Mr. WARNER. What is the business before the Senate?

NATIONAL DEFENSE AUTHORIZA-

TION ACT FOR FISCAL YEAR 2004.

The acting President pro tempore. Under the previous order, the Senate will now resume consideration of S. 1050, which the clerk will report.

Mr. LEVIN. Madam President, I understand only one of the amendments he knows of thus far on his side. On my side, there are no amendments that I know of right now. I do urge our colleagues to come forward.

The distinguished majority leader and the Democratic leader have made these 2 days for us to work on this bill. I know my colleague from Michigan, the ranking member, and I are ready to move right along on it. At this time, I yield the floor, hopefully for the purpose of my colleague speaking to the amendments he knows of.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I thank my good friend from Virginia. I think the business before us is to dispose of the Graham of South Carolina second-degree amendment and then the underlying Daschle amendment. I do not know if any of the opponents of the two amendments are on the floor to speak, but I think we should dispose of those. It is my understanding that after those amendments are disposed of, Mr. Jack Reed will be ready to proceed with an amendment.

Mr. REID. Will the Senator from Michigan yield?

Mr. REID. On this side, we are ready for a vote on the Graham of South Carolina amendment. We ask that vote occur around 11:30 today, if at all possible.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I will consult with the majority leader. I will note a willingness on this side to voice-vote the Graham of South Carolina amendment.

Mr. REID. We would not be willing to do that. We want a rollcall vote on that amendment.

Mr. WARNER. The time the Senator is recommenced.

Mr. REID. The time would be 11:30 to have a vote.

Mr. WARNER. Fine.

Mr. REID. I think we will probably only accept Daschle by voice if, in fact, the Graham of South Carolina amendment passes. I have no indication that it will. In the meantime, staff will work toward that goal with the two leaders and if people can come to the floor and offer amendments, which are certainly awaiting to be offered.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. If the chairman will yield for an inquiry, if we could put in a very brief quorum call, I think I would be able to straighten out which of the other amendments might be offered while we are awaiting a vote on the Graham of South Carolina amendment. I have two quick calls and could then give a report.

The PRESIDING OFFICER. The Senator from North Dakota.

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Mr. REID. Will the Senator from Michigan yield?
those in Russia, and begin to reduce the stock of nuclear weapons? Will we do that in our country? Will we send a signal to the world that nuclear weapons cannot ever again be used in anger, cannot ever again be used? The whole purpose of a nuclear weapon is a deterrent. It is not to be used.

In this legislation before us, we have provisions that talk about the development of new kinds of nuclear weapons and the reprocessing of spent fuel rods, if, in fact, we have a plan to develop new kinds of nuclear weapons. I think that is a horrible mistake. We have plenty of nuclear weapons. Our effort ought not to be to develop new ones. It ought to be to the rest of the world that we want to see nuclear weapons used again; we see nuclear weapons used again; we do not want them to develop a nuclear weapon. We do not want them to develop a nuclear weapon.

We are worried about Pakistan and India. They do not like each other. They both have nuclear weapons. If we are saying nuclear weapons are all right, what we ought to do is develop new kinds, develop more, use them perhaps in the future against terrorists who would burrow themselves into caves. What a terrible idea. What an awful message for this country to send to the rest of the world. The message ought to be we are going to do everything that is humanly possible in the United States of America to stop the spread of nuclear weapons because our future depends on it.

We face challenges. If, in fact, North Korea is now producing new kinds of nuclear weapons using those spent fuel rods, if, in fact, we have a country that has the capacity and is now building nuclear weapons and is perfectly willing to sell them to most anybody, can those nuclear weapons end up in the hands of terrorists 12 and 14 months from now and be used by those terrorists to threaten an American city?

The answer is yes. This is a very serious issue. Is the answer to this issue for us to be talking about developing new kinds of nuclear weapons so that perhaps we can burrow into a cave somewhere with a designer bunker buster nuclear weapon? The answer to that is clearly no. Our message, it seems to me, as a country, ought to be to the rest of the world that we want to stop the spread of nuclear weapons, and we want to reduce the number of nuclear weapons, and we want to in every single possible way say to the rest of the world nuclear weapons cannot be used, nuclear weapons will not be used.

So I am hoping to offer an amendment that will strike that money to study the development of a new designer bunker buster nuclear weapon. We cannot do that. That makes no sense to me. It is exactly the wrong message we have heard. We have heard the job is not to begin determining how we can create new nuclear weapons. Our job is to find ways to stop the spread and to begin the reduction of nuclear weapons. We have plenty—thousands and thousands of nuclear weapons. The Russian are a similar number. A few other countries also have much smaller numbers. One defection will cause a catastrophe in this world.

It just seems to me we cannot be sending a message to the rest of the world that we are seriously wanting now to develop a new kind of nuclear weapon to bust bunkers. That is just the wrong message to the world, in my judgment. I know that both the chairman and ranking member will oppose the amendment, but I believe very strongly that this country has a leadership responsibility to the rest of the world that we are strong, we are going to preserve liberty, we will fight for the future of this country's right to preserve liberty, but part of that, in my judgment, is to produce stability in the world, to say to other countries we don't ever want to see nuclear weapons used again; we want to stop the spread of nuclear weapons and we don't want to create new nuclear weapons. We don't need to create new nuclear weapons. Doing so would send exactly the wrong message to the rest of the world.

There is one other issue on which I know the chairman and the ranking member will disagree. Senator Lott and I intend to offer an amendment to strike the base closing round in 2005. The legislation approving a new Base Closure Commission in 2005 was written prior to 9/11. The shadow of 9/11 has changed virtually everything. The President came to the Congress and gave one of the most remarkable speeches I think I have ever heard a few days after 9/11. He said: Everything is changed. We now fight a war against terrorism, and that war against terrorism includes a war in Afghanistan, a war in Iraq, actions in other parts of the world, and a revamping of homeland security. The creation and revamping of homeland security, it seems to me, tells us that everything has changed. We have a Secretary of Defense who wants to dramatically change the entire structure of our Defense Department and our military.

So if everything has changed, then how do we proceed with a Base Closure Commission in the year 2005 that was developed in prior to 2001? Some of us believe we need to strike that 2005 base closing BRAC commission, get our breath, evaluate what kind of future we face with the new kind of security threat, and then decide what kind of base structure we want, both here and abroad, but instead of rushing into a mandate that was imposed prior to 9/11, what we ought to do is remove that mandate and have the flexibility to proceed in a manner that is consistent with the new realities since 9/11. It is interesting to me that there are so many new realities around the world. We have heard that since 9/11 we have heard of the divestions in Western Europe. Well, I understood why we would have had tank divisions, for example, when we had a Warsaw Pact and Eastern Europe was Communist and we were protecting Western Europe from the invasion of those Communists. That is not the case any more. There is no Warsaw Pact. Eastern Europe is democratic and free in almost all cases, and so it ought to lead us to ask the question: What are we doing with those kinds of divisions in Europe?

It seems to me there is a lot for us to evaluate in base closing, but if we are going to take a look at where the excess capacities exist in our military, let us do it with the background of 9/11. We don't know what the military will look like in 10 or 20 years from now. We don't know how big it will be, what the force structure will be. We don't know where our forces will be based.

Just recently, we had a callup of the National Guard and Reserve. God knows those wonderful citizen soldiers who leave their homes and their loved ones. The 142nd Engineering Battalion in North Dakota got 2 days' notice and dug their trucks out of the snow and put them on the road to Fort Carson, CO. The fact is they were not ready for them at Fort Carson, unfortunately, they did not have the capacity on that base to handle the 142nd when they got there. Part of it was because the troops got backed up; they could not go through Turkey; the ships were backed up; they were not able to move soldiers out of Fort Carson, so we had people being mobilized in the Guard and Reserve going to Fort Carson, CO, and they didn't have facilities to handle them at that point.

The question is, What needs and requirements will we face in the future? We don't know. Everything is changing. Everything has changed in the last few years.

The Secretary of Defense says we should have a base closing round, one round in 2005 that closes bases. I believe he said, equivalent to the number of bases closed in the first four rounds. I don't see how he or anyone else has the knowledge to understand where we would close those bases at the moment because we don't understand what the
force structure will be, what the requirements will be. And that is not a decision just for the Defense Department. It is also a decision for the Congress.

Homeland defense may require more bases than before. Homeland defense combined with the Defense Department and the efforts of both may require bases in different places, may require us to retain a base that in another area might otherwise close, may suggest you close a base in a circumstance where you otherwise might retain it. We don’t know. Homeland Security as an agency is less than a year old. We have had terrorists exploding bombs around the world in recent days—Morocco, Saudi Arabia. The fact is we don’t know how all of this comes together, and yet we have a mandate for a BRAC round, part of which will begin in 2004 with respect to the requirements and in 2005 we will have the commission.

Let me suggest also, in addition to the fact that I don’t think it makes any sense now, in the shadow of 9/11, to continue with the requirement that was imposed prior to 9/11, especially when virtually everyone says everything we do, absolutely everything we do, makes any sense to stubbornly stick to that requirement. We would be much better off, in my judgment, for long-term preparedness and long-term flexibility to strike that provision for the 2005 requirement.

Let me make one other point. We have an economy that is stuttering. Everybody understands that. The Congress and the President are struggling to try to find a way to put this economy back together. It is not producing jobs. It is losing jobs. We don’t have the kind of economic growth we want or need. All of us understand that. We all understand that.

Want to talk about a retardant economic growth? Let me tell you what that is. Tell every community in this country with a major military installation, by the way, if you invest in that community, do not build an apartment building now because between now and mid-2005 that base may be closed and you have no certainty it will be there beyond 2005 or past; so make sure you do not make that long-term investment. In every community where there is a major military installation this stutters growth because there is a target on the front: Get out of every military installation in the country. All of them are in play. No one knows which may remain open or remain closed. This Commission will meet in 2005 and on its own make that decision. Want to stunt economic growth, retard the ability of the economy to expand? The quick way to do that is to say let’s leave in place the 2005 requirement for a base-closing commission.

I guarantee, in community after community around this country, we have investors who will not, who cannot possibly make the investment in those communities because that military installation is a big part of the community and its economy and its future and they do not know whether it will be there in the future.

At a time when our economy is sputtering, bases closed by the Base Closing and Realignment Commission to expand? The quick way to do that is. Tell every community in this country because that military installation is a big part of the community and its economy and its future and they do not know whether it will be there in the future.

Mr. WARNER. I will not demean anyone who will not, who can’t, who won’t make that long-term investment beyond 2005 or past; so make sure you have no certainty it will be there in the future.

Mr. WARNER. By way of senatorial courtesy, I bring to the Senator’s attention the unanimous consent request drafted carefully and put into the calendar today. Would the Senator be willing to check with the Parliamentarian at his earliest opportunity? On this amendment, the Senator is a cosponsor. Mr. DORGAN. Senator LOTT and I.

Mr. WARNER. Would the Senator be gracious enough to check with the Parliamentarian? It seems to me before we get to the body stirred up on the issue of BRAC, we ought to determine the relevance on that amendment with these unanimous consent requests. I say that by way of courtesy.

Mr. DORGAN. Well, I appreciate the Senator’s courtesy. Of course, I am familiar that last week, perhaps for the last time, the committee has gotten unanimous consent requests for relevance. I say “for the last time” because I have discovered both last evening and this morning that the amendment, as drafted, would be nonrelevant. Let me describe my surprise at that.

Mr. REID. Will the Senator yield?

Mr. DORGAN. Let me finish the explanation and I will be happy to yield. The Base Closure Commission was established in this bill by this committee some years ago. One would expect the ability to strike that requirement would be in this bill. That is where it would be relevant. This bill itself contains provisions dealing with base closings because the bill contains some hundreds of millions of dollars in conformance with the requirements and the costs of previous Base Closure Commission actions.

I was told this morning the way our amendment is currently drafted is nonrelevant. I don’t have the foggiest idea who could come up with that sort of judgment and mean anyone who does. But to say there is no way on God’s Earth that anybody can suggest that it is not relevant in this legislation to deal with base closing because this is where base closing came about. This is where it originated.

If the idea of relevancy is to get unanimous consent to shut people out from being able to offer amendments such as this on this bill, it is the last time—I say this again—it is the last time any committee ever get a unanimous consent in this Senate as long as I am here during this session of the Congress on relevancy. It is the last time it will happen.

I am certainly not upset at the Senator from Virginia, but I am upset with this process because I will find a way to draft this so it is relevant and we will have a vote on it.

Frankly, I am upset that we have a Base Closing process by which someone says you cannot strike a provision that was put in the bill because it is not relevant. What on Earth are we thinking about?

I say to the Senator, your courtesy is understood. I will write it the way I hope someone around here can think clearly to say it is relevant. There is already a provision in this bill that deals with the Base Closure Commission; I can cite it. —There is no way my amendment can be nonrelevant.

I will work on that in the next couple of hours. I know the Senator from Virginia would want that to happen. I don’t think you will want to prevent me from offering an amendment that you think is relevant. I appreciate the comment.

Mr. WARNER. Madam President, I suggest maybe a revision in your commentary. It is not in this bill. You keep referring to “it’s in this bill.”

Some years ago this bill, by the authorization committee, did contain it. I happened to be a drafter of it. But it was in the public law. It is drafted in this bill. But there is no provision, to my understanding, in this bill that deals with the Base Closing Commission actions.

Mr. DORGAN. When I say “this bill,” I am referring generically to the Defense Authorization bill that we do each year. This bill is where the Senators who wanted to add the base-closing BRAC commission put it. It is in this piece of legislation. Generically. Not, this bill you wrote this year that comes to the floor does not create the BRAC because the BRAC now is in law. I am trying to make it. I am upset with it.

Let me say, however, that on page 349 of your bill:

For base closure and realignment activities as authorized by the Defense Base Closure and Realignment Act of 1990 (Part A of title XXIX of public law 101–510—

My point is, that portion of law is already referenced in your bill because you are proposing to spend $370 million in pursuit of certain requirements that I have been aware of in the past.

My point is, it is not as if base closing as a concept or as a subject is not there. It is there.
I assume that neither you nor the Senator from Michigan—perhaps I should ask both of you. I assume that neither of you would anticipate when you propound a unanimous consent request on relevancy that you would want to prevent someone from coming to the floor to offer an amendment that is clearly relevant. I assume you would not want to try to prevent this kind of amendment.

I assume you want to prevent an element that deals with, say, CAFE standards or how you spend the defense budget, or the amendment that I intend to offer on base closing, is that what you intended to prevent with the unanimous consent request?

I am happy to yield.

Mr. LEVIN. If the Senator will yield for a question, I, frankly, am surprised this morning at this. I think a number of others are as well because I don’t think this is what I thought relevancy was about.

My amendment is a BRAC amendment. It relates to the base-closing round. If this is not what you intended to prevent, let me ask consent that you would agree this be deemed as relevant.

Mr. WARNER. Madam President, I would not agree with that.

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

Mr. DORGAN. I will be happy to yield for a question.

Mr. REID. The Senator is aware, is he not, that on our side we have very competent staff, Marty Paone, Lula Davis, who help us with parliamentary issues that come before this body; the Senator is aware of that, of course?

Mr. DORGAN. I am. Mr. REID. Is the Senator aware that we have been told by them that the rulings that have been made on this bill have been a surprise to even them, in the many, many years they have served in the Senate? The new—I am talking about new in the last few days—definition of what is relevant has surprised even our very competent floor staff. Is the Senator aware of that?

Mr. DORGAN. That is correct.

Mr. REID. Is the Senator aware that, generally speaking, relevance is not germaneness? They are two totally different concepts; is that correct?

Mr. DORGAN. The Senator is correct.

Mr. REID. I am surprised, flabbergasted, disappointed last night when the amendment that you and I Senator McCain—I didn’t mention his name last night and I apologize for not doing that because I was so taken aback by the ruling of the Chair—that our concurrent receipt amendment was ruled nonrelevant. That is an amendment to allow the military to receive their disability pay and their retirement pay.

I would have to think this huge bill we have here—there are copies on the desk, here it is right here—in this huge bill here, I would have to think there is something about pay for the military, about retirement pay, about disability. But the Chair ruled that was not the case.

I accept the ruling of the Chair. I do not like it, but I certainly support the statement made by the Senator from Michigan last night. I thought that was a very fair statement. We have to go along with what the Chair rules. There is no other alternative, but that does not take away that this has been a tremendous surprise, disappointment to me, and I would think to the Senator from North Dakota. Is that a fair statement?

Here is a situation that has arisen that is totally against what we have learned has been the rule of relevance. This is not some magical concept that just came out of the sky, but in the
last few hours there is a new determination of what relevance is. Is this a fair statement, I say to the Senator from North Dakota?

Mr. DORGAN. That is my feeling. I hope the Senator from Virginia and the Senator from Michigan were surprised as well.

If not, if their suggestion last Thursday of what relevance was, by unanimous consent, in effect, was to say: Oh, by the way, those of you who want to come here and pose a round of questions, I am not willing to fight you on that; You can’t offer it; We will find a way to prevent you from offering it.

It is partly our fault. I had no idea that what you were doing last Thursday with a relevancy request, by consent, would have prevented Senator REID from offering the concurrent receipt issue. The fact, is, we were going to offer the concurrent receipt issue last Thursday in the tax bill not dealing with any of that, decided to offer it here because here is where it ought to be offered.

When someone works 20 years in the military for this country and then retires, and the retirement pay, if during that time they were disabled, what our current law says, in most cases—not all, but in most cases—is that you are not going to be able to collect your disability and your retirement concurrently; concurrent receipt is prohibited.

That is wrong. We ought to change that. Most of us know we ought to change that. The place to change that is on the Defense authorization bill. Of course, if you place to change it.

I am just as stunned as Senator REID has been told it is not relevant as I am about my amendment. I have spent more time this morning trying to figure out how on Earth someone could determine that BRAC amendment you had not to do that, decided to offer it here because here is where it ought to be offered.

The Parliamentarian, that 3 years ago, 5 years ago, or 10 years ago, if this were offered on this bill, it would be relevant. We all know that. The only reason we are surprised this morning is because relevancy is changing in a way that I hope surpises you because I don’t expect that you last Thursday would have wanted to prevent the concurrent receipts being debated and voted on. And I wouldn’t expect that you want my amendment to be voted on. As I said before, I have great respect for Senators and ranking members of this committee. I think they do wonderful work for this country. I have great admiration for them. I support much of what they have done. I will offer a couple of amendments. One which I very much hope you will allow to be offered is the one Senator REID, myself, and Senator McCaIN want to offer on concurrent receipts. And one that certainly should never be prevented from being offered is on the Base Closure Commission. I have amendments about that amendment and why I think it is important and why I think it is timely to offer it today. I know that both Senators will object to that. But there is a very solid and strong group of Senators who feel the other way. I and Senator LOTT intend to offer this amendment to the extent that we can find a way to offer it, either by rewording it or finding a way to allow us to offer it. It would be a mistake not to do this before the bill leaves the floor.

Mr. WARNER. Madam President, I think this colloquy undoubtedly is being followed by a number of colleagues in both parties. I have been speaking with Senator LOTT by several on my side of the aisle seeking to ask whether we can go ahead and take this up even though the Parliamentarian has indicated to those Senators in a formal and appropriate way that it is acting within the description of their job function here to say the amendment fails the test. Again, I do not intend to sit here in judgment and overrule the Parliamentarian. But the Senate is perfectly willing under the rules of the Senate to seek to do that.

Mr. DORGAN. You do not have to overrule the Parliamentarian. If one were to move to do that, would be a different issue. But by consent we can—and you know we will—do most anything on the floor of the Senate. My point is not to ask you to overrule the Parliamentarian. My point is to ask you whether you believe, whether the committee believes that it is somehow not relevant to this bill to be talking about the Base Closure Commission that was created by the Defense Authorization bill in the Senate, or to be talking about concurrent receipts which affect emoluments and reimbursements for veterans and retired veterans. Clearly, the Senators from Virginia and Michigan could not feel that somehow the inclusion of this bill. If you believe it is in the scope of the bill, let us not be technical. Let us by consent allow amendments that are at the heart of this bill to be offered.

That is what I am asking. That is my point.

Mr. LEVIN. Madam President, if the Senator from North Dakota was asking me do I believe that a BRAC amendment is germane to this bill, not relevant but germane to this bill—look up the word “germane” in the dictionary—it sure sounds germane to me. But then I ask the Parliamentarian if it is germane, and the Parliamentarian says, no, it is not germane to this bill, and if this were a postcloture situation, it would be allowed, the Senator could get up and ask, Does the Senator from Michigan really believe the BRAC amendment should not be allowed on this bill because under the rules of the Senate it is apparently not germane? The Parliamentarian has told us that.

What intrigues me is the relevance standard which the Senate from North Dakota has raised as to whether or not, in fact, there has been a change. I use the words “whether or not” there has
been a change in the standard of relevancy. It seems to me that is an important issue for this body to review, as to whether there has been a change in that definition. I haven’t talked to the Parliamentarian about it. I don’t know. Does the Senator from North Dakota suggest that there has been a change? Whether there is, has been, would be or not, we should know as a body what the standard of relevancy is and whether there has been a change in that standard. I am not suggesting, obviously, that the Parliamentarian speak on the floor at this point. I am suggesting the Parliamentarian advise the Senate in some written form relative to the standard of relevancy because the Senator is raising an absolutely crucial issue. We use the word “relevant” here all the time. If there is a change in the definition of that word, then it seems to me we ought to know about it and decide whether or not we are comfortable with it.

Mr. WARNER. Madam President, will the Senator yield?

Mr. DORGAN. I would be happy to yield to the Senator from Virginia.

Mr. WARNER. Madam President, will you yield?

Mr. DORGAN. I would be happy to yield.

Mr. WARNER. Madam President, will my friend yield?

Mr. DORGAN. I would be happy to yield.

Mr. WARNER. Madam President, I have the greatest affection for my friend from Virginia. If there were ever a southern gentleman, he is it. But this question will not do the trick. It is like asking Al Capone if he is a criminal. I am not saying that the Parliamentarian is a criminal, but you can’t ask him to defend himself. That is what amounts to. That is what is happening, especially here in the Senate. This is not the way to do it. I say to those on that side of the aisle, the greatest confidence in our floor staff, as they do theirs. They are not Johnny-come-lately. They have been here a long time. They knew when this unanimous consent agreement was entered into what it was. They know what the standard basic definition was. They are dumbfounded as to the rulings of the Chair. Marty Paone and Lula Davis—who I lived with on this floor, and spend days and weeks and months of my life, I depend on for advice and counsel every day, are dumbfounded.

I say to my friend from Virginia that to ask the Chair to determine a change in the definition in the last 2 days is not the way to go.

Mr. DORGAN. Let me make the point that there has not been a ruling of the Chair. The issue is what the Parliamentarian views to be relevant and not relevant. There is an important distinction. But we don’t want to have a half hour of debate on this point.

The only reason I came to the floor to talk about this was because I wanted to ask the Chair for advice and counsel, which I wanted to offer, recognizing that one of them at this point has been described as not relevant. I was stunned by that. I expect to be able to redraft it to make it relevant. But I would yield to the Senator from Nevada based on that decision by the Chair.

Mr. DORGAN. Let me make the point to the Chair that there has not been a ruling of the Chair. The issue is what the Parliamentarian views to be relevant and not relevant. There is an important distinction. But we don’t want to have a half hour of debate on this point.

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Mr. WARNER. Madam President, if the Senator will yield, I would be happy to yield.

Mr. WARNER. The Senator from Virginia propounded a question to the Chair. My distinguished colleague from Nevada suggested maybe we shouldn’t follow that procedure. I thought he was going to debate that subject. But then he used that to describe its relationship to “relevancy.” This will be lost on a lot of people in the country. But it would be lost on people as well if they understand what this bill is and then look at the amendment that is proposed to be offered by the Senator from Nevada and the amendment that I propose to offer and hear that those somehow are not relevant to the bill. They would ask, Is there some greater sense missing here someplace? Clearly, clearly——

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that, there is one reason or another it can’t be done.

It is just one amendment Senator RIEDE and I and Senator McCaIN want to offer. But it just does not make sense to me to be in this position. I hope my two colleagues, Senators WARNER and Senator HARKIN, would not consider these amendments to be nonrelevant. They have some notion of what is relevant, what is nonrelevant in terms of what they wanted to prevent, and I assume they didn’t want to prevent these types of amendments from being offered.

So I will be working with them and seeing if we can find a way through this. I will work with the Parliamentarian’s Office. But I must tell you, this is the first time—I have been in this Senate for a long time. I have never come to the floor ever, not one instance I think you will find where I have come to the floor and been upset with the Parliamentarian’s Office or others. And if that is the case—and I think that is the case—then they ought not be precluded, and we need to find a way to allow them to be offered.

So I will come back. I intended to come to the floor to make the same points, raise the question, and then try to solve it. I am sorry we got into a longer discussion than that.

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

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

Mr. ALLARD. Mr. President, I have a statement I would like to make on the bill. It is my understanding we are in order to move forward with the debate.

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLARD. Mr. President, today the Senate is considering the National Defense Authorization Act for fiscal year 2004. While there will be much debate on a few of the provisions in this bill, there is one thing we can all agree on—the defense of this Nation is our No. 1 priority.

The bill before us is a reflection of that priority. With the passage of this bill, we are saying our military personnel are the best in the world and should be paid and equipped as such. Modern equipment and sophisticated technology were certainly critical factors in recent operations. However, it was the extensive training, superb leadership, and valiant service of thousands of soldiers, sailors, airmen, marines, and others that has been the deciding factor time and time again.

With the passage of this bill, we are also admitting that threats to our way of life are present in many parts of the world. The global reach of terrorist networks is extensive, as demonstrated by the recent bombings in Saudi Arabia. The proliferation of weapons of mass destruction is growing. There are reports, for example, that North Korea may try to sell a nuclear weapon. These threats and others require us to remain vigilant. Our military must be prepared and ready to respond in a moment’s notice.

I would like to take a few moments to draw the attention of the body to some of the important provisions in this legislation.

Section 534 of the bill, which I sponsored, lays out several actions the Secretary of Defense and the Secretaries of each military department must take to address sexual misconduct at service academies. These include promulgating policies on sexual misconduct, conducting annual cadet surveys, and submitting a report to Congress on the board of visitors of each academy. The recent sexual assault scandal at the United States Air Force Academy highlighted the importance of being proactive and taking appropriate action at the first sign of trouble. This provision will be helpful in discovering sexual misconduct problems at service academies. This provision will also help academy leaders develop new tools for addressing sexual misconduct and give Congress and the board of visitors insight into the size and scope of the problem.

Another provision which I sponsored focuses on improving the Defense Department's management of travel credit cards. This provision builds on the purchase card legislation of Senators Grassley and Byrd which was approved by this body last year in the Defense appropriations bill. Federal agencies are required by law to use purchase cards for certain transactions and defend for travel trips. While utilization of these cards has yielded considerable savings for the American taxpayer, abuse has continued.

Recent GAO audits have reported these cards have been used at brothels, adult clubs, sporting events, and even Internet pornographic sites. Section 1013 will help address this deficiency. It requires the Secretary of Defense to prescribe guidelines and procedures regarding disciplinary action against those of improper, fraudulent, or abusive use of Defense travel cards. The provision recommends to the Secretary that he consider enforcing various penalties allowed in law, including assessing a fine three times the size of the abuse, requiring the guilty party to pay court and administrative costs, and firing or court-martiaIing Department of Defense personnel.

Lastly, the provision requires the Secretary to report to Congress on these guidelines and provide legislative proposals should legislative action become necessary.

The bill before us also includes two provisions I sponsored regarding military voters. With the current deployments resulting from the war on terrorism, Operation Iraqi Freedom, and numerous other military actions, we must do all we can to ensure these military men and women are given every available opportunity to exercise their right to vote. I believe it is our duty to remove as many barriers as possible for military voters to be heard.

One provision included by the Armed Services Committee addresses those voters who fall through the cracks when they leave the military and move before an election but after the residency deadline. The other provision addresses the inability of military absentee ballots. After the 2000 election there were numerous reports of ballots mailed without the benefit of postmarking facilities. Sometimes mail is bundled from deployed ships or other distant postings and the whole group gets one postmark which would invalidate them under current law. The provision adopted will change the law so our military personnel would be ensured their votes count.

I am encouraged by the $40 million added to the President’s request for formerly-used defense sites, better known as FUDS. As noted in the committee report, there are over 9,000 FUDS in the program which historically have longer than necessary sites wait to be remediated, the more expensive they become. That is why I am pleased to see the extra funds and encourage the Army to address these problems in an expeditious and thorough manner.

Turning to the provisions that originated from the Strategic Forces Subcommittee, which I chair, these provisions reflect a net increase of $85 million in procurement, a net increase of $202 million in research and development. They also reflect the requested level of funding for the Department of Energy programs and activities. The total net increase was $287 million.

These provisions fully fund the President’s $31 billion request for missile defense. I was pleased that my ranking member, Senator BILL NELSON, and I were able to work together effectively on these issues. I am hopeful any missile defense amendments considered as part of this debate will be non-controversial.

Significant funding actions in the committee’s bill for missile defense include an increase of $100 million for the
ground-based missile defense system for additional testing and hardware improvements to reduce risk and enhance operational effectiveness, and a $70 million decrease for the ballistic missile defense system intercept project.

The bill also contains a number of space-related provisions that originated from my subcommittee. One would help to more fully develop an effective cadre of space professionals. Another would establish assured access to space for national security payloads as national policy.

Significant funding actions for space include the following: An $80 million increase for the GPS III, which is an advanced navigation satellite; a $50 million increase for the Advanced EHF Satellite communication system; a $50 million increase for assured access to space; and a $50 million decrease for the Advanced Wideband system, which will put this program on a sounder schedule.

There are two significant legislative provisions regarding the intelligence, surveillance, and reconnaissance, referred to as ISR. The first would require establishment of a Department of Defense and Intelligence Community program to ensure the development of an efficient, interoperable, complementary ISR architecture for the Department. The second reemphasizes the committee's support for the acquisition and use of commercial imagery to meet Department of Defense and Intelligence Community needs. The bill also adds funds to a number of high-priority ISR programs.

Another set of provisions originated from my subcommittee focuses on Department of Energy programs. These provisions authorize the weapons activities within the National Nuclear Security Administration to begin research on advanced concepts, and $15 million of that research money will be used to continue the feasibility study on the robust nuclear earth penetrator. A repeal of the ban on low-yield nuclear weapons was also included—emphasizing just the repeal, and this involved the research and development.

Mr. President, our Armed Forces are highly capable, superbly led, and devoted to the protection of the American people. During Operation Enduring Freedom, the Taliban unwittingly discovered our military has the capability to deploy and supply thousands of soldiers in the most remote of regions of the world. And during Operation Iraqi Freedom, Saddam Hussein experienced firsthand the devastating precision firepower our forces can unleash from a multitude of platforms.

Yet despite these capabilities, we cannot stand still because, most assuredly, our enemies will not. We must be determined, committed, and focused on the task before us. It is our duty.

The Armed Services Committee, under the outstanding leadership of Chairman WARNER and Senator BILL NELSON, and our staffs and other members of this committee, spent many hours developing, analyzing, and reviewing the provisions in this bill. I also want to thank the ranking member of the Strategic Forces Subcommittee, Senator BILL NELSON, and his cooperation and leadership during our hearings and committee markup. While we may not all agree on the merits of some of the provisions, we can all agree the overall bill will go a long way toward meeting the growing needs of our men and women in uniform.

The American people depend on us, just as we depend on our Armed Forces. Let us do our duty and quickly approve this bill.

Mr. Warner, I yield the floor. Seeing no other member seeking recognition, I suggest the absence of a quorum.

Mr. WARNER. Mr. President, I ask unanimous consent that the pending amendment from Rhode Island [Mr. REED], to delete section 223, be called up.

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

Mr. WARNER. Mr. President, I ask unanimous consent that the amendment from Rhode Island [Mr. REED], to delete section 223, be called up.

Mr. REED. Mr. President, I ask unanimous consent that the pending amendment be laid aside.

Mr. WARNER. Mr. President, I ask unanimous consent that the amendment be laid aside.

Mr. REED. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

Mr. WARNER. Mr. President, I ask unanimous consent that the amendment be dispensed with.

Mr. REED. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

SEC. 223. OVERSIGHT OF PROCUREMENT, PERFORMANCE CRITERIA, AND OPERATIONAL TEST PLANS FOR BALISTIC MISSILE DEFENSE PROGRAMS.

(a) PROCUREMENT.—(1) Chapter 9 of title 10, United States Code, is amended by inserting after section 223 the following new section:

"§223a. Ballistic missile defense programs: procurement

"(a) BUDGET JUSTIFICATION MATERIALS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1165(a) of title 31), the Secretary of Defense shall specify, for each ballistic missile defense system element, the following information:

"(A) For each ballistic missile defense element for which the Missile Defense Agency is engaged in planning for production and initial fielding (hereinafter referred to as "blocks"), the annual assessment of the progress being made toward verifying performance through operational testing, as prepared under subsection (b).

"(B) The performance criteria prescribed under subsection (a).

"(C) The plans and schedules established and approved for operational testing under subsection (c).

"(D) Measures assumed to be employed for the protection of the threat missiles.

"(E) One or more criteria that specifically describe, in relation to that block, the types and quantities of threat missiles for which the system is designed as a defense, including the types and quantities of the countermeasures assumed to be employed for the protection of the threat missiles.

"(F) One or more criteria that specifically describe, in relation to that block, the intended effectiveness of the system against the threat missiles and countermeasures identified for the purposes of subparagraph (A).

"(G) OPERATIONAL TEST PLANS.—The Director of Operational Test and Evaluation, in consultation with the Director of the Missile Defense Agency, shall establish and approve for each ballistic missile defense system program element appropriate plans and schedules for operational testing to determine whether the performance criteria prescribed for the program under subsection (b) have been met. The test plans shall include an estimate of when successful performance of the system in accordance with each performance criterion is to be achieved through operational testing. The test plans for a program shall be updated as necessary while the program and any follow-on program remain in development.

"(H) ANNUAL TESTING PROGRESS REPORTS.—The Director of Operational Test and Evaluation shall perform an annual assessment of the progress being made toward verifying performance through operational testing the performance of the system under a missile defense system program as measured by the performance criteria prescribed for the program under subsection (b).

"(I) Future- Years Defense Program.—The future-years defense program submitted to Congress each year under section 221 of this title shall include an estimate of the
amount necessary for procurement for each ballistic missile defense system element, together with a discussion of the underlying factors and reasoning justifying the estimate.

(2) The table of contents at the beginning of such chapter 9 is amended by inserting after the item relating to section 223a of title 10, United States Code (as added by subsection (a))—

(1) the budget justification materials submitted to Congress in support of the Department of Defense for fiscal year 2004 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) need not include such assessment; and

(2) the Director of Operational Test and Evaluation shall submit the assessment to the Committees on Armed Services of the Senate and the House of Representatives not later than July 31, 2004.

Mr. REED. I thank the Chair.

Mr. President, there is a very simple, but important, premise underlying this amendment. I believe Congress should know the capabilities of any missile defense system is deployed. Yet both of these programs are complex and difficult, yet they have measurable performance criteria prior to being deployed. This is the right way to develop a missile defense system; indeed, all defense programs. This amendment would model other missile defense programs on the very successful PAC-3 program in terms of performance criteria, operational testing, and then deployment. There are a number of important things this amendment will not do. This amendment does not reduce funding for any missile defense system. It would not prevent the administration from authorizing missile defense program in 2004, although, hopefully, we will have an idea of exactly what they field in 2004, and, frankly, I do not think this Congress has such an idea at this moment. It would not dictate what performance any missile defense system should have, nor does it establish any dates for when certain performance must be attained. It would, however, enable Congress to understand what missile defense capabilities are being bought for the $9.1 billion provided in the defense bill for missile defense. I think that is a threshold issue our constituents expect us to know. If we are investing $9.1 billion, we have to know, and the American people should feel confident we know, what we are buying, how much will it protect us against what type of threat.

I believe also it would improve the chances of developing effective missile defenses by establishing clear standards of performance. Currently, none of the missile defense programs under development, under the Missile Defense Agency, have established performance criteria, meaning essentially there are no standards for when a system reaches any particular milestone or has completed its development. These standards did exist under the Clinton administration but were removed by the current administration.

The administration claims it cannot develop performance criteria for missile defense because the systems are too complex and difficult, and no one can predict how they will perform. However, despite this seeming quan- dary about not knowing what will happen, the administration plans to field both ground- and sea-based missile defenses in 2004 and possibly an airborne missile defense by 2005. Frankly, a system that is ready to be fielded is presumably far enough along to be able to tell its performance, or one can only develop performance criteria without any knowledge of how it actually will work. That to me would not be a very prudent or a very wise deployment.

Other defense programs are also complex and difficult, yet they have measurable performance criteria against which they are tested. The F/A-22 aircraft program is a very complex and difficult system, as is the V-22 Osprey program. Yet both of these programs have well-established performance criteria.

In fact, all major military programs, except missile defense, have performance criteria or requirements which were approved relatively early in a system’s development and revised as necessary as the program matures. I do not think it is incompatible to have a flexible system that can be adapted, but I believe we need to have performance criteria, and it seems in our discussion of missile defense these two notions are completely separated: Flexibility, innovation, seizing technological breakthroughs, and simple performance criteria. They should be part and parcel of any program we undertake.

For example, all unmanned aerial vehicle programs, such as the Predator, have requirements stating how long they need to stay aloft, how high they can see. Yet this has not interfered with their innovation, their development, and their deployment.

The administration has claimed be- cause it has adopted the new spiral development, capabilities-based acquisition approach, that establishing actual performance criteria and operational test plans is not appropriate because we just do not know for sure what missile defenses will eventually emerge. But the administration has removed a number of other spiral development programs in the Department of Defense, and all of them, except missile defense, have performance criteria and operational test plans.

For example, the Global Hawk Unmanned Aerial Vehicle, which saw service in Afghanistan and Iraq, is a spiral development program. Yet it has well-established performance requirements and a documented operational test plan.

There is absolutely no reason that missile defense should not have the same sort of yardsticks for measuring progress. Ballistic missile programs used to have performance criteria, such as how many incoming missiles they should be able to engage, and how much area a system should defend. This enabled Congress to understand the characteristics of missile defense programs that were being funded and why they were necessary. Such criteria have been removed, and Congress does not know, for example, how many incoming missiles each missile defense system is being designed to defend against or how much area the system is being designed to defend.

Without such information, Congress is effectively writing a $9 billion blank check each year to the administration for missile defense.

Over the previous 2 years, Congress has tried and tried again to get the administration to provide the most basic information on its missile defense programs. Time and again, the administration has refused to provide it.

In fiscal year 2002, Congress directed the Department of Defense to provide its most basic cost, schedule, and performance goals for missile defense. We also asked the General Accounting Office to assess the progress being made towards achieving these goals.
As late as the end of fiscal year 2002, when the first GAO assessment was due, the Department had still not established a single meaningful goal for its missile defense programs. GAO was forced to write to Congress saying that it could not complete its assessment because there were no goals to measure missile defense programs.

Lately, in response to continued Congressional pressure, the administration has begun to establish a few very broad, very near-term goals. But even these goals are highly misleading.

Secretary Aldridge, the Pentagon's acquisition chief, recently testified before the Senate Armed Services Committee that he thought the administration's 2004 missile defense would have a 90 percent chance of hitting an incoming warhead from North Korea.

Whether this is a firmly established goal or simply the individual opinion of a very sophisticated observer but nevertheless an individual opinion, it is hard to believe the credible, one can only ask many questions about whether this 90 percent figure as a goal is being achieved and can be achieved by 2004.

Secretary Rumsfeld has said in public that the 2004 system is rudimentary. Does this program's success will be achieved or does it mean something less?

Indeed, if we look at the system closely, there are many issues that emerge which would suggest that this is such a mode in which this system does not have any goals. For example, the booster for the system that is designed to be deployed in 2004 has yet to be flown in an actual intercept. So there is the question of making it work with the actual kill vehicle in an operationally feasible mode.

That is a pretty significant issue when it comes to whether this system will have a certain degree of reliability.

The radar for the system was never designed for missile defense and can never be actually tested in an actual intercept attempt. The Pentagon's chief tester has told the Senate Armed Services Committee that the 2004 missile defense, in his words, has not yet demonstrated operational capability.

Yet it seems clear that, regardless, there is an intention to field this system in 2004.

All of these issues raise real questions as to the capability of this system. In fact, that in fact, that 90 percent, is it 90 percent of hitting a missile with defense decoys or 90 percent of hitting a missile without a decoy? These are important points that I think can be answered and should be answered by the Department of Defense as we go forward to invest something on the order of $9 billion a year in missile defense.

The administration also claims that the missile defense system it plans to field in 2004 will protect all 50 States, but if we look at the details such a defense is only possible if we have Navy ships constantly patrolling the waters of North Korea using their radars to pick up any ICBM launches headed towards Hawaii.

Initially, in the Clinton proposal there was a plan to build a very large radar designed particularly for ballistic missile defense that was intended to, among other programs that would include protecting and covering all 50 States.

This new approach may in fact be effective, but, once again, we are not sure—therefore the Congress has not sufficient record in either an unclassified or a classified standard—of what is the standard.

Is it all 50 States? Is it 50 States assuming that the Navy will have ships constantly patrolling the waters off North Korea? Indeed, it is not quite sure whether those ships can constantly be patrolling the waters off North Korea given the numerous missions in the war on terror, given the numerous military operations. That, too, has to be looked at and examined based upon success.

Another point is that the radar on these ships is being adapted, but it was not originally designed to identify and track ICBM-type targets. There is a question of whether the radar would be accurate enough to perform this mission.

If the Navy ships are not there, if the radar truly does not work as they hope it works or it is not modified quickly enough, there is a real question about the coverage of the system.

All of these points are being made to say in order to assess what we are buying, it helps to have these performance goals, that have been delineated, to have the assumption laid out, and to have all of this operationally tested, so when we deploy a system we can say with great confidence to the American people that it will provide this level of protection. I do not think we can say that at this point.

This amendment in no way inhibits the administration from fielding a system, any type of system, in 2004, but what it will give us is an opportunity to measure. How effective is that system? What threats will this system engage? That type of knowledge is very important for us as we make our decisions. It is also incumbent upon the administration to provide such knowledge. Again, I emphasize it can be done either on a classified or unclassified basis because I understand there is a utility sometimes to have a system which our adversaries might assume would be 100-100 percent effective. But at least the Congress must know this information.

The other fact of this lack of clarity and goals is it inhibits operational testing. Administrative witnesses have testified that the need for operational testing.

We have passed laws establishing operational testing. This is the traditional routine way in which we verify whether a system works and also, as we improve the system, how effective the modifications and improvements are.

Every major defense program I can think of, except missile defense, has established plans for operational testing. Without these criteria for performance and operational testing, I do not know if we can, in fact, create and deploy a system of which we can be confident.

As we reestablish these performance criteria for missile defense systems and require a plan for operational testing, Congress will regain an important tool to understand how well our missile defense program is succeeding, how our money is being spent—not our money, frankly, but the American people's money. Without this plan for operational testing, none of that clarity will be available to us.

I think something else will be very important. It will require the Department of Defense to face squarely these tough issues: What type of threats can we defeat? How wide is the coverage of our system? What additional resources must we bring to bear to make it effective? Is this investment cost effective and cost efficient in terms of protecting the American people?

Right now all of that is very amorphous, very nebulous because there is no standard to measure it, even a general standard, these general goals I talked about. I hope this amendment will be accepted on the basis on provisions in the law that were adopted by the committee.

I commend Senator Allen for his efforts to include more cost data, more lifetime cycles of the cost, what it will take to field this system. This is an attempt to build on that foundation. I hope my colleagues will see it as such, agree to this amendment, and provide the kind of goals, operational testing and clarity that are needed so we can assure the American public that when we deploy a missile defense system, it will live up at least to the standards that are disclosed to the U.S. Congress.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I rise in opposition to the Reed amendment. First, there have been a number of issues that Senator Reed and myself have worked together on, and I think quite effectively. It is with considerable regret that I stand today and oppose his amendment.

It is an amendment that would add a number of reporting requirements for the Missile Defense Agency and the Office of the Secretary of Defense to provide a report to the Congress, which would be considered and would allow this Congress to buy into the argument that a few more, well-thought-out regulations does the job; that if we just put in more regulations it is even better. There is a good balance we need to sustain. We have found that balance. This is an issue that in previous years has been hotly debated within the Armed Services Committee and within my subcommittee in which this issue comes out.

This year we did not have any amendment—we had some debate but no amendment in the Subcommittee on Strategic Forces, which I chair; we did not have any amendments in the full
committee. Now we are dealing with this issue in the Senate.

The Missile Defense Agency is attempting to develop an effective missile defense system as rapidly as possible. They are structuring the program on threat we currently face, while recognizing that the missile threats will unpredictably evolve in the future. That is one of the problems I have with the Reed amendment, its unpredictability. To do so, the Missile Defense Agency has taken a capabilities-based approach that focused on developing a number of systems.

The Reed amendment attempts to relate ballistic missile defense element performance criteria to specific threats that these elements are designed to defeat. If it takes effect, the amendment would push the Missile Defense Agency back toward threat specific development and acquisition, away from capabilities-based development and acquisition.

Why is that a problem? We do not always understand the threat facing the United States. I can take us back to a couple of current situations where we did not understand what was happening with potential adversaries. In 1991, for example, in the Persian Gulf conflict, we got into Iraq. Only then did we begin to recognize how far along the nuclear development program was in Iraq. That was 1991. The people in the Defense Department, our experts, were surprised. In defense intelligence were surprised. We looked back to the North Korea situation. For some time we suspected there was, perhaps, nuclear development going on but we were not able to get that confirmed until just recently when North Korea finally admitted they were developing nuclear weapons.

My point is, when we have the development of a weapons program based on what you think the threats are, it may not truly reflect what is happening. The best thing we can do is decide, for example, on missile defense, it is a capability that we need to have and we base it on the capability of being able to develop that technology so we have the best technology. That is where we get the best deterrence in a program such as the ballistic missile system.

The systems or capabilities will be upgraded on a 2-year spiral, or blocks, as the technology matures. The Missile Defense Agency is seeking to develop a single integrated missile defense system consisting of a seamless web of sensors and shooters tied together by command and control, battle management and communication systems. Each system element, such as THAAD or PAC-3 or the sea-based Aegis systems, can support the other, and it makes the other more effective.

Congress has already approved a number of Missile Defense Agency reporting and policies requirements in the fiscal year 2002-2003 National Defense Authorization Acts. Yet the Reed amendment requires another layer of reporting requirements.

In response to the previous 2 years of legislation, the Missile Defense Agency provided a 300-plus-page system capability specification that describes block 2004 system specifications and metrics in painful detail, including battle manager, sensor, weapons by each element such as THAAD, PAC-3, and ABL and ground-based, midcourse, among others.

ABL also provided over 1,000 pages of a 2-volume adversary capabilities document which describes all the performance characteristics that might be embedded in foreign threat missiles that U.S. missile defense systems might have to defeat. The budget justification document provides a funding breakdown by element and block—a detailed set of goals for 2004 and more general goals for block 2006 and beyond.

The amendment in question appears to require much that is already provided by the Missile Defense Agency as well as reporting that is already required. If the last amendment I think the Missile Defense Agency already provides performance criteria. The Director of OTNE already established and provides operational test plans for missile defense systems and also provides an annual assessment of the Missile Defense Agency test plan.

Here we are, saying a few well-thought-out regulations are good, they are fine, and we are making the assumption if a few are good, more regulations are better. I agree with that. That takes away from and delays a program that needs to be moving forward in an expeditious and thoughtful way. What we have in the present system provides the accountability we need as lawmakers.

The other point is, when you tailor your development of your technology to the threats or perceived threats from your enemy, you will be left in the dust. We do not always know what our potential enemies are doing. We have a capability to defend this country. If we want a strong defense system, we need to move ahead with that defense system. It does have a deterrent effect.

It should be noted that the Missile Defense Agency already provides more reporting than any other program in the Department of Defense. There is no reason for Congress to require duplicative reporting on top of what is already authored or required. We cannot and should not be in the business of micro-managing missile defense.

I yield the floor.

The PRESIDING OFFICER (Mr. Sessions). The Senator from Rhode Island, Mr. REED. I listened to Chairman ALLARD and I commend him for his leadership on the committee’s subcommittee. The committee addressed a series of issues and in this legislation they have made progress on trying to do something we are all committed to do.

I point out in terms of reporting requirements, the legislation itself includes additional reporting requirements.
Mr. REED. I will be happy to respond to the chairman. 

Mr. WARNER. If I may reclaim my time, I am just pointing out, in 25 years, how the committee has to do its work. 

Mr. REED. If there are procedural oppositions to the bill, that is one thing. But I think the substance is compelling enough to respond. Everybody here is capable to respond in substance. Either you are going to let the system continue to operate, which I think either because of whatever number of reasons, it has not clearly identified goals and objectives, has not conducted robust testing that I think we all believe should be concomitant with the defense program. I am trying to remedy those issues. I think this is a perfectly appropriate place to introduce such an amendment, to have the committee engaged. All our colleagues are here. The staff is here. The arguments can be made here, and I hope they will be. I think it is an important issue. I am prepared to submit it to a vote. That is my understanding of the procedure. 

Mr. WARNER. Mr. President, I do not in any way contest the Senator's assertion that this is an important subject. I simply ask, can't we as a committee better serve our colleagues if we make a request of the subcommittee, where the members are fully conversant with all these issues, and then at the full committee where, again, members are conversant, rather than to spring it out on the floor? If I may say to my good friend, it is almost as if the chairman of the subcommittee didn't do his work and the ranking member didn't do his work and the members of the committee didn't do their work because this matter is of such weight and importance because it goes to the very heart of the Missile Defense Program. 

Mr. ALLARD. Mr. President, if I might make a comment or two? The PRESIDING OFFICER. The Senator from Colorado. 

Mr. ALLARD. Our committee has worked and put in hours of effort and testimony on this issue of spiral development, or whether we have an inflexible program, which I think the Reed amendment leads to, where you have specific timelines for specific parts of the system. What happens if you run into a problem in one particular part of the system? It delays the whole development. 

With the spiral concept, it gives the opportunity of the systems, the Missile Defense Agency, the opportunity to move forward in other aspects of development. It is a multifaceted system. It has to do with communications for a number of different systems and parts. 

Mr. REED. I may reclaim my time. First, I do not assume—just a procedural basis—that is a requirement. I think by law every Member of the Senate can offer amendments on any bill when it comes to the floor, whether you are on the committee or not. Being on the committee does not prevent you from offering an amendment if you did not offer it before. 

Mr. WARNER. I am not contesting that you recognize that. I am just pointing out, in 25 years, how the committee has to do its work.
find one real problem area and then all of a sudden it ties up moving forward. That is the whole concept between spiral development. We have had hours upon hours of this concept of spiral development. We have General Kadish and others sitting in individual hearings. ‘In the know’ testify about how important it is that we take this new approach so we can move forward with some of the more difficult and more technologically advanced programs, such as missile defense.

Again the assumption is that we have some regulations which I think are reasonable which we put in bills in years past, and we put some more in this year’s bill. The assumption has been made that if we have fewer regulations, it is better. That is not an assumption we should make. I think there is a proper balance. I think the committee has worked and studied that issue.

That is why I didn’t have any amendments in the Strategic Subcommittee, as well as the Armed Services Committee, indicates that members of those committees having heard testimony for hours upon hours are comfortable where we are right now.

I believe we oppose the Reed amendment.

Mr. WARNER. Mr. President, may I pose a question to my colleague? I see that Senator BILL NELSON of Florida is the ranking member on this subcommittee, together with Senator BYRD, Senator REED, Senator NELSON of Nebraska, and Senator DAYTON.

The Senator has looked at this very carefully. Is there a means by which to work this out in some way—as to portions of it you believe we will not go back over, and the issue of why it wasn’t raised but now that it is raised—is there a means by which we can do it rather than taking up further time in the Senate on reporting requirements?

Mr. ALLARD. I think maybe we can sit down and have some further discussion. All of a sudden, this gets brought up on the floor of the Senate and we need some time to maybe talk with the parties.

As the Senator mentioned in his comments, we felt as if we pretty well worked this out in committee. The various members on my subcommittee, who are knowledgeable on the subject, the Virginia and Nebraska individuals have worked out what we thought was a reasonable level of rules and regulations. Now we have an amendment that is calling for more rules and regulations. We might be able to work it out. I think we need some time. I hope this could be set aside at least for some time being to give us an opportunity to kind of work this issue a little bit more on the floor of the Senate and then perhaps come back to it at a later time.

Mr. WARNER. Is that an acceptable offer?

Mr. REED. Mr. President, I have no opposition to taking some time prior to coming forward to see if we can reach an agreement, if we can’t ask for a vote. I have absolutely no opposition to setting aside and working it to try to come up with something with which we feel comfortable.

Mr. WARNER. Mr. President, I ask unanimous consent that the amendment be laid aside with due diligence and good faith to see what might be added. I will come back to the 2,000 pages.

Mr. LEVIN. If the Senator will withhold his amendment, I would like to add one quick comment on this amendment as to what the stakes are.

First, I want to commend Senator REED for bringing this amendment to the attention of the Senate. This is not, in all fairness, simply a reporting amendment. This is not just more reports. This tells the Missile Defense Office to adopt performance criteria which are measurable, adopt an operational test plan for your systems, adopt a timetable, all of which can be changed any time. I don’t think it is fair to characterize this as some inflexible thing which is laid upon the Ballistic Missile Defense Office. It is highly flexible. It just tells the Ballistic Missile Defense Office to do what program managers do, of every major weapons system—adopt a measurable performance criteria and adopt an operational test plan, including some kind of timetable. It is neither inflexible, nor is it unusual.

I don’t know of any other major weapons system that does not have these kind of criteria. I just didn’t agree with that characterization of it. Where I do agree totally with our chairman is that if there is a way to work this matter out, it should be worked out. This is an important system. The issue is no longer whether a ballistic missile defense is going to be fielded. That is not the issue anymore. The question now is, whether it will have any kind of performance criteria by which it can be judged. That is the issue.

It seems to me we ought to be grateful as a body to the Senator from Rhode Island for bringing to our attention the fact that these important measurements are absent. But in fairness, I think it is not simply more reports to the Congress. It is saying to the Ballistic Missile Defense Office: We want you to adopt performance criteria that are not a matter of reporting to us. It is a matter of doing it for yourself and for the American people. That is what the issue is here. Send us a copy, by the way, will you?

Mr. WARNER. I simply say to my colleagues that if there was a serious issue in the function of the Missile Defense Agency, in your judgment—and you attach enormous importance to this—why did we not consider it in the course of the subcommittee hearing?

Mr. LEVIN. There are all kinds of amendments that have not been considered. Senator REED is one human being who has taken upon himself a huge amount of material to digest and present to the committee. He did a magnificent job. I think my good friend from Virginia would agree with that. There are other things which, as a matter of personal conscience, one is unable to put together and present to the committee at that moment but which are important to present to the entire Senate. I don’t think we can fault Senator REED in that regard. That is purely a matter, it seems to me, of what human limitations might be in terms of what one human being can do. But he surely did more than his share in terms of the work that was presented to the committee.

Mr. WARNER. It simply says: Agency, if it is that important in your judgment in reporting, it goes to the very heart of the oversight process. We should have raised it in subcommittee, adopted an amendment of this type, and worked it out.

I was told the staff worked very closely with one another on the provisions we did put in the bill as to reporting on missile defense which we believed was a closed-out item.

Mr. LEVIN. It is always ideal to try to bring matters before the committee. The chairman knows I agree with him on that. Sometimes it is not possible just in terms of the workload to do that. I don’t think we can fault any member of the committee if and when that load is such that they have to present it to the floor because they were not able to get all the material at the time of the committee hearings. The Senator from Rhode Island would be involved in the debate on many nuclear weapons systems even though those matters in some cases were brought to the attention of the committee.

There are new formulations just because new thinking has been brought to bear since our committee hearings and markup on those issues.

But, in any event, I fully concur with the Senator from Virginia. If we can possibly work this out to fill in an omission in what the Ballistic Missile Defense Office showed this which is to develop these performance criteria which are measurable for this major system to have an operational test plan for this major weapons system, it seems to me if that can be worked out other than during the afternoon, I fully concur with the chairman that we ought to do that.

Mr. WARNER. I thank both of my colleagues. We have had a good colloquy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I want to close. We are putting aside for a period of time to work on this. But if we can’t reach—and I hope we can—an understanding, we will have a vote, I presume, early in the evening.

I think that is fair.

Mr. WARNER. Those are matters we delegate to the leadership, the majority leader, and the Democratic leader.
MORNING BUSINESS

The PRESIDING OFFICER. The Senate proceeded to the immediate consideration of S. Res. 148 which was submitted earlier today and asks for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk reads as follows:

A resolution (S. Res. 148) to authorize representation by the Senate Legal Counsel in the case of John Jenkel v. Bill Frist, No. C-03-1235 (MEJ), now pending in the United States District Court for the Northern District of California; Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now therefore, be it
Resolved, That the Senate Legal Counsel is authorized to represent Senator Frist in the case of John Jenkel v. Bill Frist.

AUTHORIZING LEGAL COUNSEL REPRESENTATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 148 which was submitted earlier today and ask for its immediate consideration.

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Resolved, That the Senate Legal Counsel is authorized to represent Senator Frist in the case of John Jenkel v. Bill Frist.

S6657

IRAQI AND AFGHAN WOMEN

Mr. REID. Mr. President, over the past year and a half I have spoken on many occasions of including women in the reconstruction of Afghanistan. Since then we have seen the inclusion of two women cabinet members give hope to the women of Afghanistan. We have also learned the inclusion of only two women is certainly not enough. Greater representation of women is necessary in Afghanistan. Likewise, Iraqi women should play some part, and I believe an important one, in the rebuilding of their country.