made up of administrative appeals. But, of course, that is a high percentage of a very small number. When we look at the actual number of those so-called complex cases per judge, the Second Circuit has almost twice as many as the DC Circuit. In 2012 there were 512 administrative appeals filed in DC. In the Second Circuit, there were 1,493 compared to that 512.

We can look at this differently as well. In DC there were only 64 administrative appeals per active judge. The Second Circuit has nearly twice as many per judge with 115. Again, that is 64 administrative appeals per active judge in the DC Circuit as opposed to the Second Circuit, which has almost twice as many with 115.

So this entire argument about complexity is what I already called it—nonsense—and the other side knows it, and if they don't know it, they ought to know it.

Let me raise another question regarding caseload. If these cases were really that hard, if these cases were really so complex, then why in the world would the DC Circuit take the entire summer off? I am not talking about just a couple of weeks in August; they don't hear any cases for the entire summer. The DC Circuit has so few cases on their docket that they don't hear any cases from the middle of May until the second week of September. This past term, the last case they heard before taking the summer off was May 16. The court didn't hear another case until September 9—4 months later.

The bottom line is everyone knows this court doesn't have enough cases as it is, let alone if we were to add more judges. That is why, when we ask the current judges for their candid assessment, they write: ''If any more judges were confirmed now, there wouldn't be enough work to go around.''

While I am discussing the caseload issue, I will remind my colleagues of a little bit of history that is very pertinent to this debate. In 2006 the Democrats on the Judiciary Committee blocked Peter Keisler's nomination to the DC Circuit. They blocked Mr. Keisler's nomination based upon—my colleagues can guess it—the court's caseload. Since that time, by the standard set by the other side, the court's caseload has declined sharply.

We did not set this standard. The Democrats set that standard. I recognize that the other side wants to rewrite history. They try to compare John Roberts' second nomination to the circuit, which passed fairly easily, with the current nomination. What they conveniently forget in a misleading way is that they blocked Keisler's nomination after Roberts' nomination.

I recognize the other side hopes we on this side will forget they established these rules and these precedents. I recognize the other side finds those rules very inconvenient today. But these are not reasons to ignore rules and precedents they established. There is simply no legitimate reason the other side should not embrace those very same rules, those very same standards they established in the year 2006.

So under that standard established by the Democrats in 2006, then, very simply, these nominations are not needed. According to the current judges themselves, these judges are not needed. According to the chief judge of the DC Circuit, who happens to be a Clinton appointee, the senior judges are contributing the equivalent of an additional 3.25 judges. So, as a result, the court already has the equivalent of 11.25 judges, and that is beyond even the authorized number.

It seems pretty clear the other side has run out of legitimate arguments in support of these nominations. Perhaps that is why, then, they are resorting to such cheap tactics.

Over the last couple days, I have heard my colleagues on the other side

come to the floor and actually argue that Republicans are opposing the nominee because of her gender. That argument is offensive. But, you know, it tends to be very predictable. We have seen this before. When the other side runs out of legitimate arguments, their last line of defense is to accuse Republicans of opposing nominees based upon gender or race. It is an old and it is a well-worn card, and they play it every time.

The fact is—and this is why it is offensive to me—I voted for 75 women nominated to the bench by President Obama, as well as a host of other nominees of diverse backgrounds. Those are the facts. But the other side is not concerned with facts. They are more interested in coarse rhetoric as well as demagoguery, and it is very unfortunate. Those types of personal attacks on Members of the Senate are beneath this institution.

Given there is no legitimate reason to fill these seats, why is the other side pushing these nominations so aggressively? And this is really the bottom line. But you can also ask, why waste $3 million a year of taxpayers' money for reasons that are not legitimate, particularly in violation of the constitutional checks and balances?

As to these other reasons, we do not have to guess. We know the reason. We have all heard the President pledge repeatedly: If Congress will not act, I will. What he means, of course, is that he will rule by executive fiat. He will not go to Congress. He will not negotiate. He will go around this constitutionally elected body whose constitutional powers are to make law. That is not his power. He does not need legislators, then, to enact legislation. He will just issue executive orders or issue new agency rules. Why bother with us pesky Senators and Members of the House when you can make laws with a stroke of the pen? In effect, the President is saying: If the Senate will not confirm who I want when I want them, then I will recess-appoint them when the Senate is even in session. If Congress will not pass cap-and-trade fee increases, then I will go around them. And I will do the same thing through administrative action at the Environmental Protection Agency. If Congress will not pass gun control legislation, then I will issue executive orders.

That is what the President means when he says: If Congress will not act, I will. But remember, we have a system of checks and balances. Under our system, when the President issues orders by executive fiat, it is the courts that provide a check on his power. It is the courts that decide whether the President is acting unconstitutionally.

So the only way the President's plan works is if he stacks the deck in his favor. The only way the President can successfully bypass Congress is if he stacks the court with ideological allies who will rubberstamp those executive orders.

There is no big secret here. The other side has not been shy about this strategy. Here is how the Washington Post described this strategy:

> Giving liberals a greater say on the D.C. Circuit is important for Obama as he looks for ways to circumvent the Republican-led House and a polarized Senate on a number of policy fronts through executive order and other administrative procedures.

Here is how another high-profile administration ally put it:

> There are few things more vital on the president's second-term agenda. With legislative priorities gridlocked in Congress, the president's best hope for advancing his agenda is through executive action, and that runs through the D.C. Circuit.

So the President is willing to waste $3 million of taxpayers' money a year—and every year—in order to bypass Congress and make sure his executive orders do not lose in court. Every Member of this body should find that very troubling.

Finally, I want to mention a couple points on the so-called Gang of 14 agreement, which argument comes up quite frequently here on the floor, even though it is going back to the 109th Congress.

First, by the very terms of that agreement, it applied only to those 14 Senators for that specific Congress, the 109th.

Second, even though that agreement, by its own terms, expired at the end of the 109th Congress, just last week one of the Members who was actually in the Senate back in 2005 determined that these nominations, in his judgment, constituted ''extraordinary circumstances,'' which those two words implied that a filibuster would be justified.

And third, in 2006, after the so-called Gang of 14 agreement, Senate Democrats created a standard that we call the Keisler standard. They blocked Peter Keisler based on caseload, after the so-called Gang of 14 agreement. Peter Keisler waited in committee for over 900 days for a vote, a vote that never came.

These are the rules established by the other side. And now, when they are on the receiving end of those same rules, they want those rules changed. We do not intend to play by two sets of rules around here.

And that brings me to the constant threat from the majority about changing the rules on the filibuster. I have been in the minority for a number of years. I have also had the privilege of serving in the majority for a number of years. Many of those on the other side who are clamoring for rules changes—and almost falling over themselves to do it—have never served a single day in the minority. All I can say is this: Be careful what you wish for.

I have come to the conclusion that if the rules are changed, at least we Republicans will get to use those new rules when we are back in the majority. Republicans had the chance 7 or 8 years ago to change the rules, and we decided, out of respect for the integrity of this institution, not to change them. I am glad we did not. And I would imagine we would not be the first to change them in the future.

Remember, it was the Democrats who first used the filibuster to defeat circuit judges. It was the Democrats who first used the caseload argument to defeat circuit judges such as Peter Keisler. So if the Democrats are bent on changing the rules, then I say go ahead. There are a lot more Scalias and Thomases out there whom we would love to put on the bench. The nominees we would nominate and confirm with 51 votes will interpret the Constitution as it was written. They are not the type who would invent constitutional law right out of thin air.

I urge my colleagues to oppose cloture on the Pillard nomination.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Madam President, I have high hopes that the Senate will soon vote to enact the Drug Quality and Security Act, the so-called compounding and trace and track bill. This legislation helps ensure the safety of compounded drug products. It also secures the pharmaceutical supply chain.

I am pleased to report that it is the product of excellent bipartisan collaboration on the HELP Committee, where I worked very closely with our ranking member, my good friend Senator LAMAR ALEXANDER. It also reflects productive conversations with our colleagues in the House, including Chairman UPTON and ranking member WAXMAN of the House Energy and Commerce Committee.

The House passed this bill on September 28. Now it is our turn to do our part. Title I of the bill addresses drug compounding. This is basically what happened here just over a year ago, when we were shocked to learn one of the worst public health crises that we have experienced in recent years was a meningitis outbreak that claimed the lives of 64 Americans and sickened 651 people in 20 States.

You can see the hardest hit were the home State of Senator ALEXANDER, 153; Indiana, 93; Michigan, 264; Virginia 54, New Jersey, 51; Florida 25. Twenty States. A lot of people got really sick. I will be talking in a moment about those that still linger today.

What this outbreak did is it brought attention to the legal and regulatory gaps that allowed owners and managers at the New England Compounding Center to disregard basic procedures to ensure that the products they were manufacturing were sterile and safe.

This gross negligence had heartbreaking consequences for families nationwide, patients that were sick—patients such as Karina Baxter, whose

three adult children—Anita, Andrew, and Brian—lost their mother, and whose community lost a dedicated math teacher and tutor when she died of this meningitis outbreak at age 56.

Dawn Elliot, from Indiana, who used to scuba dive in her free time is now in unrelenting pain and has had to give up her job and deplete her savings.

Evelyn Bates, from Michigan, who was diagnosed last November, continues to struggle with tremendous pain every day, and her daughter had to quit her job to take care of her.

Dennis Blatt lives on the West Virginia-Ohio border with his wife and three young children. They have had to watch their father go from being an involved parent with a steady income to a man whose daily life feels, in his own words, like a ''slow, tortuous death.''

These meningitis outbreaks linger on. It also has a personal sensitivity to me. My older brother some years ago went deaf at a very young age because of meningitis. So it has lingering effects for a lifetime. That is what happened a little over a year ago. Although we know that it was not just an isolated incident, we know it was the biggest.

This chart is somewhat hard to read. It shows—going clear back to 2001—that we have had 4, 11, 64, 18. In other words, every year we have had some results we have noted from compounding that made people sick or cause deaths. So this has been ongoing for a long time.

It is just that what happened a little over a year ago in Tennessee and in these other States was that the dam broke. It is beyond all comprehension how many people got sick and died. So again, in response to these facts, beginning last year Senator ALEXANDER and I convened the members of the HELP Committee, with assistance from Senator FRANKEN and Senator ROBERTS, in an effort to identify the gaps in current policy, to solicit stakeholder views, to craft bipartisan legislation to better ensure the quality of compounded drug products.

We formally solicited three rounds of public comment. We held two public hearings before marking up the bill last May. Then over the summer we worked with our colleagues in the House to craft a package with strong bipartisan and bicameral support.

Now, the compounding provisions in this bill are an unqualified step forward from current law and practice. Basically, what this bill does in the compounding in title I—I will get to title II in a second—it distinguishes compounders engaged in traditional pharmacy practice from those making large volumes of compounded drugs without individual prescriptions.

So those who wish to remain in traditional compounding, that we might know where they are making small amounts for a certain type of illness or for a certain hospital—that sort of thing—they stay under the State boards of pharmacy as they are in current law.

An entity that neither stays within those limits of traditional pharmacy compounding nor registers as an outsourcing facility, if they do not do one of those two, then they are illegally selling unapproved drugs.

So that is what it does. It distinguishes. It defines the Food and Drug Administration's role in the oversight of these outsourcing facilities. They will be subject to FDA oversight in much the same way as traditional drug manufacturers are today.

FDA will know who these outsourcers are and what they are making, receive adverse event reports about compounded drugs, and have authority and resources to conduct risk-based inspections. In other words, the lines of responsibility are more clearly defined.

I give much credit to my friend from Tennessee for continuing to work on who is raising the flag, who has the flag, and who is responsible, because we found out there was a confusing mess for everybody about who was responsible and who was not. Thanks to Senator ALEXANDER, we have cleared that up in this bill.

The bill offers providers and patients better information about compounded drugs, and it directs FDA to make a list of FDA-regulated outsourcer facilities that will be available on their Web site. It requires detailed labeling of compounded drugs and prohibits false and misleading advertising. Finally, it clarifies current Federal law regarding pharmacy compounding. It strikes the unconstitutional provisions that were in current law which led to a lot of this mess. We had different courts in different parts of the country interpreting it differently. So anyway, we resolve that patchwork and apply a uniform standard nationwide.

Now, that is title I. Title II of the bill is the track and trace provisions. Basically, this committee, again working in a bipartisan fashion a little over a year ago—as you may remember—brought an FDA user bill to the floor, passed and signed by the President. That cleared up the upstream part of where drugs come from; in other words, from the initial—from the plant derivation to the distilling of a product to everything—all the way up to the manufacturing. So now we have a much better regulation, a clearer picture of drugs that come from China and Indonesia and the U.S.—no matter where they come from, up to the manufacturing standpoint.

What we did not have at that time was a real understanding of or an agreement on how to control it from the manufacturer down to the consumer. So our committee got involved. Again, Senator ALEXANDER was helping to lead the way with Senator BENNET and Senator BURR—almost 2 years working on this issue. So now we have this system. I think this chart shows it. As I said, everything up to the manufacturer we took care of in the FDA user bill.

Now this bill takes care of everything from the manufacturer down to the dispenser; that is, down to the consumer. So no matter where the drug goes, whether it goes directly from a manufacturer to a wholesaler to a dispenser, or whether it goes from here to a secondary wholesaler, another secondary wholesaler, and another secondary wholesaler, we found that in this country there is a patchwork, all kinds of different ways for a drug to get from a manufacturer down to a consumer.

So Senator BURR, Senator BENNET, Senator ALEXANDER, and our staffs worked together to get this picture put together and to have a track and trace so that we can track the drug. No matter how it goes, we can track it and we can trace it. That will come into being over 10 years with electronic interoperable product tracing.

You might say that 10 years is a long time. I would point out that the House had 27 years. They agreed with us and made it 10 years. But that is for electronic interoperability. Beginning in January 2015, they will have to start paper tracing. So there will be paperwork, but it will take 10 years to get it all at a unit-level and all electronic and interoperable. You can understand, it takes a long time; different manufacturers and different suppliers have different systems. So these will be worked in over that period of time.

But we will have tracing after January, 2015. It establishes nationwide drug serial numbers and requires a pathway to unit-level tracing, as I said. It strengthens licensure requirements for wholesale distributors and third-party logistic providers. Again, there was a lot of hodgepodge of different kinds of licensures for wholesalers. We strengthened that. Then, as I said, we have a nationwide serial number established for that. That will come 4 years after the date of enactment. That will serialize drugs in a consistent way across the country.

Again, this is a bill that many might say is long overdue. Better late than never. I am sorry it took a terrible calamity such as the outbreak of meningitis to get us to really focus on this and move it. But it did. I think this is a good example of where the Congress can work in a bipartisan, bicameral fashion. I met Chairman UPTON on the House side earlier this year to talk about a pathway of getting this done. In fact, what we are working on here is the House bill. The House passed it by unanimous consent. If you have been reading much about the House, you know they do not do a lot by unanimous consent. That just shows you how much work went into the bill and how it was done in a true bipartisan, bicameral fashion. So the House passed it by unanimous consent. Now we have it. I daresay, but for a Senator, one person, we probably would have passed it by unanimous consent here.

I have not found anyone who is opposed to this bill and who does not recognize that this is well supported. We

have a plethora of people and industry and consumer support: American Pharmacists Association, American Public Health Association, Biotechnology Industry Organization, plus a lot of the big pharmaceutical manufacturers and some of the small pharmaceutical manufacturers. Everyone recognizes that we need a better system to clearly outline who the traditional compounders are and who the outsourcers are, to give the FDA clear-cut authority over one segment, give the States the clear-cut authority over the other segment. As I said, if you do not fall into one of those two, you are outside the law. So it really does clear it up. This will ensure the quality and safety of the drugs on which patients rely.

We have a cloture vote later today. I am hopeful we will have a good strong vote on cloture on this bill. As I said, I honestly can say standing here I have not heard one Senator from either side of the aisle tell me or inform my staff that they were opposed to the bill as such.

I hope we have a strong vote. I am going to yield the floor and again pay my compliments and my highest respect to Senator ALEXANDER for his leadership. His State was hit very hard. I know he is very sensitive to that. I know from my talks with him that it pained him a great deal to see so much suffering and death in his own State. Senator ALEXANDER got on top of this and pulled us all together and basically said: We have to get it done.

So I thank Senator ALEXANDER very much.

The PRESIDING OFFICER (Mr. MANCHIN). The Senator from Tennessee.

Mr. ALEXANDER. On behalf of the people of Tennessee, whom I represent, and the American people, as well, I wish to thank the Senator from Iowa for his leadership on these two bills, but particularly on the compounding pharmacy bill.

Our differences of opinion in the Senate are well advertised on ObamaCare, on debt, on Syria, and on a whole variety of matters. In fact, one would say the reason we exist is to debate the big issues that haven't been resolved somewhere else.

There is another aspect of the Senate that is rarely well advertised, and that is when we get a result. Sometimes the results take a long time, involve a lot of people, and are very difficult to reach, and that is the case with this bill. Had not Senator HARKIN been patient, as well as aggressive at the same time, in working with Republicans and Democrats and with Members of the House, we would not have reached this point today.

It is important to call the attention of the American people to this result, these two pieces of legislation. One makes it clear who is in charge, as Senator HARKIN said, who is on the flagpole when it comes to making sure the sterile drugs that are injected into your back—because a person has back pain—are safe so that they don't end up with a horrible death from fungal meningitis. Who is responsible for preventing that?

The second bill is how are we going to make sure the 4 billion prescriptions we have every year in this country are safe, that they are not stolen, and that they do what they are supposed to do. How are we to make sure we can track them all the way from the manufacturer to the pharmacy who dispenses them?

We have been working on these bills for 2 years. Lest anyone think that because it was a voice vote in the House and because we are close to unanimous consent in the Senate that it was easy to do, it is not that easy to do. In fact, it is worth going through how this happened before I say just a word to add to what the Senator said about the importance of bills.

The FDA became involved in the fungal meningitis issue in September of 2012, 1 year ago, after reports from Tennessee that fungal meningitis was tied to a sterile compounded drug. This hits home to many Americans because a great many Americans have been injected in their necks, their backs, or their feet with a drug that is supposed to be sterile. If it is not, it could have terrible consequences.

Immediately, Senator HARKIN called a hearing. November 15, 1 year ago, we had our first hearing. Within 6 months we released draft legislation to address the compounding pharmacy issue. We then had a hearing on that legislation. Then we passed the legislation after a lot of comment, all in the open. Everyone had a chance to weigh in. We passed it unanimously.

This committee on which we serve, Health, Education, Labor and Pensions, probably reflects the widest span of ideological differences we have in the Senate. The Republicans can be very conservative and the Democrats can be very progressive or very liberal, so one would think it would be hard to get a unanimous agreement, but we did.

The House went to work and came up with their own version of the bill, taking our work into account. We then worked with them through the summer to reach an agreement on how to reconcile the two. The House passed it by a voice vote and sent it to us. Today we have a piece of legislation that has been hot-lined. That means that both sides have sent it around to every single office. All but one Senator have agreed we can pass it by unanimous consent. The Senator has that right, as I have that right, the Senator from West Virginia, and the Senator from Iowa has that right, and sometimes we exercise that right. Later this afternoon we will be having a cloture vote, a vote to move to this bill. That cloture vote is going to succeed. There will be a sufficient number of Republican votes and a sufficient number of Democratic votes to say we are ready to deal with this.

Why are we ready to deal with this? Because Commissioner Hamburg of the Food and Drug Administration told us at our hearing what would happen if we don't. She said:

> We have a collective opportunity and responsibility to help prevent further tragedies. If we fail to act, this type of incident will happen again. It is a matter of when, not if, I'm afraid. If we fail to act now, it will only be a matter of time until we're all back in this room asking why more people have died and what could have been done to prevent it.

No one is saying this legislation is going to guarantee that there will never ever be a tragedy again, but it will help prevent future tragedies. It will take up the responsibility she challenged us to do. We have spent 1 year on it, so many people have been involved, and it is time we move to do it. My hope is that after the cloture vote tonight, very soon thereafter, after everyone has had a chance to speak and say what they have to say, that we can pass this by unanimous consent, send it to the President, and say to the American people that our differences are well advertised, but our results can be equally important. We can pass a piece of legislation which, when taken with the track-and-trace legislation which accompanies it, affects the health and safety of every single American, period. I know the people of Tennessee would welcome a prompt solution to this, and this is what I hope we have.

Senator HARKIN, as he often does, spoke in very personal terms about this legislation. I want to tell one story from Tennessee so we know what we are talking about.

Diana Reed, 56, of Tennessee, had tried massage and acupuncture, but neither eased her neck pain. One of the potential causes for her pain was an injury sustained while helping her husband, who has Lou Gehrig's disease, in and out of the wheelchair. Diana Reed was healthy, either ran or swam every day, in addition to becoming Wayne's arms, legs, and voice, according to her brother, Bob.

She decided to try a series of epidural steroid injections for her neck problems before her health insurance ran out after losing her job at a nonprofit group. This decision ended her life on October 3 of last year. She began receiving injections August 21, with a total of three scheduled, one every 2 weeks. She felt pain and nausea for a full day after the first two injections. After the third she began having headaches.

September 23, she finally agreed to go to a doctor and was quickly diagnosed with meningitis. While she remained stable for a few days and was mostly concerned about her husband's well-being—remember, he has Lou Gehrig's disease—and getting home to him as soon as possible, she took a turn for the worse. Her speech began to slur, she had trouble seeing, and eventually she had a stroke. One day later she was in a coma.

One thousand people packed Otter Creek Church for her funeral, among them the alumni of a childcare learning center for inner-city preschoolers that she and her husband had founded. The autopsy found fungal meningitis at the injection site and in Mrs. Reed's brain.

Mr. Reed has a rare form of ALS that worsens more slowly, and his mind has not been affected. Diana Reed would help him get in and out of bed, the shower, and his wheelchair. She became more instrumental in his accounting business as his speech worsened. After her death, members of their church brought meals, did laundry, and the church accepted donations to hire help to assist Mr. Reed with his personal care.

This is only one story of the tragedy that the Commissioner of the FDA says will happen again if we don't act. We believe this bill will help to prevent such a tragedy. Steroid injections last year were meant to ease the pain of hundreds of Americans, and for many Tennesseans, instead, it became their worst nightmare. These vials of compounded medicine were contaminated. Sixty-four Americans, including sixteen from my State, died from the outbreak. It is a horrible way to die.

When the HELP Committee held its first hearings on this tragic outbreak in November of last year, we looked at how could this possibly happen. It became clear that these contaminated vials were produced in a facility that was nothing like a traditional pharmacy, a corner drugstore, if you will. It operated more like a manufacturer, but it was unclear which regulator was in charge. Was the State in charge or was the FDA in charge? I made it clear at the beginning of the hearing that my priority was to find a way to clarify who is accountable for large-scale drug compounding facilities, who is on the flagpole for overseeing the safety of drugs made in these facilities.

I used the example of Hyman Rickover and the nuclear Navy in the 1950s. Admiral Rickover was doing something new. He was doing something dangerous, potentially dangerous. He was putting reactors on submarines and ships, and no one knew quite how that was going to work.

What did he do about it? Admiral Rickover hired the captain. He interviewed the captain and said: First, you are responsible for your ship; and, second, you are responsible for the reactor. If there is ever a problem with the reactor, your career is over.

The U.S. Navy has never had a death on a nuclear ship as a result of a reactor problem because everyone knew, after Admiral Rickover made those decisions, who was on the flagpole.

There should be no confusion, after this bill is passed and signed by the President, who is on the flagpole for a particular facility that makes sterile drugs. We should be able to walk into any one of our 60,000 drugstores, pharmacies, our doctors' offices, or pain clinics, and not have to worry about whether the medicines we get there are safe. The bill we are voting on represents that year of work we talked about to find a solution.

Today we have drug manufacturers on the one hand and traditional pharmacies, the corner drugstore, on the other. This legislation creates a new, voluntary third category which we call an outsourcing facility. If a drugstore chooses to be in this category, they follow one nationwide quality standard, and the FDA is responsible for all the drugs made in that facility. FDA is on the flagpole.

What is the advantage of this? First, it eliminates the confusion, it eliminates the finger pointing. If, Heaven forbid, this should happen again, it will be clear whose fault it was, who didn't do their job of regulating.

Second, it provides an option available to doctors and hospitals who, if they wish, can choose to buy all their sterile drugs from a facility regulated by the FDA.

Outsourcing facilities are subject to regular FDA inspections. The New England compounding center that caused these problems was not inspected by the State or the FDA from 2006 to 2011. Outsourcing facilities must report the products made at the facility to the FDA. The New England center that caused the problems was making copies of commercially available drugs, which is illegal. Outsourcing facilities must report to FDA when things go wrong with a product. Currently, large-scale compounders don't have any required reporting to FDA if they know about a problem with a product.

Finally, outsourcing facilities, this new category, must clearly label their products so patients know it is compounded rather than FDA approved. Traditional pharmacy compounders will continue to be primarily regulated by the States, but for outsourcing facilities, the FDA is in charge.

During our discussions we heard a lot about drug shortages. The Senator from Iowa and I worked especially to deal with that. We tried to address it where appropriate in this legislation. We know that compounded products aren't the answer to drug shortages. We don't want compounded products to be the backup solution to drug shortages; we want a better answer than that. We recognized the problem and tried to address it.

Because of heroic reactions of State officials with the Tennessee Department of Health, more people didn't become sick from the outbreak last fall. I don't intend to sit through another hearing where FDA can point the finger at someone else instead of taking responsibility or claim it doesn't have enough authority, and if we pass this legislation, FDA won't be able to.

This legislation also establishes clear rules for outsourcing facilities and puts FDA on the flagpole for drugs made in those facilities.

I hope my colleagues will vote this afternoon to move to the bill, and then shortly after that we will be able to move to approve it, as the House did.

Just one other comment, Mr. President. The chairman, the Senator from Iowa, and Senator BURR, Senator BENNETt, and others have been working for at least 2 years on this form of legislation we call track and trace. It has been through vetting. I think everybody has had a chance to read it and to make a suggestion about it. There have been many changes and adjustments to make sure it works.

Here is the problem. In the United States today, we have about 4 billion prescriptions written every year. We don't have a uniform system to track and trace these drugs once they leave the manufacturer, which makes it easier for counterfeits and substandard products to enter the market and puts patients at risk. The laws governing the tracking of drugs haven't been updated since 1988. In the last 2 years alone there have been three cases of counterfeit Avastin—a cancer drug being distributed in the United States to physicians and patients—where the counterfeit did not contain any of the active ingredient.

We have seen an increase in drug theft. We have no way of knowing if and when these drugs are resold in the U.S. supply chain. In 2009 insulin stolen from a truck much earlier was sold by pharmacies, and the insulin was ineffective due to improper storage. Stealing drugs has turned into a big business, and without assurance that drugs are stored under certain conditions and handled correctly throughout the supply chain, the drugs may not work.

This legislation would set up a system over time—10 years—where products that are stolen could be flagged as such, preventing distribution to patients. It represents a consensus on establishing a national system for all prescription drugs to have a specific serial number on the bottles. That means wholesalers, repackagers, and pharmacies will be able to check the serial number on the bottle with the manufacturer to see whether that number was assigned by the manufacturer. The serial number will not only help prove it is not counterfeit, but the information can also be used to determine whether anything else has been reported about that bottle, including whether the product was stolen.

This won't happen overnight. Creating a system that traces 4 billion prescriptions, made by over 80 manufacturers on over 3,600 manufacturing lines, that are dispensed to patients through a variety of ways will take some time. But the path laid out for us over a number of years will ensure that the U.S. drug supply chain is secure and that consumers receive drugs that work.

I want to thank the Senator from Iowa, as I have already, for his leadership on these two extraordinary pieces of legislation; Senator BURR and Senator BENNET on the track-and-trace legislation; and Senator ROBERTS and

Senator FRANKEN worked hard on compounding legislation.

Let me end where I began. The FDA Commissioner challenged us. She said that if we don't act, this tragedy will happen again. We have an opportunity to act tonight. I hope we do. The families who were devastated by this tragedy because of contaminated sterile injections that caused fungal meningitis in many of our States, especially in Tennessee, expect us to act. If we do, it will not be as well advertised as the differences of opinion we can have in the Senate, but it will demonstrate how, when we work together over a period of a couple of years, we can take a very big piece of complex legislation—in fact, two—that affects the health and safety of every American and come to a consensus that takes a large step forward.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

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

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

NOMINATIONS

Mr. CORNYN. Mr. President, back in 2005, before some of the current membership of the Senate was even here, we had a very important development when it came to judicial nominations and the advice-and-consent function of the Senate. Never, before the Presidency of George W. Bush, had nominees to the Federal court been filibustered; that is, a 60-vote threshold been imposed as opposed to a 51-vote threshold, which is, of course, what the Constitution says—requiring a majority of the Senate. But there was an impasse. A number of judges at the circuit court level and district court level were locked down in this impasse. But, as so often happens around the Senate, a gang broke out. A gang was created. Seven Republicans and seven Democrats got together and helped us work through this impasse, and they did so by adopting a new Senate precedent which says, in essence, there will be no filibusters of Federal judges absent ''extraordinary circumstances.'' Yes, you may say that is a broad standard, and it is somewhat subjective, admittedly so, but the point was that the default position would be that Federal judges would get up-or-down votes and there would not be the resort to the 60-vote threshold absent extraordinary circumstances. But the point is that has now become the precedent, basically the rule by which the Senate operates when it comes to Federal judicial nominations, and it is a precedent that has been upheld and respected by both sides of the aisle ever since President Obama took office.

This afternoon we will be voting on a second nominee to the DC Circuit Court of Appeals, a court some have called the second most important court in the Nation because, situated as it is in the District of Columbia, here in Washington, most of the judicial review of administrative decisions goes through this court at the appellate level, and because the Supreme Court only considers roughly 80 cases a year, for all practical purposes the DC Circuit Court becomes the last word on judicial review on many important decisions, particularly those involving agencies such as the Environmental Protection Agency or matters of national security or reviewing the regulations associated with the financial services industry, such as Dodd-Frank and the like—a pretty important court.

Well, unfortunately, the majority leader and the President have determined that they are going to try to jam through three new judges on the DC Circuit Court of Appeals even though these judges are clearly not needed and there is demand elsewhere around the country where the workload is far heavier. But because of the special significance of the DC Circuit Court of Appeals, there is a conscious effort being made to pack that court with three additional judges it does not need in order to change the current division—four to four—in a court where Republican Presidents appointed four, Democratic Presidents appointed four. So it is an evenly balanced court.

As I said, the DC Circuit Court of Appeals does not need any more judges. So why in the world, in a time when we are looking to make sure every penny goes as far as it can and we are not spending money we do not have, would you want to appoint three new judges to a court that does not need any new judges?

Well, here is the number: Since 2005 the total number of written decisions per active judge actually has gone down. As of September 2012 both the total number of appeals filed in the DC Circuit and the total number of appeals ended in the DC Circuit per active judge were 61 percent below the national average.

So you might ask yourself, if it carries a 61-percent reduced caseload compared to the rest of the country, why don't we put the judges where President Obama can nominate them and the Senate can confirm them in places where they are actually needed rather than this court?

Well, because of the reduced caseload and the lack of work for the judges to do on the DC Circuit, one DC Circuit judge recently told Senator GRASSLEY, the ranking member on the Senate Judiciary Committee, ''If any more judges were added now, there wouldn't be enough work to go around.'' Again, why in the world would President Obama insist and Majority Leader REID insist on us confirming judges who are not needed when there is not enough work to go around if they were?

Well, my friends across the aisle continue to say that all they care about is filling judicial vacancies, but the majority leader has made it clear that his real objective is to switch the majority when the court sits en banc. For example, ordinarily, circuit courts sit on a three-judge panel, but in important decisions you may have the entire court sit en banc or all together. And the objective is clear that the majority leader wants to stack it in favor of President Obama's nominees, to transform it into a rubberstamp for the President's big-government, overregulatory agenda.

Indeed, despite all the victories the administration has won before this court, it is apparently not good enough. This administration has won several high-profile victories—in environmental cases, for example—but they are still upset with the court because it actually ruled against President Obama on cases related to corporate governance, emissions controls, recess appointments, and nuclear waste. So our colleagues are not content to have a court that is balanced and decides cases on a case-by-case basis they want to stack the court in a way that is a rubberstamp for the President's agenda.

But here are some examples of the cases the court has decided recently. In 2011 the DC Circuit told the Securities and Exchange Commission to follow the law—believe that or not—to follow the law and conduct a proper cost-benefit analysis before adopting its regulations. That is what the law required. The Securities and Exchange Commission ignored the law, and the DC Circuit said ''follow the law'' and reversed the Securities and Exchange Commission.

In 2012 the court rejected an Environmental Protection Agency rule that went far beyond the limits of the Clean Air Act. These regulatory agencies have a lot of power and a lot of authority, but it all springs from a legislative enactment by Congress. That is the source of their power and their authority, and in this case it was the Clean Air Act. The court said the Environmental Protection Agency exceeded the limits of its authority based on the law that Congress wrote and the President signed into law.

Then, in 2013, President Obama violated the Constitution, the court said, by making recess appointments when the Senate was not actually in recess. This is a very important power that goes back to President Washington that makes sure that when Congress is in recess there is still a way for the President to fill vacancies. But that was in the old days when Congress would basically leave town for months at a time. In this case, President Obama essentially decided he did not want to wait around for the advice-

and-consent function or the confirmation function that is given in the Constitution to the Senate, and he jammed these nominees through using what he called his ''recess appointment'' power.

Well, the DC Circuit Court of Appeals said: That is unconstitutional. Mr. President, you cannot do that. The law does not allow it.

But that is another reason why, I suggest, the President is eager to stack this court with people he believes will be more ideologically aligned with his big-government agenda.

Then there was one more decision this past August that I will mention. The court reminded the Nuclear Regulatory Commission of its legal requirement to make a final decision on whether to use Yucca Mountain as a nuclear waste repository. That sounds kind of arcane, but it is very important—certainly to the people of Nevada and to the U.S. national security interests when you talk about a safe and secure location to put nuclear waste.

I would submit that all of these were commonsense rulings for which there is a very sound and broad legal basis, and the court was doing what all courts are supposed to do; that is, uphold the law. Apparently, the administration does not think this court should be in a position to do that, and they do not think they should have to be in a position to follow the law. They do not seem to care that the DC Circuit Court has ruled in favor of the administration on things such as stem cell research, health care, greenhouse gas regulation, and other hot-button issues. They do not seem to care that the court's eight active judges are evenly split between Republican and Democratic appointees. In their view, by upholding the law the DC Circuit has been insufficiently supportive of the Obama agenda, so now they are attempting to pack the court with three unneeded judges in order to stack it in the administration's favor.

I said last week that my colleague from Iowa, Senator GRASSLEY, has offered a commonsense alternative. It is a good compromise, and we have done it before. It would actually reallocate two of these seats on the DC Circuit that are unneeded to other courts in the country where they are needed. What makes more sense than that? We have done that once before. We took one of these positions from the DC Circuit and reallocated it to the Ninth Circuit, where they needed judges before. We ought to be putting the resources where they are actually needed, not stacking them in a court where the resources are not needed in order to pursue an ideological end.

Unfortunately, our friends across the aisle—the majority leader and others—have rejected the Grassley compromise and pushed ahead with their court-packing maneuver. Given their stated desire to make the DC Circuit a liberal rubberstamp, Democrats have created an extraordinary circumstance that justifies the filibuster under the 2005 precedent brought about by the Gang of 14 that I started off with. I wish we had resolved this sooner. I wish my friends across the aisle would give serious consideration to the Grassley proposal. But for now, I am afraid we have reached an impasse, and so we will be voting on this nomination this afternoon.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONDOLENCES TO INHOFE FAMILY

Mr. DURBIN. Mr. President, the Senate family was stunned yesterday with the news that our colleague JIM INHOFE lost his son Perry in a plane crash in Oklahoma. I extend my condolences to JIM, the senior Senator from Oklahoma, and his wife Kay and their family on the loss of their son.

Each year, I always look forward to their Christmas card. It is an amazing gathering which grows by the year. Clearly, it is a strong, large family which takes great comfort in one another's strength. At this moment they will need it having lost one of their own.

I extend my condolences along with those of the Senate family to all of their extended family. I pray that they will have the strength—and I am confident they will—to face this personal and family tragedy.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF CORNELIA T.L. PILLARD TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

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

The legislative clerk read the nomination of Cornelia T.L. Pillard, of the District of Columbia, to be United States Circuit Judge for the District of Columbia.

The PRESIDING OFFICER. Under the previous order, the time until 5:30 p.m. will be equally divided and controlled in the usual form.

Mr. DURBIN. A few moments ago the Republican whip, Senator CORNYN of Texas, came to the floor to oppose the nomination of Nina Pillard to the DC Circuit Court. Sadly, this did not come as a surprise. It is now clearly a political strategy on the other side to block President Obama's nominees for this important court. There are three vacancies on the DC Circuit. Most people view it as the second most important court in the land, next to the U.S. Supreme Court.

The court has eight active judges. It is authorized to have 11. When there are vacancies in our Federal judiciary, the President has a duty to fill them. President George W. Bush made six nominations for the DC Circuit during his Presidency. Of those six nominees, four were confirmed. President Obama, by contrast, has made five nominations for the DC Circuit and so far only one has been confirmed, a well-qualified gentleman, Sri Srinivasan. Two of President Obama's nominees have been filibustered by the Senate Republicans: Caitlin Halligan and Patricia Millett, two exceptionally well-qualified women.

My colleagues on the other side of the aisle have made it clear they intend to filibuster two more equally well-qualified nominees: Georgetown law professor Nina Pillard and DC District Court Judge Robert Wilkins.

This disparity is very obvious for anyone who cares to compare. President Bush: Six DC Circuit Court nominees; four of them confirmed. President Obama: Five DC Circuit Court nominees; four of them likely filibustered by the Republicans.

This is a troubling contrast. There is no question President Obama's nominees have the qualifications and integrity to serve on this important court. There are absolutely no—underline no—extraordinary circumstances that justify filibustering these nominees. Just a few days ago when the Senate Republicans filibustered Patricia Millett, one of the most distinguished nominees to ever come before the Senate, they ignored the obvious: She has argued 32 cases before the U.S. Supreme Court. Is someone literally going to come and say, oh, but she is not qualified to serve in a Federal court.

Not only that, she had the overwhelming endorsement of Solicitors General of both political parties. Clearly, she is well qualified and has bipartisan support for the job. But it was not good enough for the other side of the aisle. They filibustered her, stopping her nomination.

For those who are new to the Senate, the filibuster is an old trick, an old procedural gambit. What happens is that well-qualified people, and many times substantive legislation, are held up indefinitely or stopped with the use of a filibuster. To do it to an amendment or a bill is bad enough, to do it to a human being is something we should think long and hard about. Her nomination, the nomination of Patricia Millett, was supported by Democratic and Republican Solicitors General. They characterized her as ''brilliant'' and ''unfailingly fair-minded.''

Ms. Millett deserved an up-or-down vote on the merits. I doubt there would have been many, if any, on the other side of the aisle who would have voted against her. There is no question she would have served with distinction as a Federal judge. It is a shame she is being filibustered.

Technically, her nomination is still hanging by a procedural thread, I guess, for the possibility of being reconsidered. But when we hear the statement just recently made by the senior Senator from Texas, it gives us scant hope of her successful nomination being approved by the Senate.

Now we are considering another well-qualified nominee to the DC Circuit, Nina Pillard. Ms. Pillard is a distinguished law professor at Georgetown. She is also one of the most talented appellate attorneys in America. She has served with distinction in the Solicitor General's office and in the Justice Department's Office of Legal Counsel. She has argued nine cases before the Supreme Court of the United States. She has written briefs on many more, including U.S. v. Virginia, the landmark equal protection case that opened the doors of the Virginia Military Institute to female students.

There is no question that Ms. Pillard has the intellect, experience, and integrity to be an excellent Federal court judge. She has received strong letters of recommendation from Republicans and Democrats, from law enforcement and law professors.

It is no secret that she has written a number of academic articles in which she argued for gender equality, that men and women be treated fairly and the same under the law in America. Some find this radical thinking. Most Americans believe it should be the law of the land. But law professors are supposed to take part in debates and advance academic discourse. That is their role. Also, issues of gender equality are important in America. Do we not want our daughters to have the same opportunities as our sons?

We should want to have our finest legal minds contribute to this conversation about gender equality. We should not penalize them for doing so. Some have dismissed her nomination because she has spoken out about equality when it comes to men and women in America. That is shameful.

Ms. Pillard also made clear at her nomination hearing she understands the difference between being a professor and a judge. When Ms. Pillard has stood in judgment of others, as she has done when she served on the ABA reviewing committee for then-Judge Sam Alito in 2005, she has been fair and impartial. She probably does not share the views of Alito, but her committee give him a rating of unanimously ''well qualified.'' That rating helped send him off to the Supreme Court.

I think Viet Dinh, former Assistant Attorney General for the Office of Legal Policy under George W. Bush, helped clarify who Nina Pillard is with a letter he sent in support of her nomination. Here is what he said:

> I know that Professor Pillard is exceptionally bright, a patient and unbiased listener, and a lawyer of great judgment and unquestioned integrity.

I would go on to say, I know Professor Dinh is a very conservative person. Yet listen to how he concluded his endorsement of Nina Pillard:

> She is a fair-minded thinker with enormous respect for the law and for the limited, and essential role of the federal appellate judge—qualities that make her well prepared to take on the work of a D.C. Circuit judge. I am confident that she would approach the judicial task of applying law to facts in a fair and meticulous manner.

I urge my colleagues to give this well-qualified nominee the chance for a vote on the merits before the Senate.

Some may argue there are three strikes against Professor Pillard for this DC Circuit, and apparently there are.

First, she is an overwhelmingly well-qualified woman. Those nominations are not faring well with the other side of the aisle recently.

Secondly, she has argued that men and women deserve equal and fair treatment in America. That does not sit well with some on the other side of the aisle.

Third, this is a critically important court. There are some who are determined to maintain these vacancies even at the expense of exceptionally well-qualified nominees.

I know my Republican colleagues like to argue: We should not confirm nominees to the court because they just do not work hard enough over there. But does anyone truly believe this caseload argument would stop the Republicans if they were in the White House trying to fill the same vacancies?

We do not have to guess at the answer to that question, we know it. The fact is, the DC Circuit's caseload is actually greater now than it was when John Roberts was confirmed to be the ninth judge on that circuit in 2003. Judge Roberts was confirmed by a voice vote. The argument about not enough work in the court did not seem to come up when it was a Republican nominee for a similar vacancy.

My Republican colleagues have been eager to confirm nominees for the 9th, 10th, and 11th seats on the DC Circuit when a Republican President has been making the nomination. But when it comes to President Obama's DC Circuit nominees, it looks as though we will see four times as many filibusters as we do confirmations.

The bottom line is this: Under the law, there are supposed to be 11 active judges on this circuit. Three vacancies exist. The President has the responsibility to fill them. President Obama's nominees are well qualified. No one questions that. But they are being filibustered by Senate Republicans.

I hope my Republican colleagues change their minds about these filibusters and agree to give these nominees an up-or-down vote. These nominees have done nothing to deserve the filibuster. They deserve to be judged on the merits.

Let me close by saying that we have gone through this debate for a long time on both sides, arguing that well-qualified nominees deserve an up-or-down vote. There have been times when some people have questioned the whole process that would allow this basic unfairness for nominees to the bench that we are seeing happen with the DC Circuit. We have gone from the brink of talking about changing the rules of the Senate, and usually at the very last moment we will step up and try to work out our differences in a fair fashion between the two parties, agreeing that certain nominees will move forward and certain nominees will not.

But I will tell you, as I have said to my friends on the other side of the aisle, there comes a tipping point. There reaches a point where we cannot allow this type of fundamental unfairness and injustice to occur. It is not fair to those nominees who submit their names in good faith, willing to serve on these important judicial assignments and to give their best talents and to show their integrity in the process and then to be given the back of the hand by a Republican filibuster on the floor of the Senate. It reaches a point where we cannot continue to do this.

I say to my friends on the other side of the aisle who have said we should not change the rules of the Senate, it is time for them to show common sense and to show a basic sense of fairness when it comes to those nominees. I hope that when this matter comes before the Senate, my Republican friends across the aisle will relent, will not stop this good nominee from her opportunity to serve.

I hope we can find her nomination and the others who are pending moving forward in a way that is befitting of this great institution.

Mr. HATCH. Mr. President, we are once again taking an unnecessary cloture vote on an unnecessary nomination to a court that needs no more judges. The only reason for either this nomination or this cloture vote is deliberately to provoke a confrontation that the majority hopes will be to their partisan political benefit. Perhaps they want to use a fake charge of obstruction to again push for rigging the confirmation process through the so-called nuclear option. Perhaps they want to give their allied grassroots groups something with which those groups can raise money. Or perhaps the majority wants to use this to distract from disasters like the implementation of Obamacare.

One thing is for sure, this confrontation is not happening because Republicans are genuinely obstructing needed nominations. President Obama has appointed more than twice as many judges so far this year than at the beginning of either President Bush's or

President Clinton's second term. President Obama has already appointed nearly one-quarter of the entire Federal judiciary.

Whatever the reason, this stunt will only end up further politicizing the confirmation process and undermining the independence of the judiciary. As I outlined in the National Law Journal over the weekend, it would be hard to make a clearer case that the U.S. Court of Appeals for the DC Circuit needs no more judges. Since 2006, when Democrats said that this court needed no more judges, new appeals are down 27 percent, cases scheduled for argument are down 11 percent, and written decisions per active judge are down 18 percent. The DC Circuit, as it has for years, ranks last among all circuits in virtually every measure of caseload.

Consider just a brief comparison with the next busiest circuit. In the Tenth Circuit, new appeals are 87 percent higher, terminated appeals are 131 percent higher, and written decisions per active judge are 150 percent higher.

In 2006, Democrats also opposed more DC Circuit appointments because more pressing ''judicial emergency'' vacancies had not been filled. Judicial emergencies are up 90 percent since then, and the percentage of those vacancies with nominees is down from 60 percent to just 47 percent.

No matter how you slice it, dice it, or spin it, the DC Circuit has enough judges while other courts need more. Democrats have not yet said that the standard they used in 2006 to oppose Republican appointees was wrong, nor have they explained why a different standard should be used today to push Democratic appointees.

The better course would be to stop these fake, partisan confrontations and focus on nominees to courts that really need them.

Mr. GRASSLEY. Mr. President, I will conclude this debate with the following points:

First, under the Democrats' standard from 2006, the DC Circuit needs no additional judges. This is why current judges have written things like: ''If any more judges were confirmed now, there wouldn't be enough work to go around.''

Second, the President has made clear on a host of issues, such as cap-and-trade fee increases, that he will simply go around Congress through administrative action rather than do the hard work of passing legislation. That is why he wants to stack the deck on this court with committed ideologues, as Professor Pillard appears to be. It seems the President is confident Professor Pillard would be a reliable rubber stamp, considering she is outside the mainstream on a host of issues, including religious freedom, abortion, and abstinence-only education.

So I agree with those Democrats who said during the Bush administration: ''The Senate should not be a rubber stamp to this President's effort to pack the court with those who would give him unfettered leeway.''

There is simply no justification for spending $1 million per year for these lifetime appointments given the lack of workload under the Democrats' standard from 2006.

Accordingly, I urge a ''no'' vote on the cloture motion.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. WARREN). Without objection, it is so ordered.

Mr. LEAHY. Madam President, here we go again. For the third time this year, we are debating whether to end a Republican filibuster and allow a confirmation vote for a highly qualified woman to the DC Circuit. In March, it was Caitlin Halligan. Last month, it was Patricia Millet. Today, it is Nina Pillard. The qualifications of each of these nominees surpass those of many other attorneys who have been confirmed to the Federal bench. These are three women who have earned their way to the top of the legal profession. They are recognized by legal scholars, practitioners, and men and women alike as being at the top of the profession. It appears Senate Republicans are going to continue to launch filibuster after filibuster at these stellar nominees.

Like Caitlin Halligan and Patricia Millett, I am confident Nina Pillard would be confirmed if Republicans would stop filibustering and allow an up-or-down vote on her nomination. She would get well over the number needed. If Republicans vote in lockstep to continue their filibuster against Nina Pillard, then Senate Republicans will have blocked three outstanding women in a row from being confirmed to what is considered the second highest court in our country.

Senate Republicans have an opportunity to make this right by voting to end the filibuster of Nina Pillard's nomination today, and by voting on the nomination of Patricia Millett once the majority leader brings it again before the Senate as he said he intends to do. Confirming these two highly qualified nominees is the right thing to do and it will make history, once these two extraordinary women are confirmed, the DC Circuit will be the first Federal appellate court in our country to have an equal number of women serving as judges as men.

Wouldn't that be nice? The DC Circuit would actually reflect the proportion of women in this country. It would be a nice move. Despite having filled nearly half of law school classrooms for the last 20 years, women are grossly underrepresented on our Federal courts. What kind of message are Senate Republicans sending by refusing to even allow a vote on three of the most qualified female attorneys in this country?

When Senate Republicans talked about seating John Roberts on one of these seats on the DC Circuit, every Republican and every Democrat supported him. That was no problem for them. Of course, John Roberts was nominated by a Republican President.

We now have women nominees who are equally well qualified, and they are filibustered. Of course, they were nominated by a Democratic President. I guess if you are a Republican and nominate a qualified man, this nominee can be confirmed easily. If you are a Democrat nominating an equally qualified woman, this nominee will be filibustered. What does this say to people in law school? What does it say to our country? What does it say about the impartiality of our Federal bench? We need women in our Federal courts. A vote to end this filibuster is a vote in the historic direction of having our Federal appellate courts more accurately reflect the gender balance of our country.

Nina Pillard is a stellar nominee. She is an accomplished litigator whose work includes 9 Supreme Court oral arguments and briefs in more than 25 Supreme Court cases. She drafted the Federal Government's brief in United States v. Virginia, which after a 7-to-1 decision by the Supreme Court made history by opening the Virginia Military Institute's doors to women students and expanded educational opportunity for women across this country.

As a father who loves his daughter and his three granddaughters, I want to see us start paying attention to the fact that we have both men and women in this country. After Nina Pillard's work in U.S. v. Virginia, hundreds of women have had the opportunity to attend VMI and go on to serve our country. Josiah Bunting III, the superintendent of VMI when female cadets were first integrated into the corps, has since called VMI's transition to coeducation ''one of its finest hours.'' And it was. But it needed somebody like Nina Pillard to bring a case to the Supreme Court so they could have their finest hour.

Nina Pillard has not only stood up for equal opportunities for women but for men as well. In Nevada v. Hibbs she successfully represented a male employee of the State of Nevada who was fired when he tried to take unpaid leave under the Family and Medical Leave Act to care for his sick wife. In a 6-to-3 opinion authored by then-Chief Justice William Rehnquist, the Supreme Court ruled for her client, recognizing that the law protects both men and women in their caregiving roles within the family.

Nina Pillard has also worked at the Department of Justice's Office of Legal Counsel, an office that advises on the most complex constitutional issues facing the executive branch. Prior to that service, she litigated civil rights cases at the NAACP Legal Defense &

Education Fund. At Georgetown Law School—a law school this chairman of the Senate Judiciary Committee loves, having graduated from there—Nina Pillard teaches advanced courses on constitutional law and civil procedure, and co-directs the law school's very prestigious Supreme Court Institute.

She has earned the American Bar Association's highest possible ranking—Unanimously Well Qualified—to serve as a federal appellate judge on the DC Circuit. She also has significant bipartisan support. Viet Dinh, the former Assistant Attorney General for the Office of Legal Policy under President George W. Bush, has written that:

> Based on our long and varied professional experience together, I know that Professor Pillard is exceptionally bright, a patient and unbiased listener, and a lawyer of great judgment and unquestioned integrity Nina . . . has always been fair, reasonable, and sensible in her judgments . . . She is a fair-minded thinker with enormous respect for the law and for the limited, and essential, role of the federal appellate judge—qualities that make her well prepared to take on the work of a D.C. Federal Judge.

Former FBI Director and Chief Judge of the Western District of Texas, William Sessions, has written that her ''rare combination of experience, both defending and advising government officials, and representing individuals seeking to vindicate their rights, would be especially valuable in informing her responsibilities as a judge.''

Nina Pillard has also received letters of support from 30 former members of the U.S. armed forces, including 8 retired generals; 25 former Federal prosecutors and other law enforcement officials; 40 Supreme Court practitioners, including Laurence Tribe, Carter Phillips, and Neal Katyal, among others.

I ask unanimous consent to have a list of those letters of support for Ms. Pillard printed in the RECORD at the conclusion of my remarks.

Nina Pillard's nomination does not rise to the level of an extraordinary circumstance, which was what the Gang of 14 decided should be the standard for filibustering nominees back in 2005. According to a Senate Republican who still serves today:

> Ideological attacks are not an 'extraordinary circumstance.' To me, it would have to be a character problem, an ethics problem, some allegation about the qualifications of the person, not an ideological bent.

There is no reasonable interpretation of that definition in which one could find an extraordinary circumstance with Nina Pillard. She has no character problem, no ethics problem, and most importantly, she has extraordinary qualifications.

Rather than debate the merits of President Obama's well-qualified nominees to the DC Circuit—because it would be impossible to debate them, as they are so well qualified—Senate Republicans have made clear that partisanship is more important to them than the Federal judiciary, the administration of justice, and the needs of the American people. With the exception of Senators LISA MURKOWSKI and SUSAN COLLINS, every single Republican Senator voted to filibuster Patricia Millett's nomination, arguing that we should not fill existing vacancies because suddenly they are concerned about the need for these existing judgeships. We know this is just a pretext for two reasons. First, they had no such concerns about the unique caseload of the DC Circuit when a Republican was in the White House and nominated judges to the 9th, 10th, and 11th seat. In fact, they filled the seat for this court that John Roberts was unanimously confirmed to when there was a lower caseload. Now, when we have a superbly qualified woman, suddenly she has to be filibustered.

And second, if Republicans actually cared about the cost of hampering our Government's functions they would not have shut down our Federal Government, which cost billions of dollars and set back our recovering economy. Avoiding the needless shutdown of our Government would have paid for all these Federal courts for years. So do not stand up and say we do not want these women on this court. Be honest about it. Do not give me a lot of folderol about numbers and expenses and everything else, because that is all it is: it is folderol.

In 2003, the Senate unanimously confirmed John Roberts by voice vote to be the ninth judge on the DC Circuit—at a time when its caseload was lower than it is today—and, in fact, his confirmation marked the lowest caseload level per judge on the DC Circuit in 20 years. Not a single Senate Republican raised any concerns about whether the caseload warranted his confirmation, and during the Bush administration, they voted to fill four vacancies on the DC Circuit—giving the court a total of 11 judges in active service. Today there are only eight judges on the court. What has changed? It is not the caseload—that has remained fairly constant over the past 10 years. In fact, the cases pending per active judge are actually higher today than they were when President Bush's nominees were confirmed to the DC Circuit. The only thing that has changed is the party of the President nominating judges to the court.

We also should not be comparing the DC Circuit's caseload with the caseload of other circuits, as Republicans have recently done. The DC Circuit is often understood to be the second most important court in the land because of the complex administrative law cases that it handles. The court reviews complicated decisions and rulemakings of many Federal agencies, and in recent years has handled some of the most important terrorism and enemy combatant and detention cases since the attacks of September 11. So comparing the DC Circuit's caseload to other circuits is a false comparison, and those who are attempting to make this comparison are not being fully forthcoming with the American public.

The DC Circuit should be operating at full strength, as it was when President Bush left office. Republicans supported this for President Bush but do not for President Obama. That is shameful. That is wrong. There are currently three vacancies and President Obama has fulfilled his constitutional role by nominating three eminently qualified nominees to fill these seats. Patricia Millett, Nina Pillard, and Robert Wilkins would fill the ninth, tenth, and eleventh seats on the DC Circuit. These are the same seats that were filled during President Bush's tenure when the caseload was lower. Do not give me balderdash; let us deal with reality. Let us judge each nominee based on his or her qualifications and not hide behind some pretextual argument that most Americans can see through.

If the Republican caucus continues to abuse the filibuster rule and obstruct the President's fine nominees to the DC Circuit, then I believe this body will need to consider anew whether a rules change should be in order. That is not a change that I want to see happen, but if Republican Senators are going to hold nominations hostage without consideration of nominees' individual merit, drastic measures may be warranted. I hope it does not come to that. I hope that the same Senators who stepped forward to broker compromise when Republicans shut down the government will decide to put politics aside and vote on the merits of these exceptional nominees. I also hope the same Senators who have said judicial nominations ought not be filibustered barring extraordinary circumstances will stay true to their word. Let us not have a double standard where one President is treated one way and another is treated differently. For the sake of justice in this country, for the sake of the independence of our Federal judiciary, let us stop the filibuster and consider Nina Pillard's nomination based on her qualifications. Let us treat her with the decency that she deserves. This Nation would be better off having her serve as a judge on the Court of Appeals for the DC Circuit.

I have argued cases before courts of appeal. I know how important it is to the administration of justice. I know how important it is for litigants who enter the courtroom not caring whether they are Republican or Democrat, whether they are plaintiff or defendant, whether the State or respondent. I know how important it is to have qualified judges. I call on the few Senators in this body who have argued cases before courts of appeals or before the U.S. Supreme Court to stop this game-playing with our Federal judiciary. Our independent judiciary is a model for the rest of the world. We must stop politicizing it, and stop using feeble, wrong, and misleading excuses. Let us start doing what is right for the country for a change. Stop the bumper sticker slogans. Stop the rhetoric that interferes with reality. Let us start doing what is right.

Would this not be a refreshing change in this country? I saw a poll this afternoon that showed the Congress at a 9 percent approval rating, and I would like to find out who those 9 percent are. Would it not be nice if the American people actually saw us doing what is best for America, and stopped this pettifoggery? Let us do what is right for America.

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

LETTERS RECEIVED IN SUPPORT OF CORNELIA PILLARD

June 4, 2013—William T. Coleman Jr., Attorney

July 8, 2013—John M. Townsend, Attorney

July 9, 2013—William S. Sessions, Former Director of the Federal Bureau of Investigation

July 17, 2013—21 Former Office of Legal Counsel Attorneys at the Department of Justice

July 17, 2013—25 Law School Deans

July 17, 2013—25 Former Federal Prosecutors and Law Enforcement Officials

July 17, 2013—40 Members of the Supreme Court Bar

July 18, 2013—Viet Dinh, Former Assistant Attorney General for the Office of Legal Policy at the Department of Justice and Professor of Law at Georgetown

July 22, 2013—30 Retired Members of the Armed Forces

July 22, 2013—Jessica Adler, President, Women's Bar Association of the District of Columbia

July 23, 2013—Virginia Military Institute Alumni

July 24, 2013—Pamela Berman, President, National Conference of Women's Bar Associations

August 7, 2013—Peter M. Reyes, Jr., National President, Hispanic National Bar Association

September 9, 2013—Douglas T. Kendall, Vice President of the Constitutional Accountability Center

September 18, 2013—Shanna Smith, President and CEO, National Fair Housing Alliance

July 23, 2013, September 11, 2013, and November 12, 2013—Wade Henderson, President and CEO, Leadership Conference on Civil and Human Rights

July 23, 2013 and November 12, 2013—Nancy Duff Campbell and Marcia Greenberger, Co-Presidents of the National Women's Law Center

November 12, 2013—Neda Mansoorian, President, California Women Lawyers

The PRESIDING OFFICER. Thirty seconds remains.

Mr. LEAHY. I yield back the remaining 30 seconds.

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Cornelia T. L. Pillard, of the District of Columbia, to be United States Circuit Judge for the District of Columbia Circuit.

Harry Reid, Patrick J. Leahy, Richard J. Durbin, John D. Rockefeller IV, Benjamin L. Cardin, Jon Tester, Sheldon Whitehouse, Mark R. Warner, Patty Murray, Mazie K. Hirono, Angus S. King, Jr., Barbara Boxer, Jeanne Shaheen, Robert Menendez, Bill Nelson, Debbie Stabenow, Richard Blumenthal.

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

The question is, Is it the sense of the Senate that debate on the nomination of Cornelia T.L. Pillard, of the District of Columbia, to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. HATCH (when his name was called). ''Present.''

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. INHOFE) and the Senator from Nebraska (Mr. JOHANNS).

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

The yeas and nays resulted—yeas 56, nays 41, as follows:

[Rollcall Vote No. 233 Ex.]

YEAS—56

Baldwin	Hagan	Murphy
Baucus	Harkin	Murray
Begich	Heinrich	Nelson
Bennet	Heitkamp	Pryor
Blumenthal	Hirono	Reed
Booker	Johnson (SD)	Rockefeller
Boxer	Kaine	Sanders
Brown	King	Schatz
Cantwell	Klobuchar	Schumer
Cardin	Landrieu	Shaheen
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Manchin	Udall (CO)
Coons	Markey	Udall (NM)
Donnelly	McCaskill	Warner
Durbin	Menendez	Warren
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murkowski	

NAYS—41

Alexander	Enzi	Paul
Ayotte	Fischer	Portman
Barrasso	Flake	Reid
Blunt	Graham	Risch
Boozman	Grassley	Roberts
Burr	Heller	Rubio
Chambliss	Hoeven	Scott
Coats	Isakson	Sessions
Coburn	Johnson (WI)	Shelby
Cochran	Kirk	Thune
Corker	Lee	Toomey
Cornyn	McCain	Vitter
Crapo	McConnell	Wicker
Cruz	Moran	

ANSWERED ''PRESENT''—1

Hatch

NOT VOTING—2

Inhofe Johanns

The PRESIDING OFFICER. On this vote, the yeas are 56, the nays are 41, 1 Senator responded ''Present.'' Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. REID. Madam President, I enter a motion to reconsider the vote by which cloture was not invoked on the Pillard nomination.

The PRESIDING OFFICER. The motion is entered.

LEGISLATIVE SESSION

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

DRUG QUALITY AND SECURITY ACT—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 236, H.R. 3204, an Act to amend the Federal Food, Drug, and Cosmetic Act with respect to human drug compounding and drug supply chain security, and for other purposes.

Harry Reid, Tom Harkin, Patrick J. Leahy, Tom Udall, Mark Begich, Brian Schatz, Al Franken, Barbara Boxer, Richard J. Durbin, Christopher A. Coons, Debbie Stabenow, Benjamin L. Cardin, Sheldon Whitehouse, Patty Murray, Barbara A. Mikulski, Kirsten E. Gillibrand, Jeff Merkley.

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

The question is, Is it the sense of the Senate that debate on the motion to proceed to H.R. 3204, an act to amend the Federal Food, Drug, and Cosmetic Act with respect to human drug compounding and drug supply chain security, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. INHOFE) and the Senator from Nebraska (Mr. JOHANNS).

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

The yeas and nays resulted—yeas 97, nays 1, as follows:

[Rollcall Vote No. 234 Leg.]

YEAS—97

Alexander	Cochran	Heitkamp
Ayotte	Collins	Heller
Baldwin	Coons	Hirono
Barrasso	Corker	Hoeven
Baucus	Cornyn	Isakson
Begich	Crapo	Johnson (SD)
Bennet	Cruz	Johnson (WI)
Blumenthal	Donnelly	Kaine
Blunt	Durbin	King
Booker	Enzi	Kirk
Boozman	Feinstein	Klobuchar
Boxer	Fischer	Landrieu
Brown	Flake	Leahy
Burr	Franken	Lee
Cantwell	Gillibrand	Levin
Cardin	Graham	Manchin
Carper	Grassley	Markey
Casey	Hagan	McCain
Chambliss	Harkin	McCaskill
Coats	Hatch	McConnell
Coburn	Heinrich	Menendez

Merkley
Mikulski
Moran
Murkowski
Murphy
Murray
Nelson
Paul
Portman
Pryor
Reed
Reid
Risch
Roberts
Rockefeller
Rubio
Sanders
Schatz
Schumer
Scott
Sessions
Shaheen
Shelby
Stabenow
Tester
Thune
Toomey
Udall (CO)
Udall (NM)
Warner
Warren
Whitehouse
Wicker
Wyden

NAYS—1

Vitter

NOT VOTING—2

Inhofe Johanns

The PRESIDING OFFICER. On this vote, the yeas are 97, the nays are 1. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Ms. WARREN. Mr. President, I ask unanimous consent 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.

VETERANS DAY

Mr. DURBIN. Mr. President, I rise today to speak about the importance of honoring our Nation's veterans for their service and sacrifice. I hope every American found a moment this weekend to reflect on what veterans have done for us and for our Nation as a whole.

We are now 238 years removed from our Nation's first war, the Revolutionary War. Brave Americans have fought to defend this Nation in wars large and small, from the World Wars to Vietnam to Iraq, and everything in between. Our Nation still has some 54,000 troops in Afghanistan, and we all pray for their safe return as we draw down our forces over the next year.

In each incarnation, brave men and women, often barely old enough to vote, went to war, and returned as veterans. A common thread that binds each generation served by our veterans is that solemn pledge so perfectly articulated by President Lincoln: ''Let us strive . . . to care for him who shall have borne the battle and for his widow and his orphan.''

Living up to Lincoln's words has been the duty of every generation. Our veterans of the wars in Iraq and Afghanistan are the most recent to experience the deep-seated physical, emotional, and mental wounds of war.

In recognition, we cannot simply commemorate our veterans' service, but must express our gratitude through action. Supporting and strengthening our veterans' access to health care, education, job training, housing, and other services is every bit about keeping this promise.

Here in Congress, we hold in our hands the legislative powers to improve the treatment, benefit, and assistance programs that already exist and the power to create new programs to meet the changing needs of our veterans and their families. We in Congress have a heightened obligation to service the needs of our veterans.

I am committed to that promise. We know that veterans face unnecessary delays in claims processing and reimbursement. I have worked hard to cut down on the backlog and encourage the VA to address this impending problem.

In Chicago, the VA is rolling out a new electronic records system, and the backlog is dropping. As chairman of the Senate Defense Appropriations Subcommittee, I have also included increased funding to the Department of Defense to ensure the speedy transfer of servicemember medical records, and I will continue to work with the chairman of the Veterans Affairs Committee to alleviate the claims processing backlog.

New medical challenges are also facing our veterans. In an age where doctors are better able to save the soldier's life on the battlefield, more soldiers are returning home with loss of limbs. To assist these veterans, I introduced legislation to make sure that the VA and our colleges and universities work together to ensure the next generation of orthotic and prosthetics professionals will be there for these wounded warriors. I'm happy to say that Senate Veterans Affairs Chairman SANDERS is working with me on this, and we hope to get this program signed into law later this year.

I was also proud to lead the fight for what is now the VA's caregivers program. It provides the families of severely disabled Iraq and Afghanistan war veterans with the support they deserve to care for their loved ones.

Treating and attending to a wounded veteran is an incredibly demanding job—often best served by a family member—and the caregiver's program ensures that these families have the training and financial support necessary to care for our wounded heroes.

I am proud to say there are now hundreds of veteran caregivers in Illinois and thousands nationwide taking part in this program—and loving it.

We have come a long way in supporting our veterans over the years and responding to their changing needs, yet our work is far from done.

On Veterans Day in 1961, President Kennedy stood at Arlington National Cemetery, in view of the Capitol building in Washington, D.C. On that day he said: ''In a world tormented by tension and the possibilities of conflict, we meet in a quiet commemoration of an historic day of peace. In an age that threatens the survival of freedom, we join together to honor those who made our freedom possible.''

Today, some 52 years later, we too stand together to honor, to commemorate, and to remember the proud ranks of veterans who have defended America and her ideals in every corner of the globe. I am proud to stand for our Nation's veterans and their families every day, but I am especially proud to celebrate them each year on Veterans Day.

REMEMBERING GERARDO HERNANDEZ

Mrs. BOXER. Mr. President, I ask my colleagues to join me in honoring the life of Gerardo Ismael Hernandez, a loving husband and father and respected homeland security agent who was dedicated to protecting the safety of the American people. Tragically, Agent Hernandez was struck down by a gunman at Los Angeles International Airport on November 1, 2013, becoming the first Transportation Security Administration officer killed in the line of duty since the agency's creation. He was 39 years old.

A graduate of Los Angeles High School, Gerardo Hernandez was born in El Salvador and came to Los Angeles with his family at age 15. The youngest of four brothers, Gerardo worked hard to succeed and always wanted to give something back to his country. He went to work for TSA in June 2010 and became a behavior detection specialist at LAX. He was devoted to his job, his country, and his beloved family.

Gerardo met his future wife, Ana Machuca, when he was 19 years old. Married in 1998, the young couple settled in Porter Ranch, CA and were proud parents to a daughter and a son. His friends and colleagues remember him as a devoted husband and father and a wonderful friend with a great sense of humor who frequently went out of his way to help others.

Agent Gerardo Hernandez, like all those who serve in law enforcement and homeland security, put his life on the line to protect and serve his community. His commitment to public safety and to the citizens he protected will never be forgotten.

On behalf of the people of California, whom he served so well, I send my gratitude and deep sympathy to his friends and family. We are forever indebted to Agent Hernandez for his courage, service, and sacrifice.

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 messages received today are printed at the end of the Senate proceedings.)

REPORT ON THE CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO IRAN THAT WAS DECLARED IN EXECUTIVE ORDER 12170 ON NOVEMBER 14, 1979—PM 24

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 Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, within the 90-day period prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice stating that the national emergency with respect to Iran that was declared in Executive Order 12170 of November 14, 1979, is to continue in effect beyond November 14, 2013.

Because our relations with Iran have not yet returned to normal, and the process of implementing the agreements with Iran, dated January 19, 1981, is still under way, I have determined that it is necessary to continue the national emergency declared in Executive Order 12170 with respect to Iran.

BARACK OBAMA.

THE WHITE HOUSE, *November 12, 2013.*

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 1661. A bill to require the Secretary of State to offer rewards of up to $5,000,000 for information regarding the attacks on the United States diplomatic mission at Benghazi, Libya that began on September 11, 2012.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. FEINSTEIN, from the Select Committee on Intelligence:

Report to accompany S. 1631, a bill to consolidate the congressional oversight provisions of the Foreign Intelligence Surveillance Act of 1978 and for other purposes (Rept. No. 113–119).

By Mr. HARKIN, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1356. A bill to amend the Workforce Investment Act of 1998 to strengthen the United States workforce development system through innovation in, and alignment and improvement of, employment, training, and education programs in the United States, and to promote individual and national economic growth, and for other purposes.

By Mrs. FEINSTEIN, from the Select Committee on Intelligence, without amendment:

S. 1681. An original bill to authorize appropriations for fiscal year 2014 for intelligence and intelligence-related activities of the United States Government and the Office of the Director of National Intelligence, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of nominations were submitted:

By Mr. ROCKEFELLER for the Committee on Commerce, Science, and Transportation.

*Terrell McSweeny, of the District of Columbia, to be a Federal Trade Commissioner for the unexpired term of seven years from September 26, 2010.

*Robert Michael Simon, of Maryland, to be an Associate Director of the Office of Science and Technology Policy.

*Jo Emily Handelsman, of Connecticut, to be an Associate Director of the Office of Science and Technology Policy.

*Kathryn D. Sullivan, of Ohio, to be Under Secretary of Commerce for Oceans and Atmosphere.

Mr. ROCKEFELLER. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Coast Guard nominations beginning with Kenneth J. Anderson and ending with Forest A. Willis, Jr., which nominations were received by the Senate and appeared in the Congressional Record on November 7, 2013 .

Coast Guard nominations beginning with Wayne R. Arguin and ending with Michael B. Zamperini, which nominations were received by the Senate and appeared in the Congressional Record on November 7, 2013.

Coast Guard nominations beginning with Steven C. Acosta and ending with Marc A. Zlomek, which nominations were received by the Senate and appeared in the Congressional Record on November 7, 2013.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. UDALL of New Mexico (for himself and Mr. DURBIN):

S. 1677. A bill to establish centers of excellence for innovative stormwater control infrastructure, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BURR (for himself, Mr. COBURN, and Mr. CHAMBLISS):

S. 1678. A bill to amend subchapter II of chapter 84 of title 5, United States Code, to prohibit coverage for annuity purposes for new Federal employees, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. TOOMEY:

S. 1679. A bill to require a study on the Russian RD–180 rocket engine; to the Committee on Armed Services.

By Mr. ROCKEFELLER:

S. 1680. A bill to amend the Communications Act of 1934 to increase consumer choice and competition in the online video programming distribution marketplace, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. FEINSTEIN:

S. 1681. An original bill to authorize appropriations for fiscal year 2014 for intelligence and intelligence-related activities of the United States Government and the Office of the Director of National Intelligence, the Central Intelligence Agency Retirement and Disability System, and for other purposes; from the Select Committee on Intelligence; placed on the calendar.

By Mr. CASEY:

S. 1682. A bill to amend title 38, United States Code, to make certain clarifications and improvements in the academic and vocational counseling programs administered by the Secretary of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. MENENDEZ (for himself and Mr. CORKER):

S. 1683. A bill to provide for the transfer of naval vessels to certain foreign recipients, and for other purposes; to the Committee on Foreign Relations.

By Mr. TOOMEY:

S. 1684. A bill to require a pilot program on the provision of certain information to State veterans agencies to facilitate the transition of members of the Armed Forces from military service to civilian life; to the Committee on Veterans' Affairs.

By Mr. PORTMAN:

S. 1685. A bill to amend the Public Health Service Act and the Social Security Act to extend health information technology assistance eligibility to behavioral health, mental health, and substance abuse professionals and facilities, and for other purposes; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself and Mr. GRASSLEY):

S. 1686. A bill to amend the Controlled Substances Act to provide enhanced penalties for marketing controlled substances to minors; to the Committee on the Judiciary.

By Mr. CASEY (for himself, Mr. BROWN, Mr. HARKIN, and Mr. FRANKEN):

S. 1687. A bill to amend the Fair Labor Standards Act of 1938 to ensure that employees are not misclassified as non-employees, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. CARDIN (for himself, Mr. WICKER, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. SCHATZ, Mr. MARKEY, Mrs. HAGAN, and Mr. SCHUMER):

S. Res. 290. A resolution commemorating the 75th anniversary of Kristallnacht, or the Night of the Broken Glass; considered and agreed to.

By Mr. TOOMEY:

S. Res. 291. A resolution expressing the sense of the Senate on a nationwide moment of remembrance on Memorial Day each year, in order to appropriately honor United States patriots lost in the pursuit of peace and liberty around the world; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 135

At the request of Mr. VITTER, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 135, a bill to amend title X of the Public Health Service Act to prohibit family planning grants from being awarded to any entity that performs abortions, and for other purposes.

S. 137

At the request of Mr. VITTER, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 137, a bill to amend the Public Health Service Act to prohibit certain abortion-related discrimination in governmental activities.

S. 252

At the request of Mr. ALEXANDER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 252, a bill to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 313

At the request of Mr. CASEY, the names of the Senator from Arkansas (Mr. BOOZMAN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 313, a bill to amend the Internal Revenue Code of 1986 to provide for the tax treatment of ABLE accounts established under State programs for the care of family members with disabilities, and for other purposes.

S. 330

At the request of Mrs. BOXER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 330, a bill to amend the Public Health Service Act to establish safeguards and standards of quality for research and transplantation of organs infected with human immunodeficiency virus (HIV).

S. 367

At the request of Mr. CARDIN, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 367, a bill to amend title XVIII of the Social Security Act to repeal the Medicare outpatient rehabilitation therapy caps.

S. 381

At the request of Mr. BROWN, the names of the Senator from Maine (Ms. COLLINS), the Senator from Mississippi (Mr. COCHRAN), the Senator from Mississippi (Mr. WICKER), the Senator from Kansas (Mr. ROBERTS), the Senator from North Carolina (Mr. BURR), the Senator from Indiana (Mr. COATS), the Senator from South Dakota (Mr. THUNE), the Senator from Idaho (Mr. CRAPO), the Senator from Wyoming (Mr. ENZI), the Senator from Louisiana (Mr. VITTER), the Senator from Idaho (Mr. RISCH), the Senator from Missouri (Mr. BLUNT), the Senator from Nevada (Mr. HELLER), the Senator from Tennessee (Mr. ALEXANDER), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Iowa (Mr. GRASSLEY), the Senator from Minnesota (Ms. KLOBUCHAR), the Senator from Illinois (Mr. KIRK) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. 381, a bill to award a Congressional Gold Medal to the World War II members of the ''Doolittle Tokyo Raiders'', for outstanding heroism, valor, skill, and service to the United States in conducting the bombings of Tokyo.

S. 411

At the request of Mr. ROCKEFELLER, the name of the Senator from Missouri (Mr. BLUNT) was added as a cosponsor of S. 411, a bill to amend the Internal Revenue Code of 1986 to extend and modify the railroad track maintenance credit.

S. 528

At the request of Mrs. HAGAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 528, a bill to amend the Higher Education Opportunity Act to restrict institutions of higher education from using revenues derived from Federal educational assistance funds for advertising, marketing, or recruiting purposes.

S. 822

At the request of Mr. LEAHY, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 822, a bill to protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 842

At the request of Mr. SCHUMER, the name of the Senator from Massachusetts (Ms. WARREN) was added as a cosponsor of S. 842, a bill to amend title XVIII of the Social Security Act to provide for an extension of the Medicare-dependent hospital (MDH) program and the increased payments under the Medicare low-volume hospital program.

S. 917

At the request of Mr. CARDIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 917, a bill to amend the Internal Revenue Code of 1986 to provide a reduced rate of excise tax on beer produced domestically by certain qualifying producers.

S. 961

At the request of Mr. BLUNT, the name of the Senator from North Dakota (Mr. HOEVEN) was added as a cosponsor of S. 961, a bill to improve access to emergency medical services, and for other purposes.

S. 981

At the request of Mr. MENENDEZ, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 981, a bill to direct the Federal Trade Commission to prescribe rules prohibiting deceptive advertising of abortion services, and for other purposes.

S. 1001

At the request of Mr. CORNYN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1001, a bill to impose sanctions with respect to the Government of Iran.

S. 1143

At the request of Mr. MORAN, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1143, a bill to amend title XVIII of the Social Security Act with respect to physician supervision of therapeutic hospital outpatient services.

S. 1158

At the request of Mr. WARNER, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 1158, a bill to require the Secretary of the Treasury to mint coins commemorating the 100th anniversary of the establishment of the National Park Service, and for other purposes.

S. 1171

At the request of Mr. MORAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1171, a bill to amend the Controlled Substances Act to allow a veterinarian to transport and dispense controlled substances in the usual course of veterinary practice outside of the registered location.

S. 1181

At the request of Mr. MENENDEZ, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1181, a bill to amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investments in United States real property interests, and for other purposes.

S. 1224

At the request of Mr. CARDIN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 1224, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and

frontpay awards received on account of such claims, and for other purposes.

S. 1235

At the request of Mr. WYDEN, the name of the Senator from Kansas (Mr. MORAN) was added as a cosponsor of S. 1235, a bill to restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

S. 1312

At the request of Mr. COBURN, the name of the Senator from South Carolina (Mr. SCOTT) was added as a cosponsor of S. 1312, a bill to amend title 5, United States Code, to limit the circumstances in which official time may be used by a Federal employee.

S. 1320

At the request of Mr. DONNELLY, the name of the Senator from North Dakota (Ms. HEITKAMP) was added as a cosponsor of S. 1320, a bill to establish a tiered hiring preference for members of the reserve components of the armed forces.

S. 1361

At the request of Mr. MURPHY, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 1361, a bill to direct the Secretary of Homeland Security to accept additional documentation when considering the application for veterans status of an individual who performed service as a coastwise merchant seaman during World War II, and for other purposes.

S. 1431

At the request of Mr. WYDEN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1431, a bill to permanently extend the Internet Tax Freedom Act.

S. 1462

At the request of Mr. THUNE, the name of the Senator from Pennsylvania (Mr. TOOMEY) was added as a cosponsor of S. 1462, a bill to extend the positive train control system implementation deadline, and for other purposes.

S. 1505

At the request of Mr. THUNE, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1505, a bill to amend the Toxic Substances Control Act to clarify the jurisdiction of the Environmental Protection Agency with respect to certain sporting good articles, and to exempt those articles from definition under that Act.

S. 1523

At the request of Mr. ROCKEFELLER, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1523, a bill to amend the Internal Revenue Code to make permanent qualified school construction bonds and qualified zone academy bonds, to treat qualified zone academy bonds as specified tax credit bonds, and to modify the private business contribution requirement for qualified zone academy bonds.

S. 1557

At the request of Mr. CASEY, the names of the Senator from New York (Mr. SCHUMER), the Senator from Colorado (Mr. BENNET), the Senator from Massachusetts (Mr. MARKEY), the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 1557, a bill to amend the Public Health Service Act to reauthorize support for graduate medical education programs in children's hospitals.

S. 1590

At the request of Mr. ALEXANDER, the name of the Senator from New Hampshire (Ms. AYOTTE) was added as a cosponsor of S. 1590, a bill to amend the Patient Protection and Affordable Care Act to require transparency in the operation of American Health Benefit Exchanges.

S. 1592

At the request of Mr. RUBIO, the name of the Senator from New Hampshire (Ms. AYOTTE) was added as a cosponsor of S. 1592, a bill to provide for a delay of the individual mandate under the Patient Protection and Affordable Care Act until the American Health Benefit Exchanges are functioning properly.

S. 1610

At the request of Mr. MENENDEZ, the name of the Senator from New Jersey (Mr. BOOKER) was added as a cosponsor of S. 1610, a bill to delay the implementation of certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012, and for other purposes.

S. 1635

At the request of Mr. CASEY, the names of the Senator from Connecticut (Mr. BLUMENTHAL), the Senator from Minnesota (Mr. FRANKEN) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 1635, a bill to amend the American Recovery and Reinvestment Act of 2009 to extend the period during which supplemental nutrition assistance program benefits are temporarily increased.

S. 1642

At the request of Ms. LANDRIEU, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from Oregon (Mr. MERKLEY) were added as cosponsors of S. 1642, a bill to permit the continuation of certain health plans.

S. 1667

At the request of Mr. VITTER, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Wisconsin (Mr. JOHNSON) were added as cosponsors of S. 1667, a bill to amend the Consumer Financial Protection Act of 2010 to provide consumers with a free annual disclosure of information the Bureau of Consumer Financial Protection maintains on them, and for other purposes.

S. 1670

At the request of Mr. GRAHAM, the names of the Senator from Pennsylvania (Mr. TOOMEY) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of S. 1670, a bill to amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.

S. RES. 26

At the request of Mr. MORAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Res. 26, a resolution recognizing that access to hospitals and other health care providers for patients in rural areas of the United States is essential to the survival and success of communities in the United States.

S. RES. 270

At the request of Mr. KIRK, the name of the Senator from New Hampshire (Ms. AYOTTE) was added as a cosponsor of S. Res. 270, a resolution supporting the goals and ideals of World Polio Day and commending the international community and others for their efforts to prevent and eradicate polio.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROCKEFELLER:

S. 1680. A bill to amend the Communications Act of 1934 to increase consumer choice and competition in the online video programming distribution marketplace, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, two decades ago, Congress passed the Cable Television and Consumer Protection Act of 1992 in part to stop cable companies from leveraging their market power to block competition from satellite television providers. Congress did so with the realization that market forces alone did not act to create true competition in video services, mainly because the entrenched interests held dominant control over the content necessary for new services to compete effectively. As a result, regulation in the name of competition was necessary to empower consumers and facilitate the development of new innovative video services. Twenty years later, DirecTV and Dish Network have become the second and third largest pay TV providers in the Nation, respectively.

The legislation that I am introducing today, the Consumer Choice in Online Video Act, builds upon the legacy, and the promise, of the 1992 Cable Act. More needs to be done.

Simply put, the video marketplace today, even with a variety of cable and satellite television providers, still is one of ever-escalating rates and of limited choice in terms of programming packages. Consumers find themselves paying more and more each year for their pay TV service, and those yearly rate increases often far exceed inflation. Even though consumers have at their fingertips hundreds of channels of programming, most homes watch very few of those channels and would prefer to have more choice in what they pay for each month.

We have all heard the familiar complaint that we have five hundred channels, but there is nothing to watch. My

legislation aims to enable the ultimate a la carte—to give consumers the ability to watch the programming they want to watch, when they want to watch it, how they want to watch it, and pay only for what they actually watch.

Key to that goal is online video. The Internet has revolutionized many aspects of American life, from the economy, to health care, to education. It has proven to be a disruptive and transformative technology. It has forever changed the way Americans live their lives. Consumers now use the Internet, for example, to purchase airline tickets, to reserve rental cars and hotel rooms, to do their holiday shopping. The Internet gives them the ability to identify prices and choices and offers an endless supply of competitive offerings that strive to meet individual consumer's needs.

But that type of choice, with full transparency and real competition, has not been fully realized in today's video marketplace. The core policy question is how to nurture new technologies and services, and make sure incumbents cannot simply perpetuate the status quo of ever-increasing bills and limited choice through exercise of their market power.

Broadband-based online video today stands at a crossroads. It promises to become the video delivery platform that can truly bring consumer-centric video services to the marketplace. Consumers clearly have an appetite for online video and the choice and flexibility it affords, and innovative companies have risen to tap into that demand. But their ability to fully compete and maximize the benefits of broadband-based online video have been compromised.

Consumers do not really care whether they access their favorite video programming through a traditional cable line, fiber, satellite, or broadband wireless technology. What they are most frustrated by today, though, is that some cable or broadcast programming is sometimes not accessible in an ''over the top'' online format, or that their experience with online video is somehow degraded. And disturbing reports suggest that one of the reasons that the consumers have these experiences is due to anticompetitive activity on the part of incumbent media companies and broadband providers.

As both the Federal Communications Commission, FCC, and the Department of Justice have noted, the nature of broadband-delivered video makes it uniquely susceptible to anticompetitive activity. Online video distributors do not own their distribution platform, and their viability depends on the ability to acquire sought-after programming from content companies on competitive terms. Yet, given their relationships with both content companies and Internet service providers, traditional cable and satellite providers have the incentive and ability to try to limit the growth of innovative, competitive online video distribution companies.

Press reports make clear that video marketplace incumbents are using their market positions to limit online video companies from entering the market and competing on a level playing field. Incumbent media companies, who control both the delivery platform and the content necessary for a robust online video service, are putting up barriers to protect their current services from new competition. Other reports indicate that some pay-TV operators are offering incentives to media companies that agree to withhold content from Web-based entertainment services.

My legislation would bar these and other anticompetitive practices in the online video marketplace, while offering regulatory parity to online video services that offer services similar to those presently provided by cable and satellite companies. It also would remedy lingering issues surrounding the regulatory treatment of online video services by the FCC. Finally, the bill would empower consumers with more information about their broadband Internet service, and give the FCC the authority to oversee the use of metered broadband Internet billing practices that could be used to stifle use of data-intensive online video services.

I offer this legislation to begin an overdue conversation about the best way that Congress can protect and promote a consumer-centric online video marketplace. I recognize that this bill is not perfect. That is why I invite discussion and comments from my colleagues and others on ways to improve it as we move forward. While I am sure that we can find ways to improve this legislation, we should not stand aside in the name of the free market while the innovation and choice that can come from online video for West Virginia and around the country is stifled.

It is time for Congress to act to maximize the promise of today's online world, and improve the consumer experience in the video marketplace. Consumers must be able to benefit from online video's promise of decreased costs for video services, more choice over the types of programming that their families consume, and higher-quality video content that educates and entertains. I strongly believe that the breathing room provided to online video distributors by my legislation is one of the keys to fostering a consumer-centric revolution in the video marketplace.

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. 1680

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Consumer Choice in Online Video Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings; statement of policy.
Sec. 3. Definitions.

TITLE I—BILLING FOR INTERNET SERVICE

Sec. 101. Consumer protections.

TITLE II—ONLINE VIDEO DISTRIBUTION ALTERNATIVES

Sec. 201. Protections for online video distributors.
Sec. 202. Federal Communications Commission report on peering.

TITLE III—NON-FACILITIES BASED MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS

Sec. 301. Non-facilities based multichannel video programming distributors.

TITLE IV—MISCELLANEOUS

Sec. 401. Technical and conforming amendments.
Sec. 402. Provisions as complementary.
Sec. 403. Applicability of antitrust laws.
Sec. 404. Severability.

SEC. 2. FINDINGS; STATEMENT OF POLICY.

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

(1) Online video distribution has the potential to increase consumer choice in video programming, lower prices for video services, bring innovative services to the video distribution marketplace, and disrupt the traditional multichannel video distribution marketplace.

(2) Evolving consumer demand, improving technology, and increased choice of viewing devices can make online video distributors stronger competitors to multichannel video programming distributors for an increasing number of viewers.

(3) Unlike traditional multichannel video programming distributors, online video distributors do not own distribution facilities and are dependent upon Internet service providers (many of which are affiliated with multichannel video programming distributors) for the delivery of their content to viewers.

(4) Internet service providers' management and pricing of broadband services affects online video distributors. Because online video distribution consumes significant amounts of Internet bandwidth, Internet service providers' use of usage-based billing practices can negatively impact the competitive position of online video distributors and the appeal of their services to consumers.

(5) Internet service providers that are affiliated with a multichannel video programming distributor or an online video distributor have an increased incentive to degrade the delivery of, or block entirely, traffic from the websites of other online video distributors, or speed up or favor access to the content and aggregation websites of their affiliates, because online video distributors pose a threat to those affiliates' video programming distribution businesses.

(6) Similarly, multichannel video programming distributors who are affiliated with Internet service providers, online video distributors who are affiliated with Internet service providers, or video programming vendors with significant market power have the incentive and ability to use their competitive position to engage in unfair methods of competition meant to hinder competition from online video distributors.

(7) Growth of online video distribution alternatives also will depend, in part, on the distributor's ability to acquire programming from content producers. Without access to content on competitive terms, an online

video distributor suffers a distinct competitive harm.

(8) Some traditional multichannel video programming distributors have admitted to taking steps to limit the ability of online video distributors to access content or otherwise effectively compete in the video distribution marketplace.

(9) Traditional multichannel video programming distributors and even other online video distributors have the incentive and ability to convince their video programming vendor partners not to sell content to online video distributors or to sell content to them at competitively-disadvantageous prices, terms, and conditions. They also have the incentive and ability to retaliate against a video programming vendor that sells content to an online video distributor.

(10) Traditional multichannel video programming distributors have the incentive and ability to use their relationships with manufacturers of television sets, set-top boxes, and other customer premises equipment to favor their own services over offerings from online video distributors.

(11) There is a substantial governmental and First Amendment interest in—

(A) requiring Internet service providers to provide consumers with accurate information about their Internet service, and to ensure that data usage monitoring systems are accurate, effective, and not used for an anticompetitive purpose;

(B) promoting a diversity of views provided through multiple technology media;

(C) promoting the development of online video distribution platforms and fair competition amongst all distributors and vendors of video programming;

(D) preventing Internet service providers that are affiliated with a multichannel video programming distributor or an online video distributor from discriminating against unaffiliated content and distributors in its exercise of control over consumers' broadband connections;

(E) encouraging and protecting consumer choice and innovation in online video distribution, including with respect to distribution of broadcast television content; and

(F) providing consumers with the ability to choose to receive local broadcast television content from various markets.

(b) STATEMENT OF POLICY.—It is the policy of the Congress that—

(1) consumers should be fully informed about the terms and conditions related to the purchase of Internet service from an Internet service provider;

(2) usage-based billing systems used by an Internet service provider should not be used in a way that harms development and use of high-bandwidth consuming Internet applications and services that might compete with that Internet service provider's own services;

(3) the availability of a diversity of views and information should be promoted to the public through various video programming distribution platforms, including those providing service by utilizing the Internet or other IP-based transmission paths;

(4) existing multichannel video programming distributors and video programming vendors should not have or exercise undue market power with respect to online video distributors; and

(5) Internet service providers should not hinder through anticompetitive behavior the ability of online video distributors to provide services to their subscribers.

SEC. 3. DEFINITIONS.

In this Act:

(1) BROADCAST TELEVISION LICENSEE.—The term ''broadcast television licensee'' means the licensee of a full-power television station or a low-power television station.

(2) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(3) INTERNET SERVICE PROVIDER.—The term ''Internet service provider'' means any provider of Internet service to an end user, regardless of the technology used to provide that service.

(4) NON-FACILITIES BASED MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR.—The term ''non-facilities based multichannel video programming distributor'' means an online video distributor that has made the election permitted under section 672.

(5) ONLINE VIDEO DISTRIBUTOR.—The term ''online video distributor'' means any entity, including a non-facilities based multichannel video programming distributor, that—

(A) has its principal place of business in the United States; and

(B) distributes video programming in the United States by means of the Internet or another IP-based transmission path provided by a person other than that entity.

(6) TELEVISION NETWORK.—The term ''television network'' means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(7) USAGE-BASED BILLING.—

(A) IN GENERAL.—The term ''usage-based billing'' means a system of charging a consumer for Internet service or the use of an IP-based transmission path provided by an Internet service provider or other entity that is based upon the amount of data the consumer uses over a period of time.

(B) INCLUSIONS.—The term ''usage-based billing'' includes—

(i) imposing a cap on the amount of data the consumer can use based on the price the consumer is willing to pay for service;

(ii) charging a consumer varying amounts each billing cycle based on a per-megabyte, per-gigabyte, or similar rate; and

(iii) establishing different tiers of prices based on the amount of data the consumer elects to consume in a billing cycle, whether or not the amount acts as a cap on the consumer's service.

(8) VIDEO PROGRAMMING.—The term ''video programming'' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, whether or not such programming is delivered using a portion of the electromagnetic frequency spectrum.

(9) VIDEO PROGRAMMING VENDOR.—The term ''video programming vendor'' means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

TITLE I—BILLING FOR INTERNET SERVICE

SEC. 101. CONSUMER PROTECTIONS.

Title VII of the Communications Act of 1934 (47 U.S.C. 601 et seq.) is amended—

(1) by inserting before section 701 the following:

"PART I—GENERAL PROVISIONS"; and

(2) by adding at the end the following:

"PART II—INTERNET SERVICES BILLING

"SEC. 721. CONSUMER PROTECTIONS.

''(a) GENERAL DISCLOSURES.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall promulgate regulations requiring Internet service providers to disclose certain information that will assist a consumer in making an informed decision about the purchase of Internet service.

''(2) REQUIREMENTS.—The regulations under paragraph (1) shall require, at a minimum, that—

''(A) any advertising related to Internet service include plain language disclosure of any information the Commission considers necessary for a consumer to make an informed decision about the purchase of that Internet service;

''(B) an Internet service provider provide a plain language disclosure to a consumer prior to the purchase of Internet service that includes—

''(i) the length of the contract;

''(ii) the terms of renewal;

''(iii) a projected monthly bill, including all fees and costs associated with the Internet service;

''(iv) if the consumer is receiving promotional pricing for service, a projected monthly bill for service once that promotional pricing period has ended;

''(v) the procedures to cancel the Internet service, including any policies related to early termination fees;

''(vi) the average actual data transmission speeds, including both upload and download speeds;

''(vii) any policies or practices regarding network management, including limiting service speeds or prioritizing content; and

''(viii) any other information that the Commission considers necessary for the consumer to make an informed decision about the purchase of the Internet service.

''(b) SPECIAL DISCLOSURES FOR USAGE-BASED BILLING.—

''(1) IN GENERAL.—As part of the rulemaking under subsection (a), the Commission shall promulgate regulations to protect consumers in the use of usage-based billing by Internet service providers.

''(2) PLAIN LANGUAGE DISCLOSURE OF TERMS AND CONDITIONS.—

''(A) IN GENERAL.—The regulations under paragraph (1) shall require an Internet service provider to provide a plain language disclosure of all terms and conditions associated with its use of usage-based billing to a consumer prior to the purchase of Internet service.

''(B) CONTENTS.—The plain language disclosure under this paragraph shall include—

''(i) an explanation of how usage-based billing will be applied to the consumer;

''(ii) a complete list of the tiers of service;

''(iii) comparisons of how much data of varying types, including video programming in standard and high-definition, the consumer would be able to consume each month under each tier;

''(iv) the procedure for providing the consumer the notifications under paragraph (4);

''(v) an explanation of the consequences, if any, to a consumer for exceeding the consumer's data usage amount, including any fees that may be charged and any options a consumer may have to avoid those fees;

''(vi) if the Internet service provider provides a tool for a consumer to monitor the consumer's data usage, a description of the tool and how to use it;

''(vii) the appeals procedure under paragraph (5); and

''(viii) any other information that the Commission considers necessary to protect consumers in the use of usage-based billing by Internet service providers.

''(3) MONTHLY DISCLOSURE OF DATA USAGE.—

''(A) DATA USAGE.—An Internet service provider that uses usage-based billing shall provide a plain language disclosure to a consumer of the consumer's data usage during each billing cycle as part of the consumer's bill.

''(B) DATA USAGE TRENDS.—An Internet service provider that uses usage-based billing shall include in the consumer's bill information documenting the consumer's data usage over the prior 6 monthly bills or over

a period beginning on the date that the consumer contracted for the Internet service, whichever is shorter.

''(4) NOTIFICATIONS.—

''(A) IN GENERAL.—An Internet service provider that uses usage-based billing shall provide to a consumer notification of the amount of data the consumer has remaining at the midpoint of a billing cycle, and at any other increments the Commission finds are in the public interest.

''(B) FORM.—The Commission may determine the form of the notifications required under this paragraph.

''(5) CONSUMER APPEALS.—Each Internet service provider that uses usage-based billing shall establish an appeals procedure for a consumer to obtain more detailed information about the consumer's Internet data usage and to challenge the Internet service provider's determination of that consumer's data usage.

''(c) TRUTH-IN-BILLING FOR INTERNET SERVICES.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall update its truth-in-billing rules to extend the rules to Internet service providers.

''(2) BUNDLED SERVICES.—As part of the rulemaking under paragraph (1), the Commission shall consider whether it is in the public interest to establish truth-in-billing rules for bundled communications service packages.

''(d) EXEMPTION.—The Commission may exempt an Internet service provider serving 20,000 or fewer subscribers from the requirements of this section

''(e) SPECIAL CONSIDERATION.—The Commission may take into account the special considerations in an Internet service provider's delivery technology, including wireless, when implementing this section.

''SEC. 722. CERTIFICATION OF DATA USAGE MONITORING SYSTEMS.

''(a) INDEPENDENT CERTIFICATION REQUIRED.—

''(1) IN GENERAL.—An Internet service provider may not use a data usage monitoring system as part of usage-based billing unless the data usage monitoring system is certified under this section.

''(2) DEVELOPMENT OF STANDARDS.—The Commission, after consultation with the National Institute of Standards and Technology, shall develop standards to ensure that a data usage monitoring system accurately measures a consumer's usage of data.

''(3) CERTIFICATION PROCESS.—The Commission may certify a data usage monitoring system for use in usage-based billing if it determines that the data usage monitoring system accurately measures consumer data usage and is in material compliance with the standards under paragraph (2).

''(4) PERMISSIBLE DELEGATION.—The Commission may designate 1 or more impartial third parties to conduct the certification of a data usage monitoring system under this section.

''(b) PERIODIC REVIEW.—The Commission shall determine how to ensure that an Internet service provider's data usage monitoring system remains in compliance with this section.

''(c) DEFINITION OF DATA USAGE MONITORING SYSTEM.—In this section, the term 'data usage monitoring system' means a system of monitoring and calculating the amount of data a user has consumed—

''(1) while accessing the Internet;

''(2) while using hardware, software, or applications that consume data transmitted over the Internet; or

''(3) while accessing another IP-based transmission path provided by an Internet service provider or another entity.

''(d) PENALTIES.—The Commission is authorized to assess penalties against any Internet service provider that fails to comply with this section.

''(e) RULEMAKING.—

''(1) IN GENERAL.—The Commission shall promulgate regulations to implement this section not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act.

''(2) EXEMPTION.—The regulations under paragraph (1) may provide an exemption from the regulations for an Internet service provider serving 20,000 or fewer subscribers.

''(3) SPECIAL CONSIDERATIONS.—The Commission may take into account the special considerations in an Internet service provider's delivery technology, including wireless, when implementing this section.''.

TITLE II—ONLINE VIDEO DISTRIBUTION ALTERNATIVES

SEC. 201. PROTECTIONS FOR ONLINE VIDEO DISTRIBUTORS.

Title VI of the Communications Act of 1934 (47 U.S.C. 521 et seq.) is amended by adding at the end the following:

"PART VI—ONLINE VIDEO DISTRIBUTORS

"SEC. 661. DEFINITIONS.

''In this part:

''(1) AFFILIATED WITH.—For purposes of sections 663, 664, and 667, the term 'affiliated with' means that the Internet service provider, multichannel video programming distributor, online video distributor, or video programming vendor, as appropriate, directly or indirectly, is owned or controlled by, owns or controls, or is under common ownership or control with another Internet service provider, multichannel video programming distributor, online video distributor, or video programming vendor, as appropriate. For purposes of this paragraph, the term 'own' means to own an equity interest, or the equivalent thereof, of more than 10 percent.

''(2) VIDEO PROGRAMMING.—The term 'video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, whether or not such programming is delivered using a portion of the electromagnetic frequency spectrum.

''SEC. 662. ENHANCEMENT OF CONSUMER CHOICE IN ONLINE VIDEO.

''The purposes of this part are

''(1) to promote the public interest, convenience, and necessity by increasing competition, innovation, and diversity in the video programming marketplace;

''(2) to enhance consumer access to online video distribution platforms and consumer choice in online video programming; and

''(3) to increase the availability of video programming on all platforms, including Internet-based platforms.

''SEC. 663. DEVELOPMENT OF COMPETITION AND DIVERSITY IN ONLINE VIDEO DISTRIBUTION.

''(a) PROHIBITION.—It shall be unlawful for a designated distributor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which are to hinder significantly or prevent an online video distributor from providing video programming to consumers, including over any platform or device capable of delivering that online video distributor's content to consumers.

''(b) REGULATIONS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall promulgate regulations to implement this section.

''(2) MINIMUM CONTENTS.—At a minimum, the regulations under this section shall—

''(A) specify the conduct that constitutes a prima facie violation of subsection (a); and

''(B) establish effective safeguards to prevent a designated distributor from—

''(i) unduly or improperly influencing the decision of any other entity to make a television set or other customer premises equipment incompatible with the services provided by any online video distributor;

''(ii) unduly or improperly using its own customer premises equipment to discriminate against, or otherwise favor its own services over, the service provided by any online video distributor;

''(iii) unduly or improperly influencing the decision of any other entity to sell, or the prices, terms, and conditions of the sale of, video programming to any online video distributor; and

''(iv) providing an incentive to any entity in an attempt to deny video programming to an online video distributor.

''(c) EXCEPTIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), a designated distributor shall not be prohibited from—

''(A) imposing reasonable requirements for creditworthiness, offering of service, and financial stability and standards regarding character and technical quality;

''(B) establishing different prices, terms, and conditions to take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the online video distributor; and

''(C) imposing reasonable requirements to ensure the security of the video programming being provided to the online video distributor, including means to authenticate the right of the distributor's subscribers to access the programming.

''(2) LIMITATIONS.—An exception under paragraph (1)—

''(A) shall be related to the substantial, real, and legitimate business concerns of the designated distributor; and

''(B) may not be used in an anticompetitive manner.

''(d) DEFINITION OF DESIGNATED DISTRIBUTOR.—

''(1) IN GENERAL.—In this section, the term 'designated distributor' means—

''(A) a multichannel video programming distributor affiliated with an Internet service provider;

''(B) an online video distributor affiliated with an Internet service provider; or

''(C) a video programming vendor with significant market power.

''(2) SIGNIFICANT MARKET POWER.—The Commission shall establish rules for determining whether a video programming vendor has significant market power under paragraph (1)(C).

''SEC. 664. ACCESS TO VIDEO PROGRAMMING.

''(a) PROHIBITIONS.—It shall be unlawful for a multichannel video programming distributor or an online video distributor—

''(1) to include in a contract with any video programming vendor a provision that serves as a substantial disincentive for the video programming vendor to sell its content to an online video distributor;

''(2) to use any practice, understanding, arrangement, or other agreement with a video programming vendor that has the effect of causing the video programming vendor to face a substantial disincentive to sell its content to an online video distributor; or

''(3) to enter into a contract with a video programming vendor that has the effect of preventing an online video distributor from making the video programming vendor's content available on any platform or device capable of delivering that distributor's content to its subscribers.

''(b) CONTRACT LIMITATIONS.—A multichannel video programming distributor or an online video distributor may not include in any contract with a video programming vendor any provision that requires the multichannel video programming distributor or online video distributor, as applicable, to be treated in material parity with other similarly situated multichannel video programming distributors or online video distributors with regard to pricing or other terms and conditions of carriage of video programming.

''(c) RETALIATION PROHIBITED.—A multichannel video programming distributor or an online video distributor may not retaliate against—

''(1) any video programming vendor for making its video programming available to an online video distributor;

''(2) any online video distributor for obtaining video programming from a video programming vendor; or

''(3) any entity for exercising a right under this Act.

''(d) EXCEPTION.—Notwithstanding subsection (a) or any other provision of this part, a multichannel video programming distributor or an online video distributor may enter into an exclusive contract with a video programming vendor for video programming provided by that video programming vendor if the contract does not exceed the limits or violate the prohibitions under subsection (e).

''(e) PUBLIC INTEREST LIMITATIONS ON EXCLUSIVE CONTRACTS.—

''(1) IN GENERAL.—The Commission shall adopt limits on—

''(A) the ability of a multichannel video programming distributor or an online video distributor to enter into any contract for video programming that includes an exclusivity provision that substantially deters the development of an online video distribution alternative; and

''(B) the ability of an online video distributor to enter into any contract for video programming that includes an exclusivity provision that substantially deters the development of an online video distribution alternative.

''(2) PROHIBITED CONTRACTS.—The Commission shall prohibit—

''(A) a multichannel video programming distributor from entering into an exclusive contract with a video programming vendor that is affiliated with the multichannel video programming distributor; and

''(B) an online video distributor from entering into an exclusive contract with a video programming vendor that is affiliated with the online video distributor.

''(3) LIMITATIONS ON OTHER EXCLUSIVE CONTRACTS FOR VIDEO PROGRAMMING.—

''(A) IN GENERAL.—The Commission shall establish criteria for determining whether an exclusive contract for programming substantially deters the development of an online video distribution alternative.

''(B) CONSIDERATIONS.—In establishing the criteria under subparagraph (A), the Commission shall consider the totality of the circumstances surrounding the contract, including—

''(i) the duration of the exclusivity period;

''(ii) the effect of the exclusive contract on capital investment in the production and distribution of video programming;

''(iii) the time period after initial first-day distribution of video programming to consumers when the multichannel video programming distributor or the online video distributor is granted exclusive access to distribute the programming; and

''(iv) the likelihood that the exclusive contract will enhance diversity in programming on video distribution platforms.

''(f) ONLINE DISTRIBUTION OF CONTENT BY A VIDEO PROGRAMMING VENDOR.—

''(1) IN GENERAL.—A multichannel video programming distributor or an online video distributor may not enter into an agreement that limits or prohibits a video programming vendor from making its video content available to consumers free over the Internet.

''(2) EXCEPTION.—The prohibition under paragraph (1) shall not apply if the duration of the agreement is 30 days or less.

''(g) PRICES, TERMS, AND CONDITIONS FOR PROGRAMMING.—A video programming vendor may establish different prices, terms, and conditions for its video programming if, taking into account economies of scale, cost savings, or other direct and legitimate economic benefits that are reasonably attributable to the number of subscribers served by an online video distributor, the prices, terms, and conditions—

''(1) are related to substantial, real, and legitimate business concerns of the video programming vendor; and

''(2) are not used in an anticompetitive manner.

''(h) REGULATIONS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall promulgate regulations to specify particular conduct that is prohibited by this section.

''(2) MINIMUM CONTENTS.—The regulations under this section shall establish, at a minimum—

''(A) effective safeguards to prevent any activity prohibited by this section; and

''(B) complaint and contract review procedures to facilitate the Commission's ability to determine if a multichannel video programming distributor, a video programming vendor, or an online video distributor has violated this section.

''(i) EXISTING CONTRACTS.—

''(1) IN GENERAL.—Subject to paragraph (2), nothing in this section shall affect any contract, understanding, or arrangement that was entered into on or before December 1, 2013.

''(2) EXCEPTIONS.—No contract, understanding, or arrangement entered into on or before December 1, 2013, that violates this section shall be enforceable by any person after the date that is 3 years after the date of enactment of the Consumer Choice in Online Video Act.

''(3) LIMITATION ON RENEWALS.—A contract, understanding, or arrangement that was entered into on or before December 1, 2013, but that is renewed or extended after the date of enactment of the Consumer Choice in Online Video Act shall not be exempt under paragraph (1).

''SEC. 665. FOSTERING ACCESS TO VIDEO PROGRAMMING.

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall commence a proceeding to determine the additional steps it should take, in the public interest, to foster the ability of online video distributors to gain access to video programming, offer innovative services, and compete with multichannel video programming distributors.

''(b) LIMITATION.—The Commission shall not compel a video programming vendor to sell its video programming to an online video distributor as part of any rules adopted under this section.

''SEC. 666. BROADCAST TELEVISION LICENSEES AND TELEVISION NETWORKS.

''(a) DUTY TO NEGOTIATE.—It shall be unlawful for a broadcast television licensee or television network—

''(1) to refuse to negotiate with an online video distributor for carriage of the broadcast television licensee's or the television network's content, as applicable; or

''(2) to place any restriction on an online video distributor's ability to make the broadcast television licensee's or the television network's content, as applicable, available on any platform or device that is capable of delivering the online video distributor's content to its subscribers.

''(b) REFUSAL TO NEGOTIATE; COMMISSION DETERMINATION.—The Commission shall determine what constitutes a refusal to negotiate under subsection (a). The Commission may require a broadcast television licensee or television network to engage in good faith negotiations with an online video distributor. The Commission shall define good faith for purposes of this subsection.

''(c) ONLINE RETRANSMISSION OF IN-MARKET BROADCAST SIGNALS.—

''(1) SIGNAL PARITY.—

''(A) IN GENERAL.—It shall be unlawful for a broadcast television licensee to provide an over-the-air signal that differs from a retransmission of that signal provided to a multichannel video programming distributor or an online video distributor.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if—

''(i) the variation in the 2 signals consists of a change to 1 or more commercial advertisements of not more than 60 seconds in duration embedded in a broadcast television licensee's signal; and

''(ii) the broadcast television licensee is not using the variation under clause (i) to increase the overall amount of advertising time in its over-the-air signal.

''(2) ANTENNA RENTAL SERVICES.—

''(A) IN GENERAL.—Notwithstanding any other provision of this Act, except subparagraph (C), an entity may rent to a consumer access to an individual antenna to view over-the-air broadcast television signals transmitted from that antenna—

''(i) directly to the consumer over the Internet or another IP-based transmission path; or

''(ii) to an individual data storage system, including an online remote data storage system, for recording and then made accessible to that consumer through the Internet or another IP-based transmission path.

''(B) RETRANSMISSION CONSENT FEES.—An antenna rental service described under subparagraph (A) shall be exempt from paying retransmission consent fees under section 325 of this Act to any broadcast television station whose signal is received by the individual antenna and retransmitted to the subscriber.

''(C) CONDITIONS OF RENTAL SERVICES.—An antenna rental service described under subparagraph (A) shall—

''(i) only provide a subscriber with access to over-the-air broadcast television signals received by an individual antenna located in the same designated market area (as defined in section 671 of this Act) in which that subscriber resides; and

''(ii) make available to a subscriber all over-the-air broadcast signals that are received by the individual antenna rented by that subscriber, unless a signal is of such poor quality that it cannot be transmitted to the consumer in a reasonably viewable form.

''(d) LIMITS IN EXISTING PROGRAMMING AND AFFILIATION CONTRACTS.—

''(1) IN GENERAL.—It shall be unlawful for any entity selling or otherwise providing video programming to be transmitted by a broadcast television licensee or television network to include in any contract, agreement, understanding, or arrangement with that licensee or network a limitation on the ability of that licensee or network to comply with the requirements of this section.

''(2) EXISTING CONTRACTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), nothing in this section shall affect any

contract, understanding, or arrangement that was entered into on or before December 1, 2013.

''(B) EXCEPTIONS.—No contract, understanding, or arrangement entered into on or before December 1, 2013, that violates this section shall be enforceable by any person after the date that is 3 years after the date of enactment of the Consumer Choice in Online Video Act.

''(C) LIMITATION ON RENEWALS.—A contract, understanding, or arrangement that was entered into on or before December 1, 2013, but that is renewed or extended after the date of enactment of the Consumer Choice in Online Video Act shall not be exempt under subparagraph (A).

''(e) REGULATIONS.—Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall promulgate regulations to implement this section. The Commission shall not compel a broadcast television licensee or television network to sell its video programming to an online video distributor as part of any rules adopted under this section.

''SEC. 667. CONSUMER ACCESS TO CONTENT.

''(a) IN GENERAL.—It shall be unlawful for a designated Internet service provider to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which are to hinder significantly or to prevent an online video distributor from providing video programming to a consumer.

''(b) REGULATIONS.—Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall promulgate regulations to specify particular conduct that is prohibited by subsection (a). The Commission's regulations under this section shall ensure, at a minimum, that a designated Internet service provider does not—

''(1) block, degrade, or otherwise impair any content provided by an online video distributor;

''(2) unreasonably discriminate in transmitting the content of an unaffiliated online video distributor over the designated Internet service provider's network;

''(3) provide benefits in the transmission of the video content of any company affiliated with the Internet service provider through specialized services or other means, or otherwise leverage its ownership of the physical delivery architecture to benefit that affiliated company in a way that has the effect of harming competition from an unaffiliated online video distributor; or

''(4) use billing systems, such as usage-based billing, in a way that deters competition from unaffiliated online video distributors that may be in competition with the Internet service provider's or its affiliate's services.

''(c) DEFINITION OF DESIGNATED INTERNET SERVICE PROVIDER.—In this section, the term 'designated Internet service provider' means an Internet service provider that is affiliated with a multichannel video programming distributor, an online video distributor, or a video programming vendor.

''SEC. 668. BLOCKING CONSUMER ACCESS TO ONLINE VIDEO PROGRAMMING.

''(a) IN GENERAL.—No video programming vendor that has made available its video programming to consumers online may restrict access to that online video programming for a subscriber of a multichannel video programming distributor or its affiliate, or an online video distributor or its affiliate, during the time that vendor is involved in a dispute with such distributor.

''(b) EXCEPTION.—

''(1) IN GENERAL.—If a video programming vendor requires a consumer to purchase access to its online video programming through a contract with a multichannel video programming distributor or an online video distributor then that vendor may restrict access to that online video programming during the time that the vendor is involved in a dispute with that distributor.

''(2) LIMITATION.—The exception under this subsection shall apply only to a subscriber to video services provided by a multichannel video programming distributor or an online video distributor involved in the dispute and not to a subscriber to any other service provided by that distributor or its affiliate.

''(c) REMEDIES.—

''(1) IN GENERAL.—Any entity that is aggrieved by a violation of this section may bring a civil action in a United States district court or in any other court of competent jurisdiction.

''(2) AUTHORITY.—The court may—

''(A) grant a temporary or final injunction on such terms as it may deem reasonable to prevent or restrain violations of this section;

''(B) award any damages it deems appropriate; and

''(C) direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

''(d) DEFINITIONS.—In this section:

''(1) AVAILABLE ONLINE.—The term 'available online' means both available over the Internet and through applications, software, or other similar services on a mobile device.

''(2) DISPUTE.—The term 'dispute' includes—

''(A) a dispute over carriage of the programming provided by a video programming vendor to a multichannel video programming distributor or online video distributor; and

''(B) a dispute over carriage of the programming provided by a television licensee or television network under section 325(b) of this Act.

''(3) ENTITY THAT IS AGGRIEVED.—The term 'entity that is aggrieved' includes—

''(A) a consumer whose access to online video programming has been restricted in violation of this section; and

''(B) a multichannel video programming distributor or its affiliate, or an online video distributor or its affiliate, that has had a subscriber's access to online video programming restricted in violation of this section.

''SEC. 669. REMEDIES AND ADJUDICATIONS.

''(a) ADJUDICATORY PROCEEDINGS.—Any online video distributor aggrieved by conduct that it alleges constitutes a violation of this part, or the regulations of the Commission under this part, may commence an adjudicatory proceeding at the Commission.

''(b) REMEDIES.—

''(1) REMEDIES AUTHORIZED.—

''(A) INTERIM REMEDIES.—The Commission may authorize interim remedies during the pendency of a complaint.

''(B) APPROPRIATE REMEDIES.—Upon completion of an adjudicatory proceeding under this section, the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved online video distributor.

''(2) ADDITIONAL REMEDIES.—The remedies provided in paragraph (1) are in addition to and not in lieu of the remedies available under title V or any other provision of this Act.

''(c) PROCEDURES.—In promulgating regulations to implement this part, the Commission shall—

''(1) provide for an expedited review of any complaint made under this part, including a procedural timeline to conclude the review of each complaint not later than 180 days after the date the complaint is filed;

''(2) establish procedures for the Commission to collect any data, including the right to obtain copies of all contracts and documents reflecting any practice, understanding, arrangement, or agreement alleged to violate this part, as the Commission requires to carry out this part; and

''(3) provide for penalties to be assessed against any person filing a frivolous complaint under this part.''.

SEC. 202. FEDERAL COMMUNICATIONS COMMISSION REPORT ON PEERING.

(a) IN GENERAL.—The Commission shall study—

(1) the status of peering, transit, and interconnection agreements related to the transport and delivery of content over the Internet and other IP-based transmission paths; and

(2) what impact the agreements under paragraph (1) or disputes about the agreements under paragraph (1) have on consumers and competition with respect to online video.

(b) REPORT.—Not later than 3 years after the date of enactment of this Act, the Commission shall report the findings of the study under subsection (a) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

TITLE III—NON-FACILITIES BASED MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS

SEC. 301. NON-FACILITIES BASED MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS.

Title VI of the Communications Act of 1934 (47 U.S.C. 521 et seq.), as amended by title II of this Act, is further amended by adding at the end the following:

''PART VII—NON-FACILITIES BASED MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS

''SEC. 671. DEFINITIONS.

''In this part:

''(1) DESIGNATED MARKET AREA.—The term 'designated market area' means a designated market area as determined by Nielsen Media Research or by any successor system of dividing broadcast television licensees into local markets that the Commission determines is equivalent to the designated market area system created by Nielsen Media Research.

''(2) LOCAL COMMERCIAL TELEVISION STATION.—The term 'local commercial television station' means, with respect to a subscriber to a non-facilities based multichannel video programming distributor, any full power commercial television station licensed and operating on a channel regularly assigned to a community in the same designated market area as the subscriber.

''(3) LOCAL NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term 'local noncommercial educational television station' means, with respect to a subscriber to a non-facilities based multichannel video programming distributor, a television broadcast station that is a noncommercial educational broadcast station (as defined in section 397 of this Act), licensed and operating on a channel regularly assigned to a community in the same designated market area as the subscriber.

''(4) NON-LOCAL COMMERCIAL TELEVISION STATION.—The term 'non-local commercial television station' means, with respect to a subscriber to a non-facilities based multichannel video programming distributor, any full power commercial television station licensed and operating on a channel regularly assigned to a community not located in the same designated market area as the subscriber.

''(5) VIDEO PROGRAMMING.—The term 'video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, whether or not such programming is delivered using a portion of the electromagnetic frequency spectrum.

"SEC. 672. RIGHT TO ELECT STATUS.

''(a) IN GENERAL.—Any online video distributor that provides programming in a manner reasonably equivalent to a multichannel video programming distributor may elect to be treated as a non-facilities based multichannel video programming distributor under this part.

''(b) PROCEDURE FOR ELECTION.—Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall establish the form and procedures for an online video distributor to make the election permitted under subsection (a).

''(c) DEFINITION OF REASONABLY EQUIVALENT.—For purposes of this section, the term 'reasonably equivalent'—

''(1) means providing multiple channels of video programming that allow a subscriber to watch that programming in a fashion comparable to the services provided by multichannel video programming distributors, regardless of the means used to transmit the multiple channels of video programming;

''(2) shall be based upon the subscriber experience in using the service provided by the online video distributor, and not the underlying technology used by the online video distributor; and

''(3) may include services that include the ability for a subscriber to record video programming and watch recorded programming at another time if the underlying video programming service being recorded conforms to this subsection.

"SEC. 673. EFFECT OF ELECTION.

''Any online video distributor that elects to be treated as a non-facilities based multichannel video programming distributor under section 672 shall have all of the rights and responsibilities under this part.

"SEC. 674. FEDERAL COMMUNICATIONS COMMISSION PROCEEDING.

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall—

''(1) determine whether any of its rules and regulations applicable to a multichannel video programming distributor shall also be applied, in the public interest, to a non-facilities based multichannel video programming distributor;

''(2) require a non-facilities based multichannel video programming distributor to comply with the access to broadcast time requirement under section 312(a)(7) of this Act and the use of facilities requirements under section 315 of this Act;

''(3) consider whether it is in the public interest for the Commission to adopt minimum technical quality standards for a non-facilities based multichannel video programming distributor; and

''(4) adopt any other rules the Commission considers necessary to implement this part.

''(b) LIMITATION.—The Commission shall not require, as part of its rulemaking under subsection (a), a non-facilities based multichannel video programming distributor to comply with the basic tier and tier buy-through requirement under section 623(b)(7).

"SEC. 675. PROGRAM ACCESS FOR NON-FACILITIES BASED MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS.

''(a) IN GENERAL.—The Commission shall prohibit practices, understandings, arrangements, and activities, including any exclusive contract for video programming between a multichannel video programming distributor and a video programming vendor or an online video distributor and a video programming vendor that prevents a non-facilities based multichannel video programming distributor from obtaining programming from any video programming vendor.

''(b) SPECIFIC ACTIONS PROHIBITED.—

''(1) MATERIAL PARITY RESTRICTIONS.—A multichannel video programming distributor or an online video distributor may not include in any contract with a video programming vendor any provision that requires the multichannel video programming distributor or online video distributor, as applicable, to be treated in material parity with other similarly situated multichannel video programming distributors or online video distributors with regard to pricing or other terms and conditions of carriage of video programming.

''(2) RETALIATION PROHIBITED.—A multichannel video programming distributor or an online video distributor may not retaliate against—

''(A) any video programming vendor for making its video programming available to a non-facilities based multichannel video programming distributor;

''(B) any non-facilities based multichannel video programming distributor for obtaining video programming from a video programming vendor; or

''(C) any entity for exercising a right under this Act.

"SEC. 676. CONSUMER CHOICE IN VIDEO PROGRAMMING.

''(a) IN GENERAL.—As part of the rulemaking required by section 674, the Commission shall determine what, if any, additional steps it should take, in the public interest, to allow a non-facilities based multichannel video programming vendor to offer a subscriber greater choice over the video programming that is part of the subscriber's service.

''(b) CONSIDERATIONS.—As part of the proceeding under subsection (a), the Commission shall consider whether to limit a video programming vendor's use of certain contractual terms and conditions that disincentivize or impede the ability of a subscriber to have greater choice over the video programming packages or options the subscriber can purchase from a non-facilities based multichannel video programming vendor.

''(c) LIMITATION.—The Commission shall not compel a video programming vendor to sell its video programming to a non-facilities based multichannel video programming vendor as part of any rules adopted under this section.

"SEC. 677. CARRIAGE OF COMMERCIAL BROADCAST TELEVISION SIGNALS.

''(a) IN-MARKET BROADCAST TELEVISION SIGNALS.—

''(1) IN GENERAL.—At the request of a non-facilities based multichannel video programming distributor serving a designated market area, a local commercial television broadcast station located in that designated market area shall enter into negotiations for carriage of its content over that distributor's system.

''(2) GOOD FAITH REQUIREMENTS.—A local commercial television station subject to the duty to negotiate under paragraph (1) shall engage in good faith negotiations for carriage of its signal in the designated marketed area where the station is located. The Commission shall define good faith for purposes of this paragraph.

''(3) GOOD SIGNAL REQUIREMENTS.—A local commercial television broadcast station being carried by a non-facilities based multichannel video programming distributor under this subsection shall be responsible for delivering a good quality signal suitable for distribution by that distributor.

''(b) OUT-OF-MARKET BROADCAST TELEVISION SIGNALS.—

''(1) IN GENERAL.—In addition to any signal carried under subsection (a), a non-facilities based multichannel video programming distributor also may deliver to a subscriber the signal of a non-local commercial broadcast television station under this subsection and subsection (c).

''(2) DEEMED SIGNIFICANTLY VIEWED.—

''(A) IN GENERAL.—A signal of a non-local commercial broadcast television station delivered by a non-facilities based multichannel video programming distributor under this section shall be deemed to be significantly viewed within the meaning of section 76.54 of title 47, Code of Federal Regulations.

''(B) EXEMPTIONS.—The following regulations shall not apply to a signal that is eligible to be carried under this subsection:

''(i) Section 76.92 of title 47, Code of Federal Regulations (relating to cable network non-duplication).

''(ii) Section 76.122 of title 47, Code of Federal Regulations (relating to satellite network non-duplication).

''(iii) Section 76.101 of title 47, Code of Federal Regulations (relating to cable syndicated program exclusivity).

''(iv) Section 76.123 of title 47, Code of Federal Regulations (relating to satellite syndicated program exclusivity).

''(v) Section 76.111 of title 47, Code of Federal Regulations (relating to cable sports blackout).

''(vi) Section 76.127 of title 47, Code of Federal Regulations (relating to satellite sports blackout).

''(3) SUBSCRIBER PREFERENCE.—In delivering a non-local commercial broadcast television station signal to a subscriber under this subsection, and consistent with subsection (c)—

''(A) the non-facilities based multichannel video programming distributor shall provide the subscriber with information regarding all signals that the distributor is capable of making available to the subscriber under this subsection;

''(B) the non-facilities based multichannel video programming distributor shall offer a subscriber the option to choose each non-local commercial television station signal the subscriber wants to receive as part of the subscriber's service; and

''(C) if a subscriber does not make a choice under subparagraph (B), the non-facilities based multichannel video programming distributor shall take reasonable steps to deliver to the subscriber the signal of each non-local commercial television station that is closest in proximity.

''(4) DEFINITION OF CLOSEST IN PROXIMITY.—

''(A) IN GENERAL.—For purposes of paragraph (3), the term 'closest in proximity' means the non-local commercial television station whose community of license is the closest in distance to the subscriber's place of residence.

''(B) INCLUSIONS.—For purposes of paragraph (3), the term 'closest in proximity' includes a non-local commercial television station located in a State other than the State of the subscriber's place of residence.

''(c) SUBSCRIBER RIGHTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a subscriber to a non-facilities based multichannel video programming distributor shall be entitled to receive programming from not more than 2 commercial television stations that are affiliates of the same television network and not more than 1 of the affiliates may be located in a

designated market area where the subscriber does not reside.

''(2) LOCAL SIGNAL NOT REQUIRED.—A non-facilities based multichannel video programming distributor shall not be required to carry the signal of a local commercial television station under subsection (a) as a condition to carrying and delivering to a consumer a non-local commercial broadcast television signal under subsection (b).

''(3) MOBILE PLATFORMS.—A subscriber shall have the right to view any commercial television station signal provided to that subscriber under this section at any time and on any device, including a mobile device and any other device not permanently located in the subscriber's place of residence, that a non-facilities based multichannel video programming distributor has made capable of delivering the distributor's service to that subscriber.

''(d) LIMITS IN EXISTING PROGRAMMING AND AFFILIATION CONTRACTS.—

''(1) IN GENERAL.—It shall be unlawful for any entity selling or otherwise providing video programming to be transmitted by a local or non-local commercial television station to include in any contract, agreement, understanding, or arrangement with that station a limitation on the ability of the station to comply with the requirements of this section.

''(2) EXISTING CONTRACTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), nothing in this section shall affect any contract, understanding, or arrangement that was entered into on or before December 1, 2013.

''(B) EXCEPTIONS.—No contract, understanding, or arrangement entered into on or before December 1, 2013, that violates this section shall be enforceable by any person after the date that is 3 years after the date of enactment of the Consumer Choice in Online Video Act.

''(C) LIMITATION ON RENEWALS.—A contract, understanding, or arrangement that was entered into on or before December 1, 2013, but that is renewed or extended after the date of enactment of the Consumer Choice in Online Video Act shall not be exempt under subparagraph (A).

"SEC. 678. CARRIAGE OF NONCOMMERCIAL, EDUCATIONAL, AND INFORMATIONAL PROGRAMMING.

''(a) LOCAL NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS.—

''(1) IN GENERAL.—If a non-facilities based multichannel video programming distributor elects to carry a local commercial broadcast television signal under section 677(a), that non-facilities based multichannel video programming distributor shall carry, upon request, the signal of a local noncommercial educational television station located in the same designated market area of the local commercial television broadcast station being carried under that section.

''(2) CARRIAGE ONLY IN LOCAL MARKET.—

''(A) IN GENERAL.—A local noncommercial educational television station shall be entitled to carriage only in the designated market area to which that station is assigned.

''(B) SYSTEMS OF NONCOMMERCIAL EDUCATIONAL BROADCAST STATIONS.—In the case of a system of 3 or more noncommercial educational broadcast stations licensed to a single State, public agency, or political, educational, or special purpose subdivision of a State, the carriage right under this subsection shall apply to any designated market area in the State where that system is located.

''(3) GOOD SIGNAL REQUIREMENTS.—A local noncommercial educational television station that requests to be carried by a non-facilities based multichannel video programming distributor under paragraph (1) shall be responsible for delivering a good quality signal suitable for distribution by that distributor.

''(b) CHANNEL RESERVATION REQUIREMENTS.—

''(1) IN GENERAL.—The Commission shall require a non-facilities based multichannel video programming distributor to reserve a portion of its channel capacity, equal to not less than 3.5 percent or not more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.

''(2) USE OF UNUSED CHANNEL CAPACITY.—A non-facilities based multichannel video programming distributor may use for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of that channel capacity for noncommercial programming of an educational or informational nature.

''(3) PRICES, TERMS, AND CONDITIONS.—A non-facilities based multichannel video programming distributor shall meet the requirements of this subsection by making channel capacity available to each national educational programming supplier, upon reasonable prices, terms, and conditions, as determined by the Commission under paragraph (5).

''(4) EDITORIAL CONTROL.—A non-facilities based multichannel video programming distributor may not exercise any editorial control over any video programming provided under this subsection.

''(5) LIMITATIONS.—In determining reasonable prices under paragraph (3)—

''(A) the Commission, among other considerations, shall consider the nonprofit character of the programming provider and any Federal funds used to support that programming;

''(B) the Commission shall not permit the prices to exceed, for any channel capacity made available under this subsection, 50 percent of the total direct costs of making the channel capacity available; and

''(C) in the calculation of total direct costs, the Commission shall exclude—

''(i) the marketing costs, general administrative costs, and similar overhead costs of the non-facilities based multichannel video programming distributor; and

''(ii) the revenue that the non-facilities based multichannel video programming distributor might have obtained by making that channel capacity available to a video programming vendor.

''(6) DEFINITION OF CHANNEL CAPACITY.—In this section, the term 'channel capacity' means the total number of channels of video programming provided to a subscriber by the non-facilities based multichannel video programming distributor, without regard to whether that non-facilities based multichannel video programming distributor uses a portion of the electromagnetic frequency spectrum to deliver that channel of video programming.

"SEC. 679. LICENSING.

''(a) IN GENERAL.—A non-facilities based multichannel video programming distributor that is carrying any broadcast television station signal under section 677 or section 678 shall—

''(1) be considered to be a cable system under section 111 of title 17, United States Code; and

''(2) be subject to—

''(A) the statutory licensing requirements set forth in sections 111(c) and 111(e) of that title;

''(B) payment of the fees required by section 111(d) of that title; and

''(C) the penalties under section 111 of that title for failure to pay the fees required by that section.

''(b) LOCAL SERVICE AREA OF A PRIMARY TRANSMITTER.—For purposes of the application of section 111 of title 17, United States Code, to a non-facilities based multichannel video programming distributor under this section—

''(1) a local commercial television station's local service area of a primary transmitter shall consist of the entirety of that station's designated market area; and

''(2) a local noncommercial educational television station's local service area of a primary transmitter shall consist of the entirety of that station's designated market area.

"SEC. 680. EXCLUSION FROM FRANCHISE REQUIREMENTS.

''A non-facilities based multichannel video programming distributor shall not be subject to local franchising requirements under section 621 of this Act or otherwise be regulated by any franchising authority.

"SEC. 681. PRIVACY PROTECTIONS.

''(a) IN GENERAL.—A non-facilities based multichannel video programming distributor shall comply with the privacy protections applicable to satellite services as set forth in section 338(i) of this Act and the Commission's regulations under that section.

''(b) PENALTIES.—Any non-facilities based multichannel video programming distributor that fails to comply with the provisions under section 338(i) of this Act, and the Commission's regulations under that section, shall be subject to the penalties set forth in section 338(i)(7) of this Act.

"SEC. 682. CONSUMER EQUIPMENT.

''Not later than 1 year after the date of enactment of the Consumer Choice in Online Video Act, the Commission shall commence a proceeding to consider whether to adopt rules—

''(1) to establish standards to ensure that services and platforms provided by a non-facilities based multichannel video programming distributor can interconnect and interface with—

''(A) any Internet-capable television and television receiver; and

''(B) any other Internet-capable consumer electronics equipment that facilitates the viewing of video programming on a television receiver; and

''(2) to promote the commercial availability of other devices that will permit a consumer to access non-facilities based multichannel video programming distribution services and platforms over equipment of the consumer's choice.

"SEC. 683. EFFECTIVE COMPETITION STANDARD.

''The number of households subscribing to a non-facilities based multichannel video programming distributor in a franchise area under this part shall not be considered for purposes of a determination by the Commission of whether a cable system is subject to effective competition in that franchise area under section 623 of this Act.

"SEC. 684. REMEDIES AND ADJUDICATIONS.

''(a) ADJUDICATORY PROCEEDINGS.—Any entity aggrieved by conduct that it alleges constitutes a violation of this part, or the regulations of the Commission under this part, may commence an adjudicatory proceeding at the Commission.

''(b) REMEDIES.—

''(1) REMEDIES AUTHORIZED.—

''(A) INTERIM REMEDIES.—The Commission may authorize interim remedies during the pendency of a complaint.

''(B) APPROPRIATE REMEDIES.—Upon completion of an adjudicatory proceeding under this section, the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish

prices, terms, and conditions of sale of programming to, or prices, terms, and conditions of the transport of the content of, the aggrieved entity.

''(2) ADDITIONAL REMEDIES.—The remedies provided in paragraph (1) are in addition to and not in lieu of the remedies available under title V or any other provision of this Act.

''(c) PROCEDURES.—In promulgating regulations to implement this part, the Commission shall—

''(1) provide for an expedited review of any complaint made under this part, including a procedural timeline to conclude the review of each complaint not later than 180 days after the date the complaint is filed;

''(2) establish procedures for the Commission to collect any data, including the right to obtain copies of all contracts and documents reflecting any practice, understanding, arrangement, or agreement alleged to violate this part, as the Commission requires to carry out this part; and

''(3) provide for penalties to be assessed against any person filing a frivolous complaint under this part.''.

TITLE IV—MISCELLANEOUS

SEC. 401. TECHNICAL AND CONFORMING AMENDMENTS.

Section 602(20) of title VI of the Communications Act of 1934 (47 U.S.C. 522(20)) is amended by inserting ''unless expressly provided otherwise,'' before ''the term 'video programming' means''.

SEC. 402. PROVISIONS AS COMPLEMENTARY.

The provisions of this Act are in addition to, and shall not affect the operation of, other Federal, State, or local laws or regulations regulating billing for Internet service, online video distribution, or non-facilities based multichannel video programming distributors, except if the provisions of any other law are inconsistent with the provisions of this Act, the provisions of this Act shall be controlling.

SEC. 403. APPLICABILITY OF ANTITRUST LAWS.

Nothing in this Act or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

SEC. 404. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held invalid, the remainder of this Act, the amendments made by this Act, and the application of such provision or amendment to any person or circumstance shall not be affected thereby.

By Mrs. FEINSTEIN (for herself and Mr. GRASSLEY):

S. 1686. A bill to amend the Controlled Substances Act to provide enhanced penalties for marketing controlled substances to minors; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I am pleased to re-introduce, along with Senator Grassley, the Saving Kids From Dangerous Drugs Act of 2013.

For years, law enforcement has seen drug dealers flavor and market their illegal drugs to entice minors, using techniques like combining drugs with chocolate and fruit flavors, and even packaging them to look like actual candy and soda. This bill would address this serious and dangerous problem by providing stronger penalties when drug dealers alter controlled substances by combining them with beverages or candy products, marketing or packaging them to resemble legitimate products, or flavoring or coloring them, all with the intent to sell the drugs to minors.

Recent media reports demonstrate the need for this legislation. In January of this year, the Drug Enforcement Administration seized THC-laden soft drinks, cookies, brownies, and candy from two phony medical marijuana dispensaries in my home state of California that grossed an estimated $3.5 million annually. The names of the products seized show how the purveyors of these drugs marketed them under names that resembled popular soda and candy products: bottles were labeled ''7 High,'' ''Dr. Feelgood,'' and ''Laughing Lemonade''; cookies and brownies had such names as ''White Chip Hash Brownie'' and ''Reese's Crumbled Hash Brownie''; and candy was named ''Jolly Stones THC Medicated Hard Candies'' and ''Stone Candy.''

Less than two weeks ago, police seized more than 40 pounds of THC-laced candy from a campus apartment at West Chester University, outside of Philadelphia. This candy was vividly colored, in a virtual rainbow assortment—pink, yellow, orange, blue, and red. When college students are peddling these drugs, it is not hard to see how minors can become targets of the operation.

Many recent incidents involve methamphetamine, a drug whose users face a ''very high'' risk of ''developing psychotic symptoms—hallucinations and delusions,'' according to a recent Harvard Medical School publication. A 2007 article in USA Today entitled ''DEA: Flavored meth use on the rise'' stated that ''[r]eports of candy-flavored methamphetamine are emerging around the nation, stirring concern among police and abuse prevention experts that drug dealers are marketing the drug to younger people.'' In March of last year, police in Chicago warned parents about a drug that ''looks and smells like candy,'' called ''strawberry quick'' or ''strawberry meth.'' Because of the drug's similarity to candy, police urged parents to tell their children not to take candy from anyone, not even a classmate.

Regrettably, this is a problem that has persisted for many years, with drug dealers trying various methods to lure kids to try many dangerous drugs. The dealers' logic is simple: the best way to create a life-long customer is to hook that person when he or she is young. According to an Indiana sheriff quoted in a 2007 article entitled ''Fruity meth aimed at kids,'' flavoring a drug like methamphetamine makes it ''more attractive to teens, because it takes away meth's normally bitter taste, and some dealers will tell potential users this meth is safer, and has less side effects.''

That is why the practice of flavoring or coloring drugs to entice youth is so dangerous—it deceives the young customer into believing that he or she is not actually ingesting drugs, or at least not ingesting drugs that are as potent as non-flavored drugs. One in three teens already believes there is ''only a slight or no risk in trying [methamphetamine],'' according to the 2007 National Meth Use & Attitudes Survey. When you flavor methamphetamine or market it as candy or soda, the number of teens who believe that the drug is not harmful is surely higher.

The size and sophistication of some of these operations is particularly alarming. In March of 2006, DEA discovered large-scale marijuana cultivation and production facilities in Emeryville and Oakland, California. Thousands of marijuana plants, and hundreds of marijuana-related soda, candy, and other products were seized from the drug dealers' facilities. The products were designed and packaged to look like legitimate products, including an item called ''Munchy Way'' candy bars.

Similarly, in March of 2008, Drug Enforcement Administration, DEA, agents seized cocaine near Modesto, California, that was valued at $272,400; a significant quantity had been flavored like cinnamon, coconut, lemon, or strawberry. After that raid, one DEA agent stated that ''[a]ttempting to lure new, younger customers to a dangerous drug by adding candy 'flavors' is an unconscionable marketing technique.''

I completely agree. That is why we need to act now to stop those who alter drugs to make them more appealing to youth.

Under current federal law, there is no enhanced penalty for a person who alters a controlled substance to make the drug more appealing to youth. Someone who alters a controlled substance in ways prohibited by the legislation we are introducing today would be subject to an additional penalty of up to ten years, in addition to the penalty for the underlying offense. If someone is convicted of a second offense that is prohibited by the act, that person would face an additional penalty of up to 20 years.

This bill sends a strong and clear message to drug dealers—if you flavor or candy up your drugs to try to entice our children, there will be a very heavy price to pay. It will help stop drug dealers from engaging in these activities, and punish them appropriately if they don't.

The Senate passed a similar version of this legislation in the 111th Congress, but it was not considered in the House. This year, I am pleased to have the support of many of the leading national law enforcement organizations as we try to get this bill over the finish line: the Major Cities Chiefs Association, the Fraternal Order of Police, the Community Anti-Drug Coalitions of America, the Major County Sheriffs' Association, the Federal Law Enforcement Officers Association, the National HIDTA Directors Association,

and the National District Attorneys Association have endorsed the legislation. They are on the front lines working to keep these drugs out of our communities, and I am proud to have their support.

I urge my colleagues to join me in supporting this bill.

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. 1686

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 ''Saving Kids From Dangerous Drugs Act of 2013''.

SEC. 2. OFFENSES INVOLVING CONTROLLED SUBSTANCES MARKETED TO MINORS.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding at the end the following:

''(i) OFFENSES INVOLVING CONTROLLED SUBSTANCES MARKETED TO MINORS.—

''(1) UNLAWFUL ACT.—Except as authorized under this title, including paragraph (3), it shall be unlawful for any person at least 18 years of age to—

''(A) knowingly or intentionally manufacture or create a controlled substance listed in schedule I or II that is—

''(i) combined with a beverage or candy product;

''(ii) marketed or packaged to appear similar to a beverage or candy product; or

''(iii) modified by flavoring or coloring; and

''(B) know, or have reasonable cause to believe, that the combined, marketed, packaged, or modified controlled substance will be distributed, dispensed, or sold to a person under 18 years of age.

''(2) PENALTIES.—Except as provided in section 418, 419, or 420, any person who violates paragraph (1) of this subsection shall be subject to—

''(A) an additional term of imprisonment of not more than 10 years for a first offense involving the same controlled substance and schedule; and

''(B) an additional term of imprisonment of not more than 20 years for a second or subsequent offense involving the same controlled substance and schedule.

''(3) EXCEPTIONS.—Paragraph (1) shall not apply to any controlled substance that—

''(A) has been approved by the Secretary under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), if the contents, marketing, and packaging of the controlled substance have not been altered from the form approved by the Secretary; or

''(B) has been altered at the direction of a practitioner who is acting for a legitimate medical purpose in the usual course of professional practice.''.

SEC. 3. SENTENCING GUIDELINES.

Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review its guidelines and policy statements to ensure that the guidelines provide an appropriate additional penalty increase to the sentence otherwise applicable in Part D of the Guidelines Manual if the defendant was convicted of a violation of section 401(i) of the Controlled Substances Act, as added by section 2 of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 290—COMMEMORATING THE 75TH ANNIVERSARY OF KRISTALLNACHT, OR THE NIGHT OF THE BROKEN GLASS

Mr. CARDIN (for himself, Mr. WICKER, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. SCHATZ, Mr. MARKEY, Mrs. HAGAN, and Mr. SCHUMER) submitted the following resolution; which was considered and agreed to.:

S. RES. 290

Whereas November 9, 2013, through November 10, 2013, marks the 75th anniversary of Kristallnacht, or the Night of Broken Glass;

Whereas Kristallnacht began as a pogrom authorized by Nazi party officials and carried out by members of the Sturmabteilungen (SA), Schutzstaffel (SS), and Hitler Youth, marking the Nazi party's first large-scale anti-Semitic operation and a crucial turning point in Nazi anti-Semitic policy;

Whereas, during Kristallnacht, synagogues, homes, and businesses in Jewish communities were attacked, resulting in murders and arrests of Jewish people in Germany and in Austrian and Czechoslovakian territories controlled by the Nazis;

Whereas the events of Kristallnacht resulted in the burning and destruction of 267 synagogues, the looting of thousands of businesses and homes, the desecration of Jewish cemeteries, the murder of 91 Jews, and the arrest and deportation of 30,000 Jewish men to concentration camps;

Whereas the shards of broken glass from the windows of synagogues, Jewish homes, and Jewish-owned businesses ransacked during the violence that littered the streets gave the pogrom its name: Kristallnacht, commonly translated as the ''Night of Broken Glass'';

Whereas Kristallnacht proved to be a crucial turning point in the Holocaust, marking a shift from a policy of removing Jews from Germany and German-occupied lands to murdering millions of people, and was a tragic precursor to the Second World War;

Whereas, despite numerous global efforts to eradicate hate, manifestations of anti-Semitism and other forms of intolerance continue to harm our societies on a global scale; and

Whereas Kristallnacht teaches us how hate can proliferate and erode our societies and serves as a reminder that we must advance global efforts to ensure such barbarism and mass murder never occur again: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the 75th anniversary of Kristallnacht;

(2) pays tribute to the over 6,000,000 Jewish people killed during the Holocaust and the families affected by the tragedy;

(3) continues to support United States efforts to address the horrible legacy of the Holocaust and combat manifestations of anti-Semitism domestically and globally;

(4) will continue to raise awareness and act to eradicate the continuing scourge of anti-Semitism at home and abroad, including through work with international partners such as the Organization for Security and Cooperation in Europe's Personal Representative on Combating Anti-Semitism and Tolerance and Non-Discrimination Unit; and

(5) requests that the Secretary of the Senate prepare an enrolled version of this resolution for presentation to the United States Holocaust Memorial Museum in Washington, D.C.

SENATE RESOLUTION 291—EXPRESSING THE SENSE OF THE SENATE ON A NATIONWIDE MOMENT OF REMEMBRANCE ON MEMORIAL DAY EACH YEAR, IN ORDER TO APPROPRIATELY HONOR UNITED STATES PATRIOTS LOST IN THE PURSUIT OF PEACE AND LIBERTY AROUND THE WORLD

Mr. TOOMEY submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 291

Whereas the preservation of basic freedoms and world peace has always been a valued objective of the United States;

Whereas thousands of United States men and women have selflessly given their lives in service as peacemakers and peacekeepers;

Whereas the American people should continue to demonstrate the appreciation and gratitude these patriots deserve and to commemorate the ultimate sacrifice they made;

Whereas Memorial Day is the day of the year for the United States to appropriately remember United States heroes by inviting the people of the United States to respectfully honor them at a designated time; and

Whereas the playing of ''Taps'' symbolizes the solemn and patriotic recognition of those Americans who died in service to the United States: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the people of the United States should, as part of a moment of remembrance on Memorial Day each year, observe that moment with the playing of ''Taps'' in honor of the people of the United States who gave their lives in the pursuit of freedom and peace; and

(2) that playing of ''Taps'' should take place at widely-attended public events on Memorial Day, including sporting events and civic ceremonies.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on November 12, 2013, at 2:30 p.m., to conduct a hearing entitled ''The Consumer Financial Protection Bureau's Semi-Annual Report to Congress.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on November 12, 2013, in room S–216, the President's room at 5:30 p.m.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet,

during the session of the Senate, on November 12, 2013, at 2:30 p.m., in room 430 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Payroll Fraud: Targeting Bad Actors Hurting Workers and Businesses.''

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

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Nathan Brown, a detailee on my staff, be granted floor privileges for the duration of the consideration of H.R. 3204, the Drug Quality and Security Act.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that Tatiana Lowell-Campbell and Benjamin Friedman of my staff be granted floor privileges for the duration of today's session.

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

CHILDREN'S HOSPITAL GME SUPPORT REAUTHORIZATION ACT OF 2013

Ms. WARREN. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 227, S. 1557.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1557) to amend the Public Health Service Act to reauthorize support for graduate medical education programs in children's hospitals.

There being no objection, the Senate proceeded to consider the bill.

Ms. WARREN. I ask the bill be read a third time and passed, the motion to reconsider be considered made and laid upon the table, with no intervening action or debate.

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

The bill (S. 1557) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1557

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 ''Children's Hospital GME Support Reauthorization Act of 2013''.

SEC. 2. PROGRAM OF PAYMENTS TO CHILDREN'S HOSPITALS THAT OPERATE GRADUATE MEDICAL EDUCATION PROGRAMS.

(a) IN GENERAL.—Section 340E of the Public Health Service Act (42 U.S.C. 256e) is amended—

(1) in subsection (a), by striking ''through 2005 and each of fiscal years 2007 through 2011'' and inserting ''through 2005, each of fiscal years 2007 through 2011, and each of fiscal years 2014 through 2018''; and

(2) in subsection (f)—

(A) in paragraph (1)(A)—

(i) in clause (iii), by striking ''and'';

(ii) in clause (iv), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(v) for each of fiscal years 2014 through 2018, $100,000,000.''; and

(B) in paragraph (2)—

(i) in subparagraph (C), by striking ''and'';

(ii) in subparagraph (D), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(E) for each of fiscal years 2014 through 2018, $200,000,000.''.

(b) REPORT TO CONGRESS.—Section 340E(b)(3)(D) of the Public Health Service Act (42 U.S.C. 256e(b)(3)(D)) is amended by striking ''Not later than the end of fiscal year 2011'' and inserting ''Not later than the end of fiscal year 2018''.

SEC. 3. SUPPORT OF GRADUATE MEDICAL EDUCATION PROGRAMS IN CERTAIN HOSPITALS.

Section 340E of the Public Health Service Act (42 U.S.C. 256e) is amended by adding at the end the following:

''(h) ADDITIONAL PROVISIONS.—

''(1) IN GENERAL.—The Secretary is authorized to make available up to 25 percent of the total amounts in excess of $245,000,000 appropriated under paragraphs (1) and (2) of subsection (f), but not to exceed $7,000,000, for payments to hospitals qualified as described in paragraph (2), for the direct and indirect expenses associated with operating approved graduate medical residency training programs, as described in subsection (a).

''(2) QUALIFIED HOSPITALS.—

''(A) IN GENERAL.—To qualify to receive payments under paragraph (1), a hospital shall be a free-standing hospital—

''(i) with a Medicare payment agreement and that is excluded from the Medicare inpatient hospital prospective payment system pursuant to section 1886(d)(1)(B) of the Social Security Act and its accompanying regulations;

''(ii) whose inpatients are predominantly individuals under 18 years of age;

''(iii) that has an approved medical residency training program as defined in section 1886(h)(5)(A) of the Social Security Act; and

''(iv) that is not otherwise qualified to receive payments under this section or section 1886(h) of the Social Security Act.

''(B) ESTABLISHMENT OF RESIDENCY CAP.—In the case of a freestanding children's hospital that, on the date of enactment of this subsection, meets the requirements of subparagraph (A) but for which the Secretary has not determined an average number of full-time equivalent residents under section 1886(h)(4) of the Social Security Act, the Secretary may establish such number of full-time equivalent residents for the purposes of calculating payments under this subsection.

''(3) PAYMENTS.—Payments to hospitals made under this subsection shall be made in the same manner as payments are made to children's hospitals, as described in subsections (b) through (e).

''(4) PAYMENT AMOUNTS.—The direct and indirect payment amounts under this subsection shall be determined using per resident amounts that are no greater than the per resident amounts used for determining direct and indirect payment amounts under subsection (a).

''(5) REPORTING.—A hospital receiving payments under this subsection shall be subject to the reporting requirements under subsection (b)(3).

''(6) REMAINING FUNDS.—

''(A) IN GENERAL.—If the payments to qualified hospitals under paragraph (1) for a fiscal year are less than the total amount made available under such paragraph for that fiscal year, any remaining amounts for such fiscal year may be made available to all hospitals participating in the program under this subsection or subsection (a).

''(B) QUALITY BONUS SYSTEM.—For purposes of distributing the remaining amounts described in subparagraph (A), the Secretary may establish a quality bonus system, whereby the Secretary distributes bonus payments to hospitals participating in the program under this subsection or subsection (a) that meet standards specified by the Secretary, which may include a focus on quality measurement and improvement, interpersonal and communications skills, delivering patient-centered care, and practicing in integrated health systems, including training in community-based settings. In developing such standards, the Secretary shall collaborate with relevant stakeholders, including program accrediting bodies, certifying boards, training programs, health care organizations, health care purchasers, and patient and consumer groups.''.

THE CALENDAR

Ms. WARREN. Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar Nos. 239 and 240, which are post office naming bills en bloc.

There being no objection, the Senate proceeded to consider the bills en bloc.

Mr. SCHUMER. Mr. President, I speak today in strong support of S.1512, a bill to designate the facility of the United States Postal Service located at 1335 Jefferson Road in Rochester, NY, as the ''Specialist Theodore Matthew Glende Post Office.''

Specialist Glende's story reminds us that no gesture of thanks can adequately reflect the sacrifices made by our troops each and every day. I would like to tell you about one amazing New Yorker. Specialist Glende grew up on Park Avenue in Rochester, NY, graduated from McQuaid Jesuit High School in Brighton, and enrolled in ROTC as soon as he entered Niagara University. Three years into his college career and ROTC training, he learned that upon graduation his rank would be a Lieutenant in the Reserves. But his desire to serve on active duty in the Infantry was such that he left school a year early and enlisted in the Army, determined to work his way up. He served in a unit stationed in Italy, and was deployed to Afghanistan in 2012.

In late July of last year, Specialist Glende and his unit came under attack by enemy forces. Some soldiers were wounded, and while the attack continued to rage around him, Specialist Glende went above and beyond the call of duty to help rescue these wounded soldiers and get them to safety. Tragically, he sacrificed his life in the process. Specialist Glende's family was told that he saved five soldiers from death before he was killed.

The Federal Government should go to any length to salute heroes like Specialist Glende for their courage under fire. Specialist Glende gave his life for our great Nation, and we are now working to ensure that his memory serves as an example of impeccable character and exceptional patriotism.

He was steadfastly loyal and dedicated to his family, his young wife, and his country. I am humbled to be honoring his memory and paying tribute to his brave and heroic sacrifice with

this legislation to dedicate the Rochester Main Post Office at 1335 Jefferson Road as the Specialist Theodore Matthew Glende Post Office.

Growing up on Park Avenue in Rochester and attending McQuaid Jesuit High School in Brighton, he was known as ''Matt'' to his family and friends. Later, when he met his future wife Alexandra while working alongside her at the Pittsford Wegmans grocery store, she would call him ''Theo.'' But with the dedication of this Post Office, he will be remembered by his thankful hometown community once and for ever as ''Specialist Glende.''

Ms. WARREN. I ask unanimous consent the bills be read a third time and passed en bloc and the motions to reconsider be laid upon the table en bloc, with no intervening action or debate.

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

SERGEANT CORY MRACEK MEMORIAL POST OFFICE

The bill (S. 1499) to designate the facility of the United States Postal Service located at 278 Main Street in Chadron, Nebraska, as the ''Sergeant Cory Mracek Memorial Post Office'', was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1499

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

SECTION 1. SERGEANT CORY MRACEK MEMORIAL POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 278 Main Street in Chadron, Nebraska, shall be known and designated as the ''Sergeant Cory Mracek Memorial Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Sergeant Cory Mracek Memorial Post Office''.

SPECIALIST THEODORE MATTHEW GLENDE POST OFFICE

The bill (S. 1512) to designate the facility of the United States Postal Service located at 1335 Jefferson Road in Rochester, New York, as the ''Specialist Theodore Matthew Glende Post Office'', was ordered to be engrossed for a third reading, was read the third time, and passed.

S. 1512

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

SECTION 1. SPECIALIST THEODORE MATTHEW GLENDE POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1335 Jefferson Road in Rochester, New York, shall be known and designated as the ''Specialist Theodore Matthew Glende Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Specialist Theodore Matthew Glende Post Office''.

COMMEMORATING THE 75TH ANNIVERSARY OF KRISTALLNACHT

Ms. WARREN. Mr. President, I ask unanimous consent the Senate proceed to the consideration of S. Res. 290, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 290) commemorating the 75th anniversary of Kristallnacht, or the Night of Broken Glass.

There being no objection, the Senate proceeded to consider the resolution.

Ms. WARREN. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 290) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

ORDERS FOR WEDNESDAY, NOVEMBER 13, 2013

Ms. WARREN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Wednesday, November 13, 2013, and that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and 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 for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the final half; that following morning business, the Senate resume consideration of the motion to proceed to H.R. 3204, the pharmaceutical drug compounding bill, postcloture; further, that all time during adjournment, recess, and morning business count postcloture on the motion to proceed to H.R. 3204; and, finally, that the Senate recess from 12:30 p.m. 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

Ms. WARREN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 7:05 p.m., adjourned until Wednesday, November 13, 2013, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF THE INTERIOR

TOMMY PORT BEAUDREAU, OF ALASKA, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR, VICE RHEA S. SUH.

NEIL GREGORY KORNZE, OF NEVADA, TO BE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT, VICE ROBERT V. ABBEY, RESIGNED.

ENVIRONMENTAL PROTECTION AGENCY

THOMAS A. BURKE, OF MARYLAND, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE PAUL T. ANASTAS, RESIGNED.

DEPARTMENT OF COMMERCE

STEFAN M. SELIG, OF NEW YORK, TO BE UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE, VICE FRANCISCO J. SANCHEZ, RESIGNED.

DEPARTMENT OF EDUCATION

ERICKA M. MILLER, OF VIRGINIA, TO BE ASSISTANT SECRETARY FOR POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION, VICE EDUARDO M. OCHOA.

CENTRAL INTELLIGENCE AGENCY

CAROLINE DIANE KRASS, OF THE DISTRICT OF COLUMBIA, TO BE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY, VICE STEPHEN WOOLMAN PRESTON, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. JOSEF F. SCHMID III

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COLONEL TALENTINO C. ANGELOSANTE
COLONEL JAMES R. BARKLEY
COLONEL THOMAS G. CLARK
COLONEL MICHAEL J. COLE
COLONEL SAMUEL C. MAHANEY
COLONEL BRETT J. MCMULLEN
COLONEL JOSE R. MONTEAGUDO
COLONEL RANDALL A. OGDEN
COLONEL JOHN P. STOKES
COLONEL STEPHEN D. VAUTRAIN