United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, SECOND SESSION

Vol. 156 WASHINGTON, TUESDAY, DECEMBER 21, 2010 *No. 172*

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JEANNE SHAHEEN, a Senator from the State of New Hampshire.

PRAYER

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

Let us pray.

God, creator of us all, during this season of goodwill, bring peace to this Chamber. Make strong in the hearts of all our Senators what unites them. Build bridges across all that divides them, so that they will respect their differences while working together to keep our Nation secure. Remove the divisions that drive wedges of rancor between them, and lead them away from the confrontational to a concord that seeks mutual progress. May this unity not be obtained at the price of compromising truth, but by the devotion with which each lawmaker passionately loves this Nation and sincerely seeks to keep it strong and free.

Today, let truth prevail over distortion, wisdom triumph over recklessness, and faith vanquish fear.

We pray in Your merciful Name. Amen.

NOTICE

If the 111th Congress, 2d Session, adjourns sine die on or before December 23, 2010, a final issue of the *Congressional Record* for the 111th Congress, 2d Session, will be published on Wednesday, December 29, 2010, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–59 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Wednesday, December 29. The final issue will be dated Wednesday, December 29, 2010, and will be delivered on Thursday, December 30, 2010.

None of the material printed in the final issue of the *Congressional Record* may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerk.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–59.

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By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman.*

PLEDGE OF ALLEGIANCE

The Honorable JEANNE SHAHEEN led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The bill clerk read as follows:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 21, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEANNE SHAHEEN, a

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

Senator from the State of New Hampshire, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mrs. SHAHEEN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Madam President, following leader remarks, Senator ALEXANDER will be recognized to speak in morning business for up to 10 minutes. Following his remarks, the Senate will resume consideration of the House message with respect to H.R. 3082, the continuing resolution. There will be 10 minutes of debate for Senator INOUYE and 15 minutes for Senator MCCAIN prior to that vote. Therefore, Senators should expect a vote to begin about 10:15 on the motion to invoke cloture on the motion to concur to the House amendment to the Senate amendment to H.R. 3082, with amendment No. 4885, which is the text of the continuing resolution that funds the government through March 4, 2011.

If cloture is invoked, I will work with the Republican leader on a time to complete action on the CR. It is important to send it over to the House very quickly so they have sufficient time to pass it before funding runs out this evening at midnight.

Upon disposition of the CR, the Senate will proceed to vote on the motion to invoke cloture on the New START treaty.

Last week, we were able to lock in a time agreement to consider two district judge nominations. It is my hope we will be able to debate and vote on those judges this afternoon.

Senators will be notified when any votes are scheduled.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Tennessee is recognized in morning business for up to 10 minutes.

NEW START TREATY

Mr. ALEXANDER. Madam President, I will vote to ratify the New START treaty between the United States and Russia because it leaves our country with enough nuclear warheads to blow any attacker to kingdom come and because the President has committed to an $85 billion 10-year plan to make sure those weapons work. I will vote for the treaty because it allows for inspection of Russian warheads and because our military leaders say it does nothing to interfere with the development of a missile defense system.

I will vote for the treaty because the last six Republican Secretaries of State support its ratification. In short, I am convinced that Americans are safer and more secure with the New START treaty than without it. Last week, I joined Senators INOUYE, COCHRAN, and FEINSTEIN in a letter to the President stating that we will vote to ratify the treaty and to appropriate funds to modernize our outdated nuclear weapons facilities and that he, the President, requests those funds in his budget.

Last night, I received a response to the President saying he would do so. I ask unanimous consent to have printed both letters in the RECORD.

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

U.S. SENATE,
Washington, DC, December 16, 2010.

THE WHITE HOUSE,
1600 Pennsylvania Avenue, NW,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to express our support for ratification of the New START Treaty and full funding for the modernization of our nuclear weapons arsenal, as outlined by your updated report that was mandated by Section 1251 of the Defense Authorization Act for Fiscal Year 2010.

We also ask that, in your future budget requests to Congress, you include the funding identified in that report on nuclear weapons modernization. Should you choose to limit non-defense discretionary spending in any future budget requests to Congress, funding for nuclear modernization in the National Nuclear Security Agency's proposed budgets should be considered defense spending, as it is critical to national security and, therefore, not subject to such limitations. Further, we ask that an updated 1251 report be submitted with your budget request to Congress each year.

We look forward to working with you on the ratification of the New START Treaty and modernization of the National Nuclear Security Agency's nuclear weapons facilities. This represents a long-term commitment by each of us, as modernization of our nuclear arsenal will require a sustained effort.

Sincerely,

DANIEL INOUYE.
DIANNE FEINSTEIN.
THAD COCHRAN.
LAMAR ALEXANDER.

THE WHITE HOUSE,
Washington DC, December 20, 2010.

Hon. LAMAR ALEXANDER,
U.S. Senate,
Washington, DC.

DEAR SENATOR ALEXANDER: Thank you for your letter regarding funding for the modernization of the nuclear weapons complex and for your expression of support for ratification of the New START Treaty.

As you know, in the Fiscal Year 2011 budget, I requested a nearly 10 percent increase in the budget for weapons activities at the National Nuclear Security Administration (NNSA). In May, in the report required by Section 1251 of the National Defense Authorization Act for Fiscal Year 2010, I laid out a 10 year, $80 billion spending plan for NNSA. The Administration submitted an update to that report last month, and we now project over $85 billion in spending over the next decade.

I recognize that nuclear modernization requires investment for the long-term, in addition to this one-year budget increase. That is my commitment to the Congress—that my Administration will pursue these programs and capabilities for as long as I am President.

In future years, we will provide annual updates to the 1251 report. If a decision is made to limit non-defense discretionary spending in any future budget requests, funding for nuclear modernization in the NNSA weapons activities account will be considered on the same basis as defense spending.

In closing, I thought it important for you to know that over the last two days, my Administration has worked closely with officials from the Russian Federation to address our concerns regarding North Korea. Because of important cooperation like this, I continue to hope that the Senate will approve the New START Treaty before the 111th Congress ends.

Sincerely,

BARACK OBAMA.

Mr. ALEXANDER. Madam President, why are these two so necessarily linked—the treaty and the plan for nuclear weapons modernization? The answer is, if we are going to reduce our number of warheads, we want to make sure we are not left with what amounts to a collection of wet matches. Defense Secretary Gates said:

> There is absolutely no way we can maintain a credible deterrent and reduce the number of weapons in our stockpile without either resorting to testing our stockpile or pursuing a modernization program.

In a November 24 statement, Senators KYL and CORKER said they ''could not support reductions in U.S. nuclear forces unless there is adequate attention to modernizing those forces and the infrastructure that supports them.''

Senators KYL and CORKER deserve credit for untiring efforts to fund properly nuclear modernization. President Obama deserves credit for updating the nuclear modernization plan in such a significant way.

I have reviewed that so-called ''1251 plan'' completed November 17 of this year, which calls for spending $85 billion over the next 10 years. I have visited our outdated nuclear weapons facilities. I am convinced the plan's implementation will make giant steps toward modernization of those facilities so that we—and our allies and adversaries—can be assured that the weapons will work if needed.

The President's statement that he will ask for these funds and the support of senior members of the Appropriations Committee means that the plan is more likely to become a reality. The President agrees that in tight budgets these funds should be considered as defense spending.

I ask unanimous consent to have printed in the RECORD a summary of the appropriations recommended by

the plan mandated by section 1251 of the 2010 Defense authorization bill.

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

3. Summary of NNSA Stockpile and Infrastructure Costs

A summary of estimated costs specifically related to the Nuclear Weapons Stockpile, the supporting infrastructure, and critical science, technology and engineering is provided in Table 1.

TABLE 1—TEN-YEAR PROJECTIONS FOR WEAPONS STOCKPILE AND INFRASTRUCTURE COSTS

$ Billions	Fiscal Year										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Directed Stockpile	1.5	1.9	2.0	2.1	2.3	2.5	2.6	2.6	2.6	2.6	2.6
Science Technology & Engineering Campaigns	1.6	1.7	1.8	1.8	1.8	1.8	1.9	2.0	2.1	2.2	2.3
Readiness in Technical Base and Facilities	1.8	1.8	2.1	2.3	2.5	2.5	2.5	2.7	2.8–2.9	2.9–3.1	2.9–3.3
UPF	0.1	0.1	0.2	0.2	0.4	0.4	0.4	0.48–0.5	0.48–0.5	0.48–0.5	0.38–0.5
CMRR	0.1	0.2	0.3	0.3	0.4	0.4	0.4	0.48–0.5	0.4–0.5	03.–0.5	02.–0.5
Secure Transportation	0.2	0.2	0.3	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Defense Programs Subtotal	5.2	5.7	6.1	6.5	6.9	7.1	7.3	7.5–7.6	7.7–7.9	7.9–8.2	8.0–8.4
Other Weapons	1.2	1.3	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.5
Subtotal, Weapons	6.4	7.0	7.4	7.8	8.2	8.5	8.7	8.9–9.0	9.2–9.3	9.4–9.6	9.4–9.8
Contractor Pensions Cost Growth	.....	.....	0.2	0.2	0.2	0.2	0.2	*	*	*	*
Total, Weapons	6.4	7.0	7.6	7.9	8.4	8.7	8.9	8.9–9.0	9.2–9.3	9.4–9.6	9.4–9.8

Numbers may not add due to rounding.

*Anticipated costs for contractor pensions have been calculated only through FY 2016. For FY 2017–2020, uncertainties in market performance, interest rate movement, and portfolio management make prediction of actual additional pension liabilities, assets, and contribution requirements unreliable.

Mr. ALEXANDER. Madam President, I will offer an amendment at the appropriate time to the resolution of ratification to require an annual update of the 1251 report, which the President's letter says he will do.

Under the terms of the treaty, the United States may have 1,550 deployed strategic nuclear weapons, each one up to 30 times more powerful than the one used at Hiroshima to end World War II.

The United States will also gain valuable data, including through inspection operations that should provide a treasure trove of intelligence about Russian activities that we would not have without the treaty, and that we have not had since the START treaty expired on December 9, 2009.

Over the weekend, the President sent a letter to the Senate reaffirming ''the continued development and deployment of U.S. missile defense systems.'' There is nothing within the treaty itself—I emphasize ''nothing in the treaty''—that would hamper the development of missile defense or its deployment. Our military and intelligence leaders all have said that.

Obviously, something could happen down the road involving differences over missile defense systems that could require either country—Russia or the United States—to withdraw from the treaty. That is any sovereign country's right with any treaty. In 2002, President Bush withdrew from the Anti-Ballistic Missile Treaty because of our desire to pursue missile defenses to protect us from an attack by a rogue state.

Madam President, I ask unanimous consent to have printed in the RECORD the President's letter on missile defense.

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

THE WHITE HOUSE,
Washington, DC, December 18, 2010.

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

DEAR SENATOR MCCONNELL: As the Senate considers the New START Treaty, I want to share with you my views on the issue of missile defense, which has been the subject of much debate in the Senate's review of the Treaty.

Pursuant to the National Missile Defense Act of 1999 (Public Law 106–38), it has long been the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack, whether accidental, unauthorized, or deliberate. Thirty ground-based interceptors based at Fort Greely, Alaska, and Vandenberg Air Force Base, California, are now defending the Nation. All United States missile defense programs—including all phases of the European Phased Adaptive Approach to missile defense (EPAA) and programs to defend United States deployed forces, allies, and partners against regional threats—are consistent with this policy.

The New START Treaty places no limitations on the development or deployment of our missile defense programs. As the NATO Summit meeting in Lisbon last month underscored, we are proceeding apace with a missile defense system in Europe designed to provide full coverage for NATO members on the continent, as well as deployed U.S. forces, against the growing threat posed by the proliferation of ballistic missiles. The final phase of the system will also augment our current defenses against intercontinental ballistic missiles from Iran targeted against the United States.

All NATO allies agreed in Lisbon that the growing threat of missile proliferation, and our Article 5 commitment of collective defense, requires that the Alliance develop a territorial missile defense capability. The Alliance further agreed that the EPAA, which I announced in September 2009, will be a crucial contribution to this capability. Starting in 2011, we will begin deploying the first phase of the EPAA, to protect large parts of southern Europe from short- and medium-range ballistic missile threats. In subsequent phases, we will deploy longer-range and more effective land-based Standard Missile–3 (SM–3) interceptors in Romania and Poland to protect Europe against medium- and intermediate-range ballistic missiles. In the final phase, planned for the end of the decade, further upgrades of the SM–3 interceptor will provide an ascent-phase intercept capability to augment our defense of NATO European territory, as well as that of the United States, against future threats of ICBMs launched from Iran.

The Lisbon decisions represent an historic achievement, making clear that all NATO allies believe we need an effective territorial missile defense to defend against the threats we face now and in the future. The EPAA represents the right response. At Lisbon, the Alliance also invited the Russian Federation to cooperate on missile defense, which could lead to adding Russian capabilities to those deployed by NATO to enhance our common security against common threats. The Lisbon Summit thus demonstrated that the Alliance's missile defenses can be strengthened by improving NATO-Russian relations.

This comes even as we have made clear that the system we intend to pursue with Russia will not be a joint system, and it will not in any way limit United States' or NATO's missile defense capabilities. Effective cooperation with Russia could enhance the overall effectiveness and efficiency of our combined territorial missile defenses, and at the same time provide Russia with greater security. Irrespective of how cooperation with Russia develops, the Alliance alone bears responsibility for defending NATO's members, consistent with our Treaty obligations for collective defense. The EPAA and NATO's territorial missile defense capability will allow us to do that.

In signing the New START Treaty, the Russian Federation issued a statement that expressed its view that the extraordinary events referred to in Article XIV of the Treaty include a ''build-up in the missile defense capabilities of the United States of America such that it would give rise to a threat to the strategic nuclear potential of the Russian Federation.'' Article XIV(3), as you know, gives each Party the right to withdraw from the Treaty if it believes its supreme interests are jeopardized.

The United States did not and does not agree with the Russian statement. We believe that the continued development and deployment of U.S. missile defense systems, including qualitative and quantitative improvements to such systems, do not and will not threaten the strategic balance with the Russian Federation, and have provided policy and technical explanations to Russia on why we believe that to be the case. Although the United States cannot circumscribe Russia's sovereign rights under Article XIV(3), we believe that the continued improvement and deployment of U.S. missile defense systems do not constitute a basis for questioning the effectiveness and viability of the New START Treaty, and therefore would not give rise to circumstances justifying Russia's withdrawal from the Treaty.

Regardless of Russia's actions in this regard, as long as I am President, and as long

as the Congress provides the necessary funding, the United States will continue to develop and deploy effective missile defenses to protect the United States, our deployed forces, and our allies and partners. My Administration plans to deploy all four phases of the EPAA. While advances of technology or future changes in the threat could modify the details or timing of the later phases of the EPAA—one reason this approach is called ''adaptive''—I will take every action available to me to support the deployment of all four phases.

Sincerely,

BARACK OBAMA.

Mr. ALEXANDER. Madam President, ratifying this treaty would extend the policies of President Nixon, President Reagan, President George H.W. Bush, President George W. Bush, as well as Democratic Presidents.

I ask unanimous consent to have printed in the RECORD the statements of the last six Republican Secretaries of State, all of whom support ratification of the treaty.

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

[From the Washington Post, Dec. 2, 2010]

THE REPUBLICAN CASE FOR RATIFYING NEW START

(By Henry A. Kissinger, George P. Shultz, James A. Baker III, Lawrence S. Eagleburger, and Colin L. Powell)

Republican presidents have long led the crucial fight to protect the United States against nuclear dangers. That is why Presidents Richard Nixon, Ronald Reagan and George H.W. Bush negotiated the SALT I, START I and START II agreements. It is why President George W. Bush negotiated the Moscow Treaty. All four recognized that reducing the number of nuclear arms in an open, verifiable manner would reduce the risk of nuclear catastrophe and increase the stability of America's relationship with the Soviet Union and, later, the Russian Federation. The world is safer today because of the decades-long effort to reduce its supply of nuclear weapons.

As a result, we urge the Senate to ratify the New START treaty signed by President Obama and Russian President Dmitry Medvedev. It is a modest and appropriate continuation of the START I treaty that expired almost a year ago. It reduces the number of nuclear weapons that each side deploys while enabling the United States to maintain a strong nuclear deterrent and preserving the flexibility to deploy those forces as we see fit. Along with our obligation to protect the homeland, the United States has responsibilities to allies around the world.

The commander of our nuclear forces has testified that the 1,550 warheads allowed under this treaty are sufficient for all our missions—and seven former nuclear commanders agree. The defense secretary, the chairman of the Joint Chiefs of Staff and the head of the Missile Defense Agency—all originally appointed by a Republican president—argue that New START is essential for our national defense.

We do not make a recommendation about the exact timing of a Senate ratification vote. That is a matter for the administration and Senate leaders. The most important thing is to have bipartisan support for the treaty, as previous nuclear arms treaties did.

Although each of us had initial questions about New START, administration officials have provided reasonable answers. We believe there are compelling reasons Republicans should support ratification.

First, the agreement emphasizes verification, providing a valuable window into Russia's nuclear arsenal. Since the original START expired last December, Russia has not been required to provide notifications about changes in its strategic nuclear arsenal, and the United States has been unable to conduct on-site inspections. Each day, America's understanding of Russia's arsenal has been degraded, and resources have been diverted from national security tasks to try to fill the gaps. Our military planners increasingly lack the best possible insight into Russia's activity with its strategic nuclear arsenal, making it more difficult to carry out their nuclear deterrent mission.

Second, New START preserves our ability to deploy effective missile defenses. The testimonies of our military commanders and civilian leaders make clear that the treaty does not limit U.S. missile defense plans. Although the treaty prohibits the conversion of existing launchers for intercontinental and submarine-based ballistic missiles, our military leaders say they do not want to do that because it is more expensive and less effective than building new ones for defense purposes.

Finally, the Obama administration has agreed to provide for modernization of the infrastructure essential to maintaining our nuclear arsenal. Funding these efforts has become part of the negotiations in the ratification process. The administration has put forth a 10–year plan to spend $84 billion on the Energy Department's nuclear weapons complex. Much of the credit for getting the administration to add $14 billion to the originally proposed $70 billion for modernization goes to Sen. Jon Kyl, the Arizona Republican who has been vigilant in this effort. Implementing this modernization program in a timely fashion would be important in ensuring that our nuclear arsenal is maintained appropriately over the next decade and beyond.

Although the United States needs a strong and reliable nuclear force, the chief nuclear danger today comes not from Russia but from rogue states such as Iran and North Korea and the potential for nuclear material to fall into the hands of terrorists. Given those pressing dangers, some question why an arms control treaty with Russia matters. It matters because it is in both parties' interest that there be transparency and stability in their strategic nuclear relationship. It also matters because Russia's cooperation will be needed if we are to make progress in rolling back the Iranian and North Korean programs. Russian help will be needed to continue our work to secure ''loose nukes'' in Russia and elsewhere. And Russian assistance is needed to improve the situation in Afghanistan, a breeding ground for international terrorism.

Obviously, the United States does not sign arms control agreements just to make friends. Any treaty must be considered on its merits. But we have here an agreement that is clearly in our national interest, and we should consider the ramifications of not ratifying it.

Whenever New START is brought up for debate, we encourage all senators to focus on national security. There are plenty of opportunities to battle on domestic political issues linked to the future of the American economy. With our country facing the dual threats of unemployment and a growing federal debt bomb, we anticipate significant conflict between Democrats and Republicans. It is, however, in the national interest to ratify New START.

Mr. ALEXANDER. Madam President, I will vote to ratify this treaty. The vote we are about to have today is about whether to end debate. The majority's decision to jam through other matters during this lameduck session has poisoned the well, driven away Republican votes, and jeopardized ratification of this important treaty.

Nevertheless, this treaty was presented in the Senate on May 13, after 12 hearings in two committees and many briefings. The Foreign Relations Committee reported the treaty to the Senate on September 16 in a bipartisan vote of 14 to 4. For several months, there have been intense negotiations to develop a realistic plan and the funding for nuclear modernization. That updated plan was reported on November 17. The Senate voted to proceed to the treaty last Wednesday. I voted no because I thought there should still be more time allowed for amendment and debate.

Despite the flawed process, I believe the treaty and the nuclear modernization plan make our country safer and more secure. It will allow us to resume inspection and verification of disarmament of nuclear weapons in Russia. The head of our missile defense system says the treaty will not hamper our missile development program—and if it does, we can withdraw from the treaty.

All six former Republican Secretaries of State support ratification of this treaty. Therefore, I will vote to ratify the New START treaty and during the next several years vote to fund the nuclear modernization plan.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

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

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 3082, which the clerk will report.

The bill clerk read as follows:

Motion to concur in the House amendment to the Senate amendment, with an amendment to H.R. 3082, an act making appropriations for military construction, Department of Veteran Affairs and Related Agencies, for the fiscal year ending September 30, 2010, and for other purposes.

Pending:

Reid motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Reid amendment No. 4885 (to the House amendment to the Senate amendment), of a perfecting nature.

Reid amendment No. 4886 (to amendment No 4885), to change the enactment date.

Reid motion to refer the message of the House on the bill to the Committee on Apropriations, with instructions, Reid amendment No. 4887, to provide for a study.

Reid amendment No. 4888 (to (the instructions) amendment No. 4887), of a perfecting nature.

Reid amendment No. 4889 (to amendment No. 4888) of a perfecting nature.

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

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

The bill clerk proceeded to call the roll.

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

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

RECOGNITION OF THE MINORITY LEADER

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

NET NEUTRALITY RULES

Mr. MCCONNELL. Madam President, later today the Federal Communications Commission is expected to approve new rules on how Americans access information on the Internet. There are a lot of people rightly concerned. The Internet has transformed our society, our economy, and the very way we communicate with others. It has served as a remarkable platform for innovation at the end of the 20th century and now at the beginning of the 21st century. All of this has been made possible because people have been free to create and to innovate, to push the limits of invention free from government involvement.

Now that could soon change. Today, the Obama administration, which has already nationalized health care, the auto industry, insurance companies, banks, and student loans, will move forward with what could be a first step in controlling how Americans use the Internet by establishing Federal regulations on its use. This would harm investment, stifle innovation, and lead to job losses. That is why I, along with several of my colleagues, have urged the FCC Chairman to abandon this flawed approach. The Internet is an invaluable resource. It should be left alone.

As Americans become more aware of what is happening here, I suspect many will be as alarmed as I am at the government's intrusion. They will wonder, as many already do, if this is a Trojan horse for further meddling by the government. Fortunately, we will have an opportunity in the new Congress to push back against new rules and regulations.

Madam President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. BROWN of Ohio. I thank the Chair.

Mr. INOUYE. Madam President, today the Senate will consider a 73-day continuing resolution, which will fund the government through March 4 of next year. This is a clean CR that is $1 billion above the spending level for fiscal year 2010. It meets the most basic needs of the Federal Government, and will allow Congress the time necessary to reconsider a funding bill next year. Most importantly, this temporary funding measure will avoid a government shutdown, which would be a terrible thing for the American people. That is the last thing any responsible Member of this body should wish for.

As I have previously stated, it is deeply unfortunate that we were unable to take up and pass the omnibus bill. An omnibus, as opposed to a CR, assumed responsibility for the spending decisions that are the most basic responsibility of Congress. I regret that our colleagues on the other side of the aisle, many of whom helped to craft the omnibus, failed to support it in the end. It was a far superior alternative to this short-term CR. The omnibus better protected our national security and would have brought a responsible conclusion to the fiscal year 2011 appropriations process.

The CR we have before us allows for a limited number of adjustments for programs that would lose either their funding or their authorization between now and March 4. The CR will also prevent the layoff of thousands of Federal workers and contractors during the holiday season.

When the 112th Congress convenes in January, I hope the Senate and the House will find a way to move forward in a responsible manner to conclude work on the fiscal year 2011 appropriations process. To do so, we will require a good-faith effort from Members of both parties to reach reasonable compromises on a range of issues. I hope that despite the current political environment, we can find a way to work together to fund critical priorities that will strengthen our economy and protect our Nation's security. That is what the American people expect of us, and they deserve no less. But for now, I urge my colleagues to support this 10-week continuing resolution.

CLOTURE MOTION

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

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to concur in the House amendment to the Senate amendment to H.R. 3082, the Full Continuing Appropriations Act, with an amendment.

Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, John F. Kerry, Richard J. Durbin, Mark L. Pryor, Robert Menendez, Amy Klobuchar, Patty Murray, Kay R. Hagan, Christopher J. Dodd, Daniel K. Inouye, Mark Begich, Al Franken, Robert P. Casey, Jr., Tom Carper.

The ACTING PRESIDENT pro tempore. 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 concur in the House amendment to the Senate amendment to H.R. 3082, with amendment No. 4885, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from New Hampshire (Mr. GREGG).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 82, nays 14, as follows:

[Rollcall Vote No. 288 Leg.]

YEAS—82

Akaka	Feinstein	Mikulski
Alexander	Franken	Murkowski
Barrasso	Gillibrand	Murray
Baucus	Graham	Nelson (FL)
Begich	Grassley	Pryor
Bennet	Hagan	Reed
Bennett	Harkin	Reid
Bingaman	Hutchison	Roberts
Bond	Inouye	Rockefeller
Boxer	Johanns	Sanders
Brown (MA)	Johnson	Schumer
Brown (OH)	Kerry	Sessions
Bunning	Kirk	Shaheen
Cantwell	Klobuchar	Shelby
Cardin	Kohl	Snowe
Carper	Kyl	Specter
Casey	Landrieu	Stabenow
Cochran	Lautenberg	Tester
Collins	Leahy	Thune
Conrad	Levin	Udall (CO)
Coons	Lieberman	Udall (NM)
Corker	Lincoln	Voinovich
Cornyn	Lugar	Warner
Dodd	Manchin	Webb
Dorgan	McCaskill	Whitehouse
Durbin	McConnell	Wicker
Ensign	Menendez	
Enzi	Merkley	

NAYS—14

Burr	Feingold	McCain
Chambliss	Hatch	Nelson (NE)
Coburn	Inhofe	Risch
Crapo	Isakson	Vitter
DeMint	LeMieux	

NOT VOTING—4

Bayh	Gregg
Brownback	Wyden

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 82, the nays are 14. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, if I could have the attention of the Senators, I have had a number of conversations with the Republican leader today. The collective goal is to move forward with the schedule as we know what it is. Senator MCCAIN has 15 minutes, Senator INOUYE has 10 minutes, and the farewell speech of our friend Senator SPECTER is going to be this morning. We hope to have agreement that at around 2 o'clock today, we will vote on a couple of judges. We will vote on the motion to concur on the continuing resolution and vote on cloture on the treaty. We don't have that down in writing yet, but that is the goal, so everyone understands. We will have four to five votes this afternoon around 2 o'clock. That would point us toward the final surge on this most important treaty. I had conversations with Senator KERRY and Senator KYL this morning. I think there is a way clear to complete this sometime tomorrow.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

FAREWELL TO THE SENATE

CLOSING ARGUMENT

Mr. SPECTER. Madam President, this is not a farewell address but, rather, a closing argument to a jury of my colleagues and the American people outlining my views on how the Senate and, with it, the Federal Government arrived at its current condition of partisan gridlock, and my suggestions on where we go from here on that pressing problem and the key issues of national and international importance.

To make a final floor statement is a challenge. The Washington Post noted the poor attendance at my colleagues' farewell speeches earlier this month. That is really not surprising since there is hardly anyone ever on the Senate floor. The days of lively debate with many Members on the floor are long gone. Abuse of the Senate rules has pretty much stripped Senators of the right to offer amendments. The modern filibuster requires only a threat and no talking. So the Senate's activity for more than a decade has been the virtual continuous drone of a quorum call. But that is not the way it was when Senator CHRIS DODD and I were privileged to enter the world's greatest deliberative body 30 years ago. Senators on both sides of the aisle engaged in collegial debate and found ways to find common ground on the Nation's pressing problems.

When I attended my first Republican moderates luncheon, I met Mark Hatfield, John Chafee, Ted Stevens, Mac Mathias, Bob Stafford, Bob Packwood, Chuck Percy, Bill Cohen, Warren Rudman, Alan Simpson, Jack Danforth, John Warner, Nancy Kassebaum, Slade Gorton, and I found my colleague John Heinz there. That is a far cry from later years when the moderates could fit into a telephone booth.

On the other side of the aisle, I found many Democratic Senators willing to move to the center to craft legislation—Scoop Jackson, JOE BIDEN, DAN INOUYE, Lloyd Bentsen, Fritz Hollings, PAT LEAHY, Dale Bumpers, David Boren, Russell Long, Pat Moynihan, George Mitchell, Sam Nunn, Gary Hart, Bill Bradley, and others. They were carrying on the Senate's glorious tradition.

The Senate's deliberate cerebral procedures have served our country well. The Senate stood tall in 1805 in acquitting Supreme Court Justice Samuel Chase in impeachment proceedings and thus preserved the independence of the Federal judiciary. The Senate stood tall in 1868 to acquit President Andrew Johnson in impeachment proceedings, and that preserved the power of the Presidency. Repeatedly in our 223-year history, the Senate has cooled the passions of the moment to preserve the institutions embodied in our Constitution which have made the United States the envy of the world.

It has been a great privilege to have had a voice for the last 30 years in the great decisions of our day: how we allocate our resources among economic development, national defense, education, environmental protection, and NIH funding; the Senate's role in foreign policy as we exercise it now on the START treaty; the protection of civil rights, as we demonstrated last Saturday, eliminating don't ask, don't tell; balancing crime control and defendants' rights; and how we have maintained the quality of the Federal judiciary, not only the high-profile 14 Supreme Court nominations I have participated in but the 112 Pennsylvanians who have been confirmed during my tenure on the Federal district courts or the Third Circuit.

On the national scene, top issues are the deficit and the national debt. The deficit commission has made a start. When raising the debt limit comes up next year, that will present an occasion to pressure all parties to come to terms on future taxes and expenditures, to realistically deal with these issues.

The Next Congress should try to stop the Supreme Court from further eroding the constitutional mandate of separation of powers. The Supreme Court has been eating Congress's lunch by invalidating legislation with judicial activism after nominees commit under oath in confirmation proceedings to respect congressional factfinding and precedents. That is stare decisis. The recent decision in Citizens United is illustrative. Ignoring a massive congressional record and reversing recent decisions, Chief Justice Roberts and Justice Alito repudiated their confirmation testimony given under oath and provided the key votes to permit corporations and unions to secretly pay for political advertising, thus effectively undermining the basic democratic principle of the power of one person, one vote. Chief Justice Roberts promised to just call balls and strikes. Then he moved the bases.

Congress's response is necessarily limited in recognition of the importance of judicial independence as the foundation of the rule of law, but Congress could at least require televising the Court proceedings to provide some transparency to inform the public about what the Court is doing since it has the final word on the cutting issues of the day. Brandeis was right when he said that sunlight is the best disinfectant.

The Court does follow the election returns, and the Court does judicially notice societal values as expressed by public opinion. Polls show that 85 percent of the American people favor televising the Court when told that a citizen can only attend an oral argument for 3 minutes in a chamber holding only 300 people. Great Britain, Canada, and State supreme courts permit television.

Congress has the authority to legislate on this subject, just as Congress decides other administrative matters such as what cases the Court must hear, time limits for decisions, number of Justices, the day the Court convenes, and the number required for a quorum. While television cannot provide a definitive answer, it could be significant and may be the most that can be done consistent with life tenure and judicial independence.

Additionally, I urge Congress to substantially increase funding for the National Institutes of Health. When NIH funding was increased from $12 to $30 billion annually and $10 billion added to the stimulus package, significant advances were made on medical research. It is scandalous—absolutely scandalous—that a nation with our wealth and research capabilities has not done more. Forty years ago, the President of the United States declared war on cancer. Had that war been pursued with the diligence of other wars, most forms of cancer might have been conquered.

I also urge colleagues to increase their activity on foreign travel. Regrettably, we have earned the title of ugly Americans by not treating other nations with proper respect and dignity.

My experience on congressional delegations to China, Russia, India, NATO, Jerusalem, Damascus, Bagdad, Kabul, and elsewhere provided an opportunity for eyeball-to-eyeball discussions with world leaders about our values, our expectations, and our willingness to engage in constructive dialog. Since 1984, I have visited Syria almost every year, and my extensive conversations with Hafiz al-Assad and Bashar al-Assad have convinced me there is a realistic opportunity for a peace treaty between Israel and Syria, if encouraged by vigorous U.S. diplomacy. Similar meetings I have been privileged to have with Muammar Qadhafi, Yasser Arafat, Fidel Castro, Saddam Hussein, and Hugo Chavez have persuaded me that candid, respectful dialog with our toughest adversaries can do much to improve relations among nations.

Now I will shift gears. In my view, a principal reason for the historic stature of the U.S. Senate has been the ability of any Senator to offer virtually any amendment at any time. This Senate Chamber provides the forum for unlimited debate with a potential to acquaint the people of America and the world with innovative proposals on public policy and then have a vote on the issue. Regrettably, that has changed in recent years because of abuse of the Senate rules by both parties.

The Senate rules allow the majority leader, through the right of his first recognition, to offer a series of amendments to prevent any other Senator from offering an amendment. That had been done infrequently up until about a decade ago and lately has become a common practice, and, again, by both parties.

By precluding other Senators from offering amendments, the majority leader protects his party colleagues from taking tough votes. Never mind that we were sent here and are paid to make tough votes. The inevitable and understandable consequence of that practice has been the filibuster. If a Senator cannot offer an amendment, why vote to cut off debate and go to final passage? Senators were willing—and are willing—to accept the will of the majority in rejecting their amendments but unwilling to accept being railroaded to concluding a bill without being provided an opportunity to modify it. That practice has led to an indignant, determined minority to filibuster and to deny 60 votes necessary to cut off debate. Two years ago on this Senate floor, I called the practice tyrannical.

The decade from 1995 to 2005 saw the nominees of President Clinton and President Bush stymied by the refusal of the other party to have a hearing or floor vote on many judicial and executive nominees. Then, in 2005, serious consideration was given by the Republican caucus to changing the longstanding Senate rule by invoking the so-called nuclear or constitutional option. The plan called for Vice President Cheney to rule that 51 votes were sufficient to impose cloture for confirmation of a judge or executive nominee. His ruling, then to be challenged by Democrats, would be upheld by the traditional 51 votes to uphold the Chair's ruling.

As I argued on the Senate floor at that time, if Democratic Senators had voted their consciences without regard to party loyalty, most filibusters would have failed. Similarly, I argued that had Republican Senators voted their consciences without regard to party loyalty, there would not have been 51 of the 55 Republican Senators to support the nuclear option.

The majority leader then scheduled the critical vote on May 25, 2005. The outcome of that vote was uncertain, with key Republicans undeclared. The showdown was averted the night before by a compromise by the so-called Gang of 14. Some nominees were approved, some rejected, and a new standard was established to eliminate filibusters unless there were extraordinary circumstances, with each Senator to decide if that standard had been met. Regrettably, again, that standard has not been followed as those filibusters have continued up to today. Again, the fault rests with both parties.

There is a way out of this procedural gridlock by changing the rule on the power of the majority leader to exclude other Senators' amendments. I proposed such a rule change in the 110th and 111th Congresses. I would retain the 60-vote requirement for cloture on legislation, with a condition that Senators would have to have a talking filibuster, not merely presenting a notice of intent to filibuster. By allowing Senators to offer amendments and a requirement for debate, not just notice, I think filibusters could be effectively managed, as they had been in the past, and still retain, where necessary, the opportunity to have adequate debate on controversial issues.

I would change the rule to cut off debate on judicial and executive branch nominees to 51 votes, as I formally proposed in the 109th Congress. Important positions are left open for months, and the Senate agenda today is filled with unacted-upon judicial and executive nominees, and many of those judicial nominees are in areas where there is an emergency backlog. Since Judge Bork and Justice Thomas did not provoke filibusters, I think the Senate can do without them on judges and executive officeholders. There is a sufficient safeguard of the public interest by requiring a simple majority on an up-down vote. I would also change the rule requiring 30 hours of postcloture debate and the rule allowing the secret hold, which requires cloture to bring the matter to the floor. Requiring a Senator to disclose his or her hold to the light of day would greatly curtail this abuse.

While political gridlock has been facilitated by the Senate rules, I am sorry to say partisanship has been increased greatly by other factors. Senators have gone into other States to campaign against incumbents of the other party. Senators have even opposed their own party colleagues in primary challenges. That conduct was beyond contemplation in the Senate I joined 30 years ago. Collegiality can obviously not be maintained when negotiating with someone simultaneously out to defeat you, especially within your own party.

In some quarters, ''compromise'' has become a dirty word. Senators insist on ideological purity as a precondition. Senator Margaret Chase Smith of Maine had it right when she said we need to distinguish between the compromise of principle and the principle of compromise. This great body itself was created by the so-called Great Compromise, in which the Framers decreed that States would be represented equally in the Senate and proportionate to their populations in the House. As Senate Historian Richard Baker noted: ''Without that compromise, there would likely have been no Constitution, no Senate, and no United States as we know it today.''

Politics is no longer the art of the possible when Senators are intransigent in their positions. Polarization of the political parties has followed. President Reagan's ''big tent'' has frequently been abandoned by the Republican Party. A single vote out of thousands cast can cost an incumbent his seat. Senator BOB BENNETT was rejected by the far right in his Utah primary because of his vote for TARP. It did not matter that Vice President Cheney had pleaded with the Republican caucus to support TARP or President Bush would become a modern Herbert Hoover. It did not matter that 24 other Republican Senators, besides BOB BENNETT, out of the 49 Republican Senators voted for TARP. Senator BENNETT's 93 percent conservative rating was insufficient.

Senator LISA MURKOWSKI lost her primary in Alaska. Congressman MIKE CASTLE was rejected in Delaware's Republican primary in favor of a candidate who thought it necessary to defend herself as not being a witch. Republican Senators contributed to the primary defeats of BENNETT, MURKOWSKI, and CASTLE. Eating or defeating your own is a form of sophisticated cannibalism. Similarly, on the other side of the aisle, Senator JOE LIEBERMAN, a great Senator, could not win his Democratic primary.

The spectacular reelection of Senator LISA MURKOWSKI on a write-in vote in the Alaska general election and the defeat of other Tea Party candidates in the 2010 general elections may show the way to counter right-wing extremists. Arguably, Republicans left three seats on the table in 2010—beyond Delaware, Nevada, and perhaps Colorado—because of unacceptable general election candidates. By bouncing back and winning, Senator MURKOWSKI demonstrated that a moderate centrist can win by informing and arousing the general electorate. Her victory proves that America still wants to be and can be governed by the center.

Repeatedly, senior Republican Senators have recently abandoned long-held positions out of fear of losing their seats over a single vote or because of party discipline. With 59 votes for cloture on this side of the aisle, not a single Republican would provide the 60th vote for many important legislative initiatives, such as identifying campaign contributors to stop secret contributions.

Notwithstanding the perils, it is my hope more Senators will return to independence in voting and crossing party lines evident 30 years ago. President Kennedy's ''Profiles in Courage'' shows the way. Sometimes a party does ask

too much. The model for an elected official's independence in a representative democracy has never been stated more accurately, in my opinion, than it was in 1774 by Edmund Burke, in the British House of Commons, when he said: '' . . . his [the elected representative's] unbiased opinion, his mature judgment, his enlightened conscience . . . [including his vote] ought not to be sacrificed to you, to any man or any set of men living.''

But, above all, we need civility. Steve and Cokie Roberts, distinguished journalists, put it well in a recent column, saying:

> Civility is more than good manners. . . . Civility is a state of mind. It reflects respect for your opponents and for the institutions you serve together. . . . This polarization will make civility in the next Congress more difficult—and more necessary—than ever.

A closing speech has an inevitable aspect of nostalgia. An extraordinary experience for me is coming to an end. But my dominant feeling is pride in the great privilege to be a part of this very unique body with colleagues who are such outstanding public servants. I have written and will write elsewhere about my tenure here, so I do not say farewell to my continuing involvement in public policy, which I will pursue in a different venue. Because of the great traditions of this body and because of its historic resilience, I leave with great optimism for the future of our country, a great optimism for the continuing vital role of the Senate in the governance of our democracy.

I thank my colleagues for listening.

(Applause, Senators rising.)

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Cloture having been invoked, the motion to refer falls.

Mr. WHITEHOUSE. 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.

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

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

TRIBUTE TO RETIRING SENATORS

ARLEN SPECTER

Mr. CASEY. Mr. President, I wish to offer some remarks in furtherance of what Senator SPECTER told us about this great institution. I wanted to spend a moment talking about his service to the Commonwealth of Pennsylvania.

When I came to the Senate in 2007 as a Senator-elect, one of the first things I did was go to see Senator SPECTER. He asked me at that time to go to lunch. From the moment I arrived in the Senate, he made it very clear to me that not only did the people of Pennsylvania expect, but he expected as well, that we work together.

From the beginning of his service in the Senate, way back when he was elected in 1980 all the way up to the present moment, he has been a Senator who was focused on building bipartisan relationships and, of course, focusing on Pennsylvania priorities. I am honored to have worked with him on so many priorities, whether it was veterans or workers, whether it was dairy farmers or the economy of Pennsylvania or whether it was our soldiers or our children or our families. We have worked on so many priorities. He has been a champion for our State and he has shown younger Senators the way to work together in the interests of our State and our country.

That bipartisanship wasn't just a sentiment; it was bipartisanship that led to results. I wish to point to one example of many I could list: the funding for the National Institutes of Health, that great bulwark and generator of discoveries that cures diseases and creates jobs and hope for people often without hope because of a disease or a malady of one kind or another. That bipartisanship Senator SPECTER demonstrated every day in the Senate has achieved results for Pennsylvania, for sure, in terms of jobs and opportunity and hope but also results for the Nation as well.

I know we are short on time, but I wanted to make one note about the history of his service. No Senator in the history of the Commonwealth—and we have had 55 or so Senators, depending on how you count those who have been elected and served, but of those 55, no Senator has served longer than Senator SPECTER. I recall the line—I think it is attributed to Abraham Lincoln, but it is a great line about what years mean and what service means, and I will apply the analogy to Senate service. The line goes something like this: It is not the years in a life, it is the life in those years. I am paraphrasing that. The same could be said of the life of a Senator. It is not just that he served 30 years. That alone is a singular, unprecedented achievement. In fact, the Senator he outdistanced in a sense in terms of years of service was only elected by the people twice. Senator SPECTER was elected by the people of Pennsylvania five times. But it is the life in those Senate years, the work in those Senate years, the contribution to our Commonwealth and our country in those Senate years that matters and has meaning. His impact will be felt for generations—not just decades but for generations.

Let me close with this. There is a history book of our State that came out in the year 2002, and it has a series of stories and essays and chapters on the history of Pennsylvania. It is a fascinating review of the State's history. The foreword to that publication was written by Brent E. Glass, at the time the executive director of the Pennsylvania Historical and Museum Commission. He wrote this in March of 2002. It is a long foreword which I won't read, but he said in the early part of this foreword the following:

> One way to understand the meaning of Pennsylvania's past is to examine certain places around the State that are recognized for their significance to the entire Nation.

Then he lists and describes in detail significant places in Pennsylvania that have a connection to our history, whether it is the Liberty Bell or the battlefield of Gettysburg; whether it is the farms in our Amish communities or whether it is some other place of historic significance. I have no doubt whatsoever that if the same history were recounted about the people who had an impact on our Commonwealth—the people who moved Pennsylvania forward; the people who in addition to moving our State forward had an impact on the Nation—if we make a list of Pennsylvanians who made such contributions, whether it would be William Penn or Benjamin Franklin—and you can fill in the blanks from there—I have no doubt that list would include Senator ARLEN SPECTER. He is a son of Kansas who made Pennsylvania his home. He is a son of Kansas who fought every day for the people of Pennsylvania.

So it is the work and the achievements and the passion and the results in those years in the Senate that will put him on the very short list of those who contributed so much to our Commonwealth that we love and to our country that we cherish.

For all of that and for so many other reasons, as a citizen of Pennsylvania, a resident of Pennsylvania, a citizen of the United States but as a Senator—I want to express my gratitude to Senator ARLEN SPECTER for his 30 years of service, but especially for what those 30 years meant to the people, sometimes people without a voice, sometimes people without power.

Thank you, Senator SPECTER.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to join my colleagues in noting the farewell address of Senator ARLEN SPECTER is an inspiring moment in the Senate.

It has been my great honor to serve with Senator SPECTER and to be a member of the Senate Judiciary Committee with him as well. I think of his contribution to the Senate at many levels. I certainly appreciate what he did for the Senate and for the Nation when he chaired the Judiciary Committee and served on that committee, particularly when it came to the hearings involving the appointment of new Supreme Court Justices. Without fail, Senator SPECTER at those hearings would always have dazzling insight into the current state of the law and the record of the nominee. I couldn't wait for him each time there was a hearing to see what his tack would be. It always reflected a thoughtful reflection on the historic moment we faced with each nominee. The questions he asked, the positions he took, the statements he made, all made for a better record for the United States as the

Senate proceeded to vote on those historic nominations.

But there is one area he touched on ever so slightly that I believe is equal to his mark on the Senate Judiciary Committee. This man, Senator ARLEN SPECTER, with the help in some respects and in some efforts by Senator TOM HARKIN, has done more to advance the cause of medical research in his time than virtually any other Member of the Congress. He had a single-minded determination to advance medical research and to put the investment in the National Institutes of Health. On the House side, Congressman John Porter joined him in that early effort—John Porter of Illinois—but time and again ARLEN SPECTER would have as his last bargaining chip on the table, whenever there was a negotiation, that we needed to put more money in the National Institutes of Health. I know he was probably inspired to that cause by many things, but certainly by his own life experience where he has successfully battled so many medical demons and is here standing before us as living proof that with his self-determination and the advancement of science, we can overcome even some of the greatest diseases and maladies that come our way.

He was, to me, a role model many times as he struggled through cancer therapy and never missed a bell when it came to presiding over a committee hearing or coming to the floor to vote. There were times when all of us knew he was in pain. Yet he never let on. He did his job and did it with a gritty determination, and I respect him so much for it. That personal life experience, I am sure, played some role in his determination to advance medical research.

So as he brings an end to his Senate career, there are countless thousands who wouldn't know the name ARLEN SPECTER who have been benefited by this man's public service and commitment to medical research. I thank him for that as a person, as does everyone in this Chamber who has benefited from that cause in his life.

I also think, as I look back on his work on the stimulus bill when he was on the other side of the aisle, that it took extraordinary courage and may have cost him a Senate seat to step forward and say, I will join with two other Republicans to pass a bill for this new President Obama to try to stop a recession and to give some new life to this economy. There were very few with the courage to do it. He was one of them. Sitting with him in the meetings where the negotiations were underway, then-Republican Senator ARLEN SPECTER drove hard bargains in terms of bringing down the overall cost of the project and dedicating a substantial portion—$10 billion, if I am not mistaken—to the National Institutes of Health. Again, the final negotiation on the stimulus bill for America included ARLEN SPECTER's demand that the National Institutes of Health have additional research dollars. His commitment to make that happen did make it happen. Those three votes from the Republican side of the aisle made it happen: a stimulus which averted, in my mind, a terrible, much worse recession, maybe even a depression in America. It was the best of the Senate, when a Senator had the courage to stand up, take a position, risk his Senate seat because he believed in it, and do some good for America which would benefit millions, as his vote and his effort did.

When I look at those whom I have served with in the Senate, there are precious few who meet the standards for ARLEN SPECTER. I am going to miss him for so many reasons, but I know his involvement in public life will not quit. That is often a cliche we hear on the floor after a farewell address. But I know it because he has been hammering away at me every single day about bringing those cameras over to the Supreme Court. So even when he leaves this body, if it is not done then, I am sure I am going to hear from him again on televising the Supreme Court proceedings. I give my word that as long as I am around here, Senator, I will carry that banner for you, and if I have a chance to help you pass that measure at some point in the future I am going to do it because I think it is the right thing to do and I know it has meant so much to you.

The Senate's loss is America's gain as he becomes a public figure in a different life. But during his tenure in the Senate he has graced this institution with an extraordinary intelligence, a determination, and a belief that the national good should rise above any party cause. I am going to miss ARLEN SPECTER and I thank him for being my friend.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I was pleased to have an opportunity to hear most of the remarks made this morning by my friend and colleague from Pennsylvania and others who have spoken on the occasion of his retirement from the Senate.

I couldn't help but remember when he was campaigning in his first race for the Senate and I had been asked to be available to help out in some campaigns that year. I was a brandnew Senator and didn't know a lot of the protocols, but when I heard ARLEN SPECTER wanted me to come up and speak in Pennsylvania somewhere during his campaign, I decided I would accept the invitation, although I was a little apprehensive about it, about how I would be received as a Republican from Mississippi going up and helping this new candidate who was running on the Republican ticket too. His wife Joan was a member of the city council in Philadelphia, as I recall—very well respected. Anyway, I enjoyed getting to know the Senator and his wife better during those early campaign events. Then, after he was elected, he asked me to make one more trip up.

He could not go to Erie, PA, and keep an invitation that he wanted to accept and speak to a retired group of businessmen. These were older gentlemen who had been prominent in Pennsylvania business and political life. I worried about it—that they would not think much about me. But I went up there and nearly froze to death. I thought this is just a payback for the Civil War, I guess, that ARLEN never got to express. He was going to do his part to help educate me and refine me in the ways of modern America. But that led to an entire career here working alongside him on both sides of the aisle, which I have enjoyed very much.

We have all learned from him the commitment that he makes to the job, the seriousness of purpose that he brings to committee work, and he has truly been an outstanding leader in the Senate, through personal performance and his serious and impressive record of leadership.

I am glad to express those thoughts today and wish ARLEN well in the years ahead. We will still have a friendship that will be appreciated. I look forward to continuing that relationship.

I yield the floor.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Pennsylvania is recognized.

NEW START TREATY

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly about the START Treaty, the consideration of which is now pending before the Senate, and to urge my colleagues to move forward to ratify this important treaty.

I have long been interested in the relationship between the United States and, at that time, the Soviet Union, following the end of World War II, with the emergence of our Nation and the Soviets emerging as the two great world powers.

In college, after the war, I devoted a good bit of study to U.S.-U.S.S.R. relations. I wrote a senior thesis on it as a major in political science and international relations, and I have continued that interest throughout my tenure in the Senate. One of my first initiatives, in 1982, after being elected in 1980, was to propose a resolution calling for a summit meeting between the President of the United States and the head of the Soviet Union.

President Reagan had a practice of making Saturday afternoon speeches—or Saturday morning speeches—on the radio. One day I listened in and heard him talk about the tremendous destructive power which both the U.S. and U.S.S.R. had, and how they had the capacity to destroy each other. Of course, that capacity became the basis of the mutual assured destruction period. But it seemed to me that what ought to be done was there ought to be a dialog and an effort to come to terms with the Soviet Union to reduce the tension and reduce the threat of nuclear war. I, therefore, offered a resolution to propose that.

My resolution was resisted by one of the senior Senators, Senator John Tower of Texas, who was chairman of the Armed Services Committee. When I proposed the resolution, it brought Senator Tower to the floor with a very really heated debate, with Senator Tower challenging my resolution and challenging my knowledge on the subject.

Early on, after being elected and starting to serve in 1981, I had traveled to Grand Forks, ND, to see the Missileman II. I went to Charleston, SC, to see our nuclear submarine fleet, and I went to Edwards Air Force Base in California to look at the B1–B, the B–1 bomber, at that time. I was prepared to take on these issues.

Senator Tower opposed it, offered a tabling motion, and standing in the well of the Senate, as if it was yesterday, I can remember that Senator Laxalt walked down the aisle from the door entering this Chamber and voted no. He started to walk up the aisle to the Republican cloakroom.

Senator Tower chased him and said: Paul, you don't understand. This is a tabling motion. I am looking for an ''aye.''

Laxalt turned and said: I understand it is a tabling motion, and I voted the way I wanted to, no. I want the resolution to go forward.

Senator Tower said: Well, ARLEN SPECTER is trying to tell the President what to do.

Senator Laxalt replied: Well, why shouldn't he? Everybody else does, he said jokingly.

That tabling motion was defeated 60 to 38. When a vote came up on the final resolution, it passed with 90 in favor and 8 in opposition. We know what happened. There were negotiations and President Reagan came up with the famous dictum, ''trust, but verify.''

I was then active in the negotiations, the discussions on the Senate observer group in Geneva around 1987. Then our record is plain that we have approved by decisive numbers three very important treaties. START I was approved by the Senate in 1992, with a vote of 93 to 6. The START II treaty was approved in 1996 by a vote of 87 to 4. The Moscow Treaty of 2003 was approved by a vote of 95 to 0.

We have heard extensive debate on the floor of the Senate. People have questioned the adequacy of the verification. I think those arguments have been answered by Senator JOHN KERRY, chairman of the Foreign Relations Committee, who has done such an excellent job in managing the treaty. Questions have been raised about the missile defense, and I think that, too, has been adequately responded to. This has nothing to do with the issue of missile defense.

For me, a very key voice in this entire issue has been the voice of Senator RICHARD LUGAR, who has pointed out that this treaty does not deal with these collateral issues. This treaty is, directly stated, an extension of the treaty which has been in effect up until the present time and has worked so very well.

Strenuous arguments have been made about modernizing our nuclear forces. Well, that is a subject for another day and another time. But those who have offered that advocacy have found a response from the administration with millions of dollars, from $85 million. That, as I say, belongs to another day and another analysis. But those who have advocated for modernization have gained very substantial responses from the administration on that subject. Curious, in that context, that notwithstanding that very substantial funding, it hasn't won them over, hasn't diminished their resistance to the treaty. Also, curious in the context of those expenditures on an issue, which didn't directly involve the necessity for modernization, there is a real question as to whether there has been adequate debate and study on that subject, on the hearings. It isn't part of the START treaty debate and discussion about the expenditure of that kind of money, considering the kind of a deficit we have, and also considering the advocates of those modernization additions with the great expense have been some of the loudest voices objecting to governmental expenditures.

Well, we ought to spend what it takes for defense. That is the fundamental purpose of the Federal Government, to protect its citizens. But real questions arise in my mind as to whether this was the proper place to have that argument, but that has gone by the boards.

I think the letter which Admiral Mullen, Chairman of the Joint Chiefs of Staff, has issued about the conclusion of the military, that this is a good treaty; about Admiral Mullen's statement that he personally was involved in the negotiations; that if the START treaty was not to be ratified there would be U.S. military resources that would have to be devoted to certain other issues which were taken by START so that it leads to an unequivocal recommendation by our No. 1 military expert, the Chairman of the Joint Chiefs of Staff.

One other very important element that has been discussed, but cannot be over emphasized, is the destructive consequence of having this treaty rejected in terms of our relations with Russia.

Russia is vitally important to us as we deal with Iran, vitally important to us as we deal with North Korea, vitally important to us as we deal with a whole range of international problems. For us to come right to the brink and then to say no and reject it and seek to reopen it would have a very serious effect on our relations with Russia, which are so important to our national security. The other nations of the world are watching in the wings what we do here. It would have a domino effect on our relationship with other nations.

It comes in a context where it is subject to being misunderstood as a political matter in the United States. I do not question for a moment the motivation of those who oppose START. Those who have spoken against it have been some of our body's most knowledgeable Members on this important subject. But there is so much publicity about some questioning whether President Obama can have both the START treaty and repeal of don't ask, don't tell at the same time, there has been so much public comment about not wanting to see President Obama have another victory before the end of the year, so much comment which raises a question as to whether opposition is politically motivated.

If the Russians and the other nations of the world cannot rely upon the Senate to make a judgment on the merits without regard to the politics or the appearance of politics, it has very serious consequences for our standing in the international community of nations.

For those reasons, I do believe we ought to move ahead promptly. We ought to ratify this treaty. We ought to continue our strenuous efforts to rid the world of the threat of nuclear war. This is part of that ongoing process.

I urge my colleagues to ratify this important treaty.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Alabama is recognized.

ARLEN SPECTER

Mr. SESSIONS. Mr. President, I see my other colleagues. I do wish to talk about one or two judicial nominees, but I want to say first how much I appreciate Senator SPECTER.

I have had the honor to serve on the Senate Judiciary Committee with Senator SPECTER the entire time I have been in the Senate—going on 14 years, I guess. No one has a clearer legal mind. The clarity of his thought and expression is always impressive to me. And as someone who practiced law, I see the great lawyer skills he possesses.

Also, I note that he has not just today but throughout his career defended the legitimacy of the powers of the Senate. He was very articulate over the past number of years in criticizing the abuse of filling the tree, where bills can be brought up and amendments are not allowed. He has believed that is an unhealthy trend in the Senate, and he has been one of the most effective advocates in opposition to it.

He sponsored and helped pass the Armed Career Criminal Act. He was one of the leaders in that. Having been a longtime prosecutor in Philadelphia, I like to tease our good friend Senator LEAHY that he was a prosecutor, but it was in Vermont. Senator SPECTER had to deal with a lot of crime in Philadelphia and was consistently reelected there for his effectiveness and is a true source of insight into crime in America and has been an effective advocate for fighting crime.

I note also that he has a good view about a Senator. He respects other Senators. He was talking with me one time or I was sharing with him my concern about a matter, and he used a phrase I heard him use more than once: Well, you are a U.S. Senator. In other words, if you do not like it, stand up and defend yourself. He respected that, even if he would disagree.

I remember another time Senator SPECTER was on the floor. I had just arrived in the Senate. I wanted him to do something—I have long since forgotten what.

I said: Senator SPECTER, you could vote for this, and back home, you could say thus and so.

He looked right at me, and he said: Senator, I don't need your advice on how to conduct myself back home politically.

I learned a lesson from that. I never told another Senator that, I say to Senator SPECTER. Who am I to tell you how to conduct yourself politically back home in the State of Pennsylvania?

Senator SPECTER chaired the Judiciary Committee during the confirmations of Chief Justice Roberts and Justice Alito. He was the leading Republican chair at that time. He raised questions about the nominees. But as chairman of the committee, with the votes and support of his Republican colleagues, he protected our rights, he protected our interests. He did not back down one time on any action by the other party that would have denied the ability to move that nomination forward to a vote and protect the rights of the parties on our side.

Those are a few things that come to mind when I think about the fantastic service he has given to the Senate. He is one of our most able Members, one of our most effective defenders of senatorial prerogative and independence, one of our crime fighters without par, and one of the best lawyers in the Senate, a person who is courageous and strong. Even when he was conducting those very intense Alito and Roberts hearings—it was just after he had serious cancer treatment, the chemotherapy. I know he didn't feel well, but he was fabulous in conducting himself at that time. Throughout all of that treatment, his work ethic surpassed by far that of most Senators in this body. It has been an honor to serve with him.

I see my other colleagues. I know Senator COBURN wanted to come down. He was told he might be able to speak around noon.

SENATOR SPECTER

Mr. BENNET. Mr. President, first, before I get into my remarks, I wish to say how much I appreciated the remarks of Senator SPECTER today. I, for one, hope Senators on both sides of the aisle, Democrats and Republicans, heed his closing remarks as he described them and also the farewell remarks of so many Senators over the last 2 or 3 weeks. I think there is a lot of wisdom we can apply to our work going forward.

I thank Senator SPECTER very much for his service.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

NEW START TREATY

Mr. BEGICH. Mr. President, I rise in support of the New START treaty. I do so for several reasons.

First, of course, the treaty is essential for national security. It promotes transparency and stability between the two countries that possess the majority of the world's nuclear weapons. It will decrease the likelihood of a nuclear weapon falling into the hands of a rogue nation.

For the residents of my State, the treaty is close to home, literally. Alaska and Russia are less than 3 miles apart at the closest point in the Bering Sea. Commerce, scientific, educational, and cultural exchanges are commonplace between Alaska and our Russian neighbors. So peaceful coexistence with Russia is more than an abstract concept to my constituents; it is a way of life.

The second reason this treaty is personal for Alaskans is because of our close proximity to North Korea. When North Korea's leader exercises his political muscle by firing test missiles or threatening to attack the United States, Alaskans get nervous because we are most directly in the line of fire.

Thankfully, my home State is home to the ground-based missile defense system. Based at Fort Greely, this sophisticated system of more than two dozen ground-based interceptors is maintained and operated by highly trained members of the Alaska National Guard. I was pleased to show Defense Secretary Robert Gates this state-of-the-art system last year. I worked with my colleagues on both sides of the aisle to make sure this system gets the resources and funding it warrants to protect us. I will continue to do that.

I would be troubled if the New START treaty impacted our Nation's missile defense system. I know some of my colleagues on the other side of the aisle would be equally concerned. Fortunately, such concerns are unfounded. I am confident nothing in this treaty will limit our ability to defend ourselves and our allies against a ballistic missile attack from a rogue nation.

The preamble of this treaty simply acknowledges the relationship between offensive and defensive strategic arms and verifies that current defensive strategic arms do not undermine the offensive forces. The preamble is nonbinding. There is no action or inaction arising from this statement.

The section of the treaty prohibiting conversion of missile silos or launchers for ballistic missile defense purposes does not impact us. It is not something we are planning to do. In fact, we are in the process of completing a missile field in Alaska to field interceptors. The field will have seven spare silos to deploy more interceptors if we need them. We are moving forward with the phased adaptive approach to protect our allies, with the two-stage interceptor as a hedge.

The unilateral statement by Russia also is nonbinding and is not even part of the treaty. Our own unilateral statements make it clear that this treaty will not constrain missile defense in any way and that we will continue improving and deploying missile defense systems to protect us and our allies. These types of statements in a treaty are not unprecedented. The right to withdraw has been stated in many previous treaties—the nonproliferation treaty and the START treaty. Those statements did not stop the Senate from ratifying those treaties. The language in the New START treaty should not either. In fact, this treaty actually helps missile defense because it lessens restrictions on test targets that were in the previous treaty. We will have more flexibility in testing.

We have heard from our national security leaders that this treaty does not constrain ballistic missile defense in any way. Secretary of State Hillary Clinton, Secretary of Defense Robert Gates, Chairman of the Joint Chiefs of Staff Mike Mullen, Missile Defense Agency Director LTG Patrick O'Reilly, former Strategic Commander GEN Kevin Chilton, and countless others confirm that this treaty in no way limits our ballistic missile defense plans. We cannot disregard the views of our Nation's most senior military and civilian leaders on this critical issue because of politics.

We have had almost 7 months to consider this treaty. We have had numerous hearings and briefings—more on this treaty than any other single item I have been involved in since I have been here. In that time, I heard no current or former national security leader say this treaty is a detriment to ballistic missile defense. What they say and what we know is that the New START treaty will strengthen national security and will not constrain ballistic missile defense.

For all of these reasons, I urge a prompt approval of this vital treaty for our Nation and our world.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BENNET. Mr. President, I ask unanimous consent that my statement and that of Senator UDALL appear as in executive session and that the time be charged postcloture.

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

NOMINATION OF BILL MARTINEZ

Mr. BENNET. Mr. President, I rise today to state my strong support for the nomination of Bill Martinez to serve on the U.S. District Court for the District of Colorado. Having recommended his candidacy to the President, along with my colleague Senator UDALL, I believe he is eminently qualified for the Federal bench.

Bill was nominated to serve on the U.S. District Court for the District of

Colorado in February of this year. His nomination cleared the Senate Judiciary Committee in April. Since then, he has been in a state of limbo awaiting a final vote allowing him to serve. That is why I am very grateful for the hard work of the Judiciary Committee, both Democrats and Republicans, who have moved this nomination forward and are trying to finish it before the end of the 111th Congress.

Our State has two vacancies on the district court. Both vacancies are over 2 years old, with one close to 3 years old. Because there are only seven Federal judgeships in our State, the other judges are facing ever-growing caseloads, resulting in significant backlogs for those seeking justice.

In fact, the administrative office of the courts has declared the vacancy situation in Colorado a judicial emergency. It is important that we move these nominations forward to prevent further backlogs and judicial emergencies, and I pledge to work with my colleagues on both sides of the aisle to make sure we can work together to confirm judicial nominees such as Bill Martinez in a timely manner.

I believe, after careful review of Bill Martinez's experience, my colleagues will see this is someone well worth confirming. Bill is currently at a law firm in Denver, where he primarily represents plaintiffs in Federal and State courts and before arbitrators and administrative agencies. He is certified as AAA arbitrator in employment disputes.

Prior to starting his own firm, he was a regional attorney of the U.S. EEOC in its Denver district office. Senator UDALL will be going into more detail regarding this nominee.

There, Bill had responsibility for the Commission's legal operations and Federal court enforcement litigation in the office's six-State jurisdiction.

Before joining the EEOC, Bill worked in private practice on employment, securities and commercial litigation.

I know some want to focus on his pro bono work and try to make political assumptions about him from a small portion of his career. But I know Bill, and he is the sum of a lot of great work in the public and private sectors.

For example, while at the EEOC Bill was in charge of an age discrimination class action suit that resulted in a settlement of nearly $200 million for 3,200 laid off engineers. This is one of the largest ever age discrimination class actions.

Bill began his career at the Legal Assistance Foundation of Chicago, representing indigent clients and other individuals seeking low- or no-cost counsel. This is a nominee whose breadth of legal experience has spanned the profession, and I think for that reason alone he should be confirmed.

Over the course of his legal career, Bill has been lead or colead counsel in complex litigation, resulting in 18 published opinions from Federal and State courts in Colorado and Illinois. Bill's time as a litigator and advocate has provided him with the necessary skills and perspective to deal with the diverse docket that comes before U.S. district court judges.

Beyond his distinguished legal skills, Bill's personal story is a tribute to this country and embodies the American dream. He is an immigrant success story. Bill was born in Mexico and immigrated with his family to the United States at a young age. He was the first in his family to attend college and law school. His rise through the legal profession is a great example for bright, young law students, and, indeed, for us all.

I urge my colleagues to vote for Bill's nomination. He is a model nominee for the Federal district court, an expert in labor and employment law who will serve Coloradans well. Bill Martinez has the experience and strong sense of civic responsibility we need on the Federal bench.

I thank the chairman for his guidance of this nomination, and I urge my colleagues to vote to confirm Bill to Colorado 's Federal bench.

I also would be remiss, if I didn't thank my senior Senator, MARK UDALL, for his extraordinary efforts to make sure we had a fair, balanced, and thoughtful search process. I think that process for this appointment and for the others whom we have done already are a model for the country, and it is a real testament to Senator UDALL's leadership.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

NEW START TREATY

Mr. CORKER. Mr. President, I know today is a pretty monumental day as it relates to the START treaty we have been discussing for some time, and tomorrow will be a big day in that regard too. I think there is nothing more we care about than our country being secure. I have two daughters who are 21 and 23, a wonderful wife, and extended family, as does every Member in this room, and there is nothing I take more seriously than making sure our country is secure.

So as a member of the Foreign Relations Committee, when we entered into discussions relating to the START treaty, I attended 11 of the 12 hearings. I have been in multiple classified meetings, I have spoken to military leaders across our country, and I have been in so many intelligence briefings that I have begun to speak like an intelligence officer. So I have taken this responsibility very seriously.

I wish to say there are numbers of people who obviously are still making up their mind regarding this treaty, and that is why I came to the floor. One of the things we do when we end up ratifying a treaty is we have something called a resolution of ratification. No doubt this treaty was negotiated by the President and his team—the Secretary of State and others who work with Secretary Clinton—and no doubt that is done by people on the other side of the aisle. But what I would like to bring to the attention of my colleagues is that whenever we ratify a treaty, we do so through something called a resolution of ratification. For those who might not have been involved in the markup, I would like for everyone in this body to know this resolution of ratification, thanks to the good will of the chairman of our committee, was mostly drafted by Republicans. It was drafted, with the approval, certainly, of the chairman, but this was drafted by Senator LUGAR, by myself, Senator KYL had tremendous input into this, and Senator ISAKSON.

So the resolution of ratification we are amending today had tremendous Republican input. As a matter of fact, it was done mostly by Republicans. As a matter of fact, this resolution of ratification is called the Lugar-Corker resolution. This is what came out of committee.

One of the things that has concerned people on both sides of the aisle has been this whole issue of modernization. I have seen something of beauty over the last year. About 1 year ago, I met with Senator KYL in the Senate Dining Room, and we began looking at the modernization of our nuclear arsenal. Many people have focused during this debate on the fact that we have 1,550 warheads as a limitation, if you will, in this treaty. But they fail to realize we have over 5,000 warheads in our nuclear arsenal, all of which need to be modernized, and all of which are getting ready to be obsolete if we don't make the investment.

As a matter of fact, the Presiding Officer and I have visited some of the labs throughout our country. There are seven facilities we have in this country that deal with our nuclear arsenal. Many of those are becoming obsolete and must have needed investment.

I have watched Senator KYL over the last year, in a very methodical way—under his leadership, with me as his wing man, and others—working to make sure the proper modernization of our nuclear arsenal takes place. There is no question in my mind—there is no question in my mind—if it were not for the discussion of this treaty, we would not have the commitments we have today on modernization.

This is the 1251 report that is required by Defense authorization. This has been updated twice due to the efforts of Republicans, led by Senator KYL, who has done an outstanding job. This has been updated twice. First, we had a 5-year update about 60 days ago, and we had a 10-year update that came thereafter. This is our nuclear modernization plan.

Mr. President, I ask unanimous consent to have printed in the RECORD the nuclear modernization plan as part of this debate.

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

NOVEMBER 2010 UPDATE TO THE NATIONAL DEFENSE AUTHORIZATION ACT OF FY2010 SECTION 1251 REPORT

NEW START TREATY FRAMEWORK AND NUCLEAR FORCE STRUCTURE PLANS

Introduction

This paper updates elements of the report that was submitted to Congress on May 13, 2010, pursuant to section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) (''1251 Report'').

2. National Nuclear Security Administration and modernization of the complex—an overview

From FY 2005 to FY 2010, a downward trend in the budget for Weapons Activities at the National Nuclear Security Administration (NNSA) resulted in a loss of purchasing power of approximately 20 percent. As part of the 2010 Nuclear Posture Review, the Administration made a commitment to modernize America's nuclear arsenal and the complex that sustains it, and to continue to recruit and retain the best men and women to maintain our deterrent for as long as nuclear weapons exist. To begin this effort, the President requested a nearly 10 percent increase for Weapons Activities in the FY 2011 budget, and $4.4 billion in additional funds for these activities for the FY 2011 Future Years Nuclear Security Plan (FYNSP). These increases were reflected in the 1251 report provided to Congress in May 2010.

The Administration spelled out its vision of modernization through the course of 2010. In February, soon after the release of the President's budget, the Vice President gave a major address at the National Defense University in which he highlighted the need to invest in our nuclear work force and facilities. Several reports to Congress provided the details of this plan, including: NNSA's detailed FY 2011 budget request, submitted in February; the strategy details in the Nuclear Posture Review (NPR) (April); the 1251 report (May); and the multi-volume Stockpile Stewardship and Management Plan (SSMP) (June). Over the last several months, senior Administration officials have testified before multiple congressional committees on the modernization effort.

The projections in the Future Years Nuclear Security Plan (FYNSP) that accompanied the FY 2011 budget submission and the 1251 report by the President are, appropriately called, 'projections.' They are not a 'fixed in stone' judgment of how much a given project or program may cost. They are a snapshot in time of what we expect inflation and other factors to add up to, given a specific set of requirements (that are themselves not fixed) over a period of several years. Budget projections, whether in the FYNSP and other reports, are evaluated each year and adjusted as necessary.

Indeed, planning and design, as well as budget estimates, have evolved since the budget for FY 2011 was developed. Notably, stockpile requirements to fully implement the NPR and the New START Treaty have been refined, and the NNSA has begun executing its Stockpile Stewardship and Management Plan (SSMP). This update will discuss, in particular, evolving life extension programs (LEP) and progress on the designs of key facilities such as the Uranium Processing Facility (UPF) and the Chemistry and Metallurgy Research Replacement (CMRR).

Based on this additional work, and the development of new information and insights, the President is prepared to seek additional resources for the Weapons Activities account, over and above the FY 2011 FYNSP, for the FY 2012 budget and for the remainder of the FYNSP period (FY 2013 through FY 2016).

Specifically, the President plans to request $7.6 billion for FY 2012 (an increase of $0.6 billion over the planned FY 2012 funding level included in the FY 2011 FYNSP). Thus, in two years, the level of funding for this program requested will have increased by $1.2 billion, in nominal terms, over the $6.4 billion level appropriated in FY 2010. Altogether, the President plans to request $41.6 billion for FY 2012–2016 (an increase of $4.1 billion over the same period from the FY 2011 FYNSPT—).

Given the extremely tight budget environment facing the federal government, these requests to the Congress demonstrate the priority the Administration's places on maintaining the safety, security and effectiveness of the deterrent.

3. NNSA—Program Changes and New Requirements since submission of the 1251 Report

A. Update to Stockpile Stewardship and Sustainment

Surveillance—Surveillance activities are essential to enabling continued certification of the reliability of the stockpile without nuclear testing. Surveillance involves withdrawing weapons from deployment and subjecting them to laboratory tests, as well as joint flight tests with the DoD to assess their reliability. These activities allow detection of possible manufacturing and design defects as well as material degradation over time. NNSA has also received recommendations from the National Laboratory directors, the DoD, the STRATCOM Strategic Advisory Group, and the JASON Defense Advisory Panel that the nuclear warhead/bomb surveillance program should be expanded.

In response to this broad-based advice, NNSA has reviewed the stockpile surveillance program and its funding profile. From FY 2005 through FY 2009, funding for surveillance activities, when adjusted for inflation, fell by 27 percent. In recognition of the serious concerns raised by chronic underfunding of these activities, beginning in FY 2010, the surveillance budget has been increased by 50 percent, from $158 million to $239 million. In the FY 2012 budget, the President will seek to sustain this increase throughout the FYNSP. This level of funding will assure that the required surveillance activities can be fully sustained over time.

Weapon System Life Extension—The Administration is committed to pursuing a fully funded Life Extension Program for the nuclear weapons stockpile. The FY 2011 budget submission and the NPR outlined initial plans. Since May 2010, additional work has further defined the requirements to extend the life of the following weapon systems:

W76—The Department of Defense has finalized its assessment of the number of W76 warheads recommended to remain in the stockpile to carry out current guidance. The number of W76–1 life-extended warheads needing completion is larger than NNSA built into its FY 2011 budget plans. NNSA, with the support of the DoD, has adjusted its plan accordingly to ensure the W76–1 build is completed in FY 2018, an adjustment of one year that is endorsed by the Nuclear Weapons Council. This adjustment will not affect the timelines for B61 or W78 life extensions. The LEP will be fully funded for the life of the program at $255 million annually.

B61—NNSA began the study on the nuclear portion of the B61 life extension in August 2010, six months later than the original planning basis. To overcome this delay, NNSA will accelerate the technology maturation, warhead development, and production engineering that is necessary to retain the schedule for the completion of the first production unit in FY 2017. An additional $10 million per year has been added to the FY 2012 FYNSP for this purpose.

W88 AF&F—The 1251 Report addressed the intent to study, among other things, a common warhead for the W78 and the W88 as an option for W78 life extension. Early development of a W88 Arming, Fuzing, and Firing system (AF&F) would enhance the evaluation of commonality options and enable more efficient long-term sustainment of the W88. Approximately $400 million has been added to the FY 2012–16 FYNSP for this purpose.

Stockpile Systems and Services—NNSA is now seeking to execute a larger program of stockpile maintenance than assumed in planning the FY 2011 budget and than projected in the 1251 Report. The additional work includes an increase in the development/production of the limited life components to support the weapons systems. Consequently, the Administration plans to request increased funding of $40 million in FY 2012 for the production of neutron generators and gas transfer systems. NNSA and DoD are aligned for the delivery of essential hardware to ensure no weapon fails to meet requirements.

New Experiments—NNSA's current science and surveillance activities have been more successful than originally anticipated in ensuring the reliability of our existing stockpile without nuclear testing. As we continue to develop modern life extension programs, however, NNSA and the laboratories are considering even more advanced methods for evaluating the best technical options for life extension programs, including refurbishment, reuse and replacement of nuclear components. One such effort of interest that could aid in our efforts includes expanded subcritical experiments designed to modernize warhead safety and security features without adding new military capabilities or pursuing explosive nuclear weapons testing. This program might include so-called ''scaled experiments'' that could improve the performance of predictive capability calculations by providing data on plutonium behavior under compression by insensitive high explosives. In order to thoroughly understand this issue, to assess its cost-effectiveness and to ensure that there is a sound technical basis for any such effort, the Administration will conduct a review of these proposed activities and potential alternatives.

B. Updates to Modernization of the Nuclear Weapons Complex

Modernization of the complex includes reducing deferred maintenance, constructing replacement facilities, and disposing of surplus facilities. The Administration is committed to fully fund the construction of the Uranium Processing Facility (UPF) and the Chemistry and Metallurgy Research Replacement (CMRR), and to doing so in a manner that does not redirect funding from the core mission of managing the stockpile and sustaining the science, technology and engineering foundation. To this end, in addition to increased funding for CMRR and UPF, the FY 2012 budget will increase funding over the FY 2012 number in the 2011 FYNSP for facilities operations and maintenance by approximately $176 million.

Readiness in Technical Base and Facilities (RTBF): CMRR and UPF Construction—These two nuclear facilities are required to ensure the United States can maintain a safe, secure and effective arsenal over the long-term. The NPR concluded that the United States needed to build these facilities; the Administration remains committed to their construction.

Construction of large, one-of-a-kind facilities such as these presents significant challenges. Several reviews by the Government

Accountability Office, as well as a ''root-cause'' analysis conducted by the Department of Energy in 2008, have found that initiating construction before designs are largely complete contributes to increased costs and schedule delays. In response to these reviews, and in order to assure the best value for the taxpayers, NNSA has concluded that reaching the 90% engineering design stage before establishing a project baseline for these facilities is critical to the successful pursuit of these capabilities.

The ten-year funding plan reported in the 1251 Report reflected cost estimates for these two facilities that were undertaken at a very early stage of design (about 10% complete), were preliminary, and could not therefore provide the basis for valid, longer-range cost estimates. The designs of these two facilities are now about 45% completed; the estimated costs of the facilities have escalated. Responsible stewardship of the taxpayer dollars required to fund these facilities requires close examination of requirements of all types and to understand their associated costs, so that NNSA and DoD can make informed decisions about these facilities. To this end, NNSA, in cooperation with the DoD, is carrying out a comprehensive review of the safety, security, environmental and programmatic requirements that drive the costs of these facilities. In parallel with, and in support of this effort, separate independent reviews are being conducted by the Corps of Engineers and the DOE Chief Financial Officer's Cost Analysis Office. In addition, the Secretary of Energy is convening his own review, with support from an independent group of senior experts, to evaluate facility requirements.

The overriding focus of this work is to ensure that UPF and CMRR are built to achieve needed capabilities without incurring cost overruns or scheduling delays. We expect that construction project cost baselines for each project will be established in FY 2013 after 90% of the design work is completed. At the present time, the range for the Total Project Cost (TPC) for CMRR is $3.7 billion to $5.8 billion and the TPC range for UPF is $4.2 billion to $6.5 billion. TPC estimates include Project Engineering and Design, Construction, and Other Project Costs from inception through completion. Over the FYNSP period (FY 2012–2016) the Administration will increase funding by $340 million compared with the amount projected in the FY 2011 FYNSP for the two facilities.

At this early stage in the process of estimating costs, it would not be prudent to assume we know all of the annual funding requirements over the lives of the projects. Funding requirements will be reconsidered on an ongoing basis as the designs mature and as more information is known about costs. While innovative funding mechanisms, such as forward funding, may be useful in the future for providing funding stability to these projects, at this early design stage, well before we have a more complete understanding of costs, NNSA has determined that it would not yet be appropriate and possibly counterproductive to pursue such mechanisms until we reach the 90% design point. As planning for these projects proceeds, NNSA and OMB will continue to review all appropriate options to achieve savings and efficiencies in the construction of these facilities.

The combined difference between the low and high estimates for the UPF and CMRR facilities ($4.4 billion) results in a range of costs beyond FY 2016 as shown in Figure 3. Note that for the high estimate, the facilities would reach completion in FY 2023 for CMRR and FY 2024 for UPF. For each facility, functionality would be attainable by FY 2020 even though completion of the total projects would take longer.

Readiness in the Technical Base of Facilities (RTBF)—Operations and Maintenance

In order to implement an increased scope of work for stockpile activities, especially surveillance and the ongoing life extension programs (LEPs), the following will be supported:

NNSS—Full experimental facility availability to support ongoing subcritical and other experiments necessary for certification of life extension technologies.

Pantex—Funds are included in the FY 2012 request to fully cover anticipated needs for flood prevention.

SNL—Replacement of aging and failing equipment at the Tonopah Test Range in Nevada to facilitate the increasing pace of operations support for the B61; and Micro-electronics, engineering test, and surveillance actions at SNL to support the B61, W76 and W78 that require additional equipment maintenance in facilities and the need to operate engineering test facilities that currently operate in a periodic campaign mode.

LLNL, LANL, and Y–12—Investments in infrastructure and construction, including support for Site 300, PF–4, and Nuclear Facilities Risk Reduction.

Kansas City—Investment sufficient to meet LEP needs for the W76–1, B–6I, and W78/88 while preparing and completing the move to the KCRIMS site at Botts Road.

Savannah River—Sufficient investment to ensure that availability of tritium supplies adequate for stockpile needs is assured.

RTBF: Other Construction—As the CMRR and UPF projects are completed, NNSA will continue to modernize and refurbish the balance of its physical infrastructure over the next ten years. The FY 2012 budget request includes $67 million for the High Explosive Pressing Facility project that is ongoing at Pantex, $35 million for the Nuclear Facilities Risk Reduction Project at Y–12, $25 million for the Test Capabilities Revitalization Project at Sandia, as well as $9.8 million for the Transuranic Waste Facility and $20 million for the TA–55 Reinvestment Project at LANL.

RTBF: Construction Management—Because of the unprecedented scale of construction that NNSA is initiating, both in the nuclear weapons complex and in non- proliferation activities, the Administration recognizes that stronger management structures and oversight processes will be needed to prevent cost growth and schedule slippage. NNSA will work with DoD, OMB, and other affected parties to analyze current processes and to consider options for enhancements.

C. Pension Cost Growth and Alternative Mitigation Strategies

NNSA has a large contractor workforce that is covered by defined-benefit pension plans for which the U.S. Government assumes liability. Portfolio management decisions, market downturns, interest rate decreases, and new statutory requirements have caused large increases in pension costs. The Administration is fully committed to keeping these programs solvent without harming the base programs. The Administration will therefore cover total pension reimbursements of $875 million for all of NNSA for FY 2012, adding $300 million more to the NNSA topline than the amount provided in FY 2011. Over the five year period FY 2012 to FY 2016, the Administration will provide a total of $1.5 billion above the FY 2011 level. About three-quarters of this funding is associated with Weapons Activities and is included in the funding totals for those programs noted above.

The Administration will conduct an independent study of these issues using the appropriate statutory and regulatory framework to inform longer-term decisions on pension reimbursements. The Administration is evaluating multiple approaches to determine the best path to cover pension plan contributions, while minimizing the impact to mission. Contractors are evaluating mitigation strategies, such as analyzing plan changes, identifying alternative funding strategies, and seeking increased participant contributions. Also, contractors have been directed to look into other human resource areas where savings can be achieved, in order to help fund pension plan contributions.

3. Summary of NNSA Stockpile and Infrastructure Costs

A summary of estimated costs specifically related to the Nuclear Weapons Stockpile, the supporting infrastructure, and critical science, technology and engineering is provided in Table 1.

TABLE 1—TEN-YEAR PROJECTIONS FOR WEAPONS STOCKPILE AND INFRASTRUCTURE COSTS

$ Billions	Fiscal year										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Directed Stockpile	1.5	1.9	2.0	2.1	2.3	2.5	2.6	2.6	2.6	2.6	2.6
Science Technology & Engineering Campaigns	1.6	1.7	1.8	1.8	1.8	1.8	1.9	2.0	2.1	2.2	2.3
Readiness in Technical Base and Facilities	1.8	1.8	2.1	2.3	2.5	2.5	2.5	2.7	2.8–2.9	2.9–3.1	2.9–3.3
UPF	0.1	0.1	0.2	0.2	0.4	0.4	0.4	0.48–0.5	0.48–0.5	0.48–0.5	0.38–0.5
CMRR	0.1	0.2	0.3	0.3	0.4	0.4	0.4	0.48–0.5	0.4–0.5	0.3–0.5	0.2–0.5
Secure Transportation	0.2	0.2	0.3	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Defense Programs Subtotal	5.2	5.7	6.1	6.5	6.9	7.1	7.3	7.5–7.6	7.7–7.9	7.9–8.2	8.0–8.4
Other Weapons	1.2	1.3	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.5
Subtotal, Weapons	6.4	7.0	7.4	7.8	8.2	8.5	8.7	8.9–9.0	9.2.9.3	9.4–9.6	9.4–9.8
Contractor Pensions Cost Growth			0.2	0.2	0.2	0.2	0.2	*TBD	*TBD	*TBD	*TBD
Total, Weapons	6.4	7.0	7.6	7.9	8.4	8.7	8.9	8.9–9.0	9.2–9.3	9.4–9.6	9.4–9.8

Numbers may not add due to rounding.

*Anticipated costs for contractor pensions have been calculated only through FY 2016. For FY 2017–2020, uncertainties in market performance, interest rate movement, and portfolio management make prediction of actual additional pension liabilities, assets, and contribution requirements unreliable.

4. Plans for Sustaining and Modernizing U.S. Strategic Delivery Systems

The Administration remains committed to the sustainment and modernization of U.S. strategic delivery systems, to ensure continuing deterrent capabilities in the face of evolving challenges and technological developments. DoD's estimates of costs to sustain and modernize strategic delivery systems will be updated as part of the President's FY 2012 budget request; until this budget request is finalized, figures provided in the May 2010 1251 report remain the best available cost estimates.

The following section of this report provides the latest information on DoD's efforts to modernize the Triad, including expected timelines for key decisions.

Strategic Submarines (SSBNs) and Submarine-Launched Ballistic Missiles (SLBMs)

As the NPR and the 1251 Report note, the United States will maintain continuous at-sea deployments of SSBNs in the Atlantic and Pacific Oceans, as well as the ability to surge additional submarines in crisis. The current Ohio-class SSBNs, have had their service life extended by a decade and will commence retirement in FY 2027. DoD plans a transition between the retiring Ohio-class SSBNs and the Ohio-class replacement that creates no gap in the U.S. sea-based strategic deterrent capability.

Current key milestones for the SSBN replacement program include:

Research, development, test, and evaluation (RDT&E) began in FY 2010 and continues with the goal of achieving 10 percent greater design maturity prior to starting procurement than the USS VIRGINIA class had before procurement started;

In FY 2015, the Navy will begin the detailed design and advanced procurement of critical components;

In FY 2019, the Navy will begin the seven-year construction period for the new SSBN lead ship;

In FY 2026, the Navy will begin the three-year strategic certification period for the lead ship; and

In FY 2029, the lead ship will commence active strategic at-sea service.

The Analysis of Alternatives (AoA) considered three platforms concepts for the Ohio-class Replacement: VIRGINIA-Insert, OHIO-Like, and a New Design. DoD is currently evaluating the advantages and disadvantages of each concept, including cost tradeoffs, with the goal of meeting military requirements at an affordable cost. An initial milestone decision is expected by the end of calendar year 2010 to inform the program and budget moving forward.

After the initial milestone design decision is made, DoD will be able to provide any adjustments to the estimated total costs for the Ohio-class replacement program. Thus, today's estimated total costs for FY 2011 through FY 2020 remain the same as reported in the 1251 Report: a total of approximately $29.4 billion with $11.6 billion for R&D and $17.8 billion for design and procurement.

As noted in the 1251 Report, the Navy plans to sustain the Trident II D5 missile, as carried on Ohio-class Fleet SSBNs as well as the next generation SSBN, through a least 2042 with a robust life-extension program.

Intercontinental Ballistic Missiles (ICBMs)

As stated in the Nuclear Posture Review, while a decision on an ICBM follow-on is not needed for several years, preparatory analysis is needed and is in fact now underway. This work will consider a range of deployment options, with the objective of defining a cost-effective approach for an ICBM follow-on that supports continued reductions in U.S. nuclear weapons while promoting stable deterrence. Key milestones include:

The Capabilities-Based Assessment (CBA) for the ICBM follow-on system is underway.

By late 2011, the study plan for the AoA, including the scope of options to be considered, will be completed.

In 2012, the AoA will begin.

In FY 2014, the AoA will be completed, and DoD will recommend a specific way-ahead for an ICBM follow-on to the President.

The Air Force is funding the ongoing CBA effort at approximately $26 million per year. Given the inherent uncertainties about missile configuration and basing prior to the completion of the AoA, DoD is unable to provide costs for its potential development and procurement at this time. However, DoD expects to be able to include funding for RDT&E for an ICBM follow-on system in the FY 2013 budget request, based on initial results from the AoA.

The Air Force plans to sustain the Minuteman III through 2030. That sustainment includes substantial ongoing life extension programs, cost data for which was provided to Congress in the May 2010 Section 1251 Report.

Heavy Bombers

DoD plans to sustain a heavy bomber leg of the strategic Triad for the indefinite future, and is committed to the modernization of the heavy bomber force. Thus, the question being addressed in DoD's ongoing long-range strike study is not whether to pursue a follow-on heavy bomber, but the appropriate type of bomber and the timelines for development, production, and deployment. The long-range strike study, which is also considering related investments in electronic attack, intelligence, surveillance and reconnaissance, air- and sea-delivered cruise missiles, and prompt global strike, will be completed in time to inform the President's budget submission for FY 2012.

As stated in the May 2010 1251 Report, pending the results of the long-range strike study, estimated costs for a follow-on bomber for FY 2011 through FY 2015 are $1.7 billion and estimated costs beyond FY 2015 are to-be-determined. DoD intends to provide any necessary updates to cost estimates along with the President's budget submission for FY 2012.

The Air Force plans to retain the B–52 in the inventory through at least 2035 to continue to meet both nuclear and conventional mission requirements. The Air Force will make planned upgrades and life extensions to the fleet. The B–2 fleet is being upgraded through three top priority acquisition programs: the Radar Modernization Program (RMP), Extremely High Frequency (EHF) Satellite Communications and Computers, and Defensive Management System (DMS), as well as multiple smaller sustainment initiatives.

Air Launched Cruise Missile (ALCM)

DoD intends to replace the current ALCM with the advanced long range standoff (LRSO) cruise missile. The CBA for the LRSO is underway. An AoA will be conducted from approximately spring 2011 through fall 2013. The AoA will define the platform requirements, provide cost-sensitive comparisons, validate threats, and establish measures of effectiveness, and assess candidate systems for eventual procurement and production.

The Air Force has programmed approximately $800 million for RDT&E over the FYDP for the development of LRSO. Based on current analysis of the program, the Air Force expects low rate initial production of LRSO to being in approximately 2025, while the current ALCM will be sustained through 2030. Until the planned AoA is completed, DoD will not have a basis for accurately estimating subsequent costs.

Mr. CORKER. Mr. President, the reason I want that entered into the RECORD, over the next 10 years, what this calls for is $86 billion—$86 billion—worth of investment throughout the seven facilities throughout our country on nuclear armaments and over $100 billion on the delivery mechanisms to ensure that these warheads are deliverable.

So one might say: Well, that is great, but how are we going to be sure? How are we going to be sure the appropriators actually ask for the money?

Mr. President, I ask unanimous consent to have printed in the RECORD a letter signed on December 16 by Chairman INOUYE, Senators DIANNE FEINSTEIN, THAD COCHRAN, and LAMAR ALEXANDER.

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

U.S. SENATE,
Washington, DC, December 16, 2010.

THE WHITE HOUSE,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to express our support for ratification of the New START Treaty and full funding for the modernization of our nuclear weapons arsenal, as outlined by your updated report that was mandated by Section 1251 of the Defense Authorization Act for Fiscal Year 2010.

We also ask that, in your future budget requests to Congress, you include the funding identified in that report on nuclear weapons modernization. Should you choose to limit non-defense discretionary spending in any future budget requests to Congress, funding for nuclear modernization in the National Nuclear Security Agency's proposed budgets should be considered defense spending, as it is critical to national security and, therefore, not subject to such limitations. Further, we ask that an updated 1251 report be submitted with your budget request to Congress each year.

We look forward to working with you on the ratification of the New START Treaty and modernization of the National Nuclear Security Agency's nuclear weapons facilities. This represents a long-term commitment by each of us, as modernization of our nuclear arsenal will require a sustained effort.

Sincerely,

DANIEL K. INOUYE.
DIANNE FEINSTEIN.
THAD COCHRAN.
LAMAR ALEXANDER.

Mr. CORKER. Mr. President, that letter says to the President that they will ask for the moneys necessary to modernize our nuclear arsenal; that they agree to ask for that money as part of their appropriations bill.

So, then, you might say: Well, what about the President? Will the President actually, in his budget, ask Congress to ask for that money?

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the President of the United States, dated December 20, addressed to the appropriators who just wrote the letter I mentioned, saying that he, in fact, will ask for those funds in the budget he puts forth in the next few months.

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

THE WHITE HOUSE,
Washington, December 20, 2010.

Hon. LAMAR ALEXANDER,
U.S. Senate,
Washington, DC.

DEAR SENATOR ALEXANDER: Thank you for your letter regarding funding for the modernization of the nuclear weapons complex and for your expression of support for ratification of the New START Treaty.

As you know, in the Fiscal Year 2011 budget, I requested a nearly 10 percent increase in the budget for weapons activities at the National Nuclear Security Administration (NNSA). In May, in the report required by Section 1251 of the National Defense Authorization Act for Fiscal Year 2010, I laid out a 10 year, $80 billion spending plan for NNSA. The Administration submitted an update to that report last month, and we now project over $85 billion in spending over the next decade.

I recognize that nuclear modernization requires investment for the long-term, in addition to this one-year budget increase. That is my commitment to the Congress—that my Administration will pursue these programs and capabilities for as long as I am President.

In future years, we will provide annual updates to the 1251 report. If a decision is made to limit non-defense discretionary spending in any future budget requests, funding for nuclear modernization in the NNSA weapons activities account will be considered on the same basis as defense spending.

In closing, I thought it important for you to know that over the last two days, my Administration has worked closely with officials from the Russian Federation to address our concerns regarding North Korea. Because of important cooperation like this, I continue to hope that the Senate will approve the New START Treaty before the 111th Congress ends.

Sincerely,

BARACK OBAMA.

Mr. CORKER. Mr. President, there has been a lot of discussion about many things—and I will get to missile defense in just one moment—but I don't think there is anything, as it relates to nuclear issues, that threatens our national security more than our not investing in the arsenal we have. I think what we see is a commitment by appropriators on the Senate side, the President of the United States, those within the NNSA and our military complex who believe modernization has to occur.

Candidly, the only thing today that would keep us from actually doing modernization the way it needs to be done would be Republican appropriators. So I just wish to say to my friends on this side of the aisle, it seems to me, through Senator KYL's efforts and the efforts of people working in a cooperative way, we have been very successful in getting the commitments we need on modernization.

By the way, I would add, I do not think we would be talking about the issue of modernization today—something that hasn't been done for many years to this scale—if it were not for discussions of the START treaty. So I say to the Chair, I think we have enhanced our country's national security just by having this debate, and I would say we have sought and received commitments that otherwise we would not have received if it were not for the discussion of this treaty.

The two are very related. I have heard a lot of people say there is no real relationship between the two. There is a lot of relationship between the two, in that I think Americans want to know if we are going to limit ourselves to 1,550 warheads, that we know they operate, we know they can be delivered, and we know the thousands of warheads we have that are not deployed are warheads that will be kept up.

We have talked a lot about missile defense, and I just wish to say I have been through every word of this treaty, I have been through every word of the annexes, I have been through every word of the protocols and I have been in countless briefings and there is nothing in this treaty that limits our missile defense other than the fact that we cannot convert ICBM launchers that we use on the offense for missile defense—something our military leaders do not want to do. That is the most expensive way of creating a missile defense system. That is something they do not want to do.

So a lot of discussions have been brought up because in the preamble something was stated that was nonbinding. How do we clear that up? We clear that up by virtue of a letter the President has sent to us absolutely committing to the missile defense system that is now being deployed in Europe, absolutely committing to a national defense system. People might say: Well, but that is no commitment.

I have reasonable assurance that by the time this debate ends we will codify, as part of the resolution of ratification, the operative words in the President's language committing to all four phases of our adaptive missile system in Europe, committing to those things we need to do as relates to our national defense system and making that a part of the resolution of ratification.

I would say to you that I doubt very seriously we would have received the types of commitments, the strident commitments from the President as relates to missile defense today, if we were not debating this treaty.

Mr. President, I ask unanimous consent that Senator LAMAR ALEXANDER be added as a cosponsor to my amendment, amendment No. 4904, dealing with ensuring the President's language becomes a part of this resolution of ratification.

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

Mr. CORKER. Mr. President, let me conclude by saying it is obviously up to us, as Senators. We are the ones who have the right and the responsibility and the privilege to take up the types of matters we are taking up today. It is up to us to do the due diligence, to have the intelligence briefings, to look at our nuclear posture reviews, to look at what this treaty itself says, and to look at what our force structure is. That is our responsibility. It is up to each of us, the 100 of us in this body, to decide whether we ratify this treaty. But I think it is also at least interesting to get input from others.

One of the things our side of the aisle likes to do is we like to listen to military leaders and what they have to say about issues relating to the war—Afghanistan or Iraq—and certainly the issue of how we enter into nuclear treaties with other countries.

I will ask to have printed in the RECORD a letter to Senator KERRY from the Joint Chiefs of Staff talking about their firm commitment for the START treaty on the basis that it increases our national security.

I ask unanimous consent to have printed in the RECORD this letter dated December 20 from ADM Mike Mullen, Chairman of our Joint Chiefs.

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

CHAIRMAN OF THE
JOINT CHIEFS OF STAFF,
Washington, DC, December 20, 2010.

Hon. JOHN F. KERRY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

MR. CHAIRMAN, Thank you for your letter of 20 December asking me to reiterate the positions of the Joint Chiefs of Staff on ratification of the New START Treaty and several related questions.

This treaty has the full support of your uniformed military, and we all support ratification. Throughout its negotiation, Secretaries Clinton and Gates ensured that professional military perspectives were thoroughly considered. During the development of the treaty, I was personally involved, to include two face-to-face negotiating sessions and several conversations with my counterpart, the Chief of the Russian General Staff, Gen Makarov, regarding key aspects of the treaty.

The Joint Chiefs and I—as well as the Commander, U.S. Strategic Command—believe the treaty achieves important and necessary balance between four critical aims. It allows us to retain a strong and flexible American nuclear deterrent that will allow us to maintain stability at lower levels of deployed nuclear forces. It helps strengthen openness and transparency in our relationship with Russia. It will strengthen the U.S. leadership role in reducing the proliferation of nuclear weapons. And it demonstrates our national commitment to reducing the worldwide risk of a nuclear incident resulting from proliferation.

More than a year has passed since the last START inspector left Russian soil, and even if the treaty were ratified by the Senate in the next few days, months would pass before inspectors could return. Without the inspections that would resume 60 days after entry into force of the treaty, our understanding of Russia's nuclear posture will continue to erode. An extended delay in ratification may eventually force an inordinate and unwise shift of scarce resources from other high priority requirements to maintain adequate awareness of Russian nuclear forces. Indeed, new features of the treaty's inspection protocol will provide increased transparency for both parties and therefore contribute to greater trust and stability.

The Joint Chiefs and I are confident that the treaty does not in any way constrain our ability to pursue robust missile defenses. We are equally confident that the European Phased Adaptive Approach to missile defense

will adequately protect our European allies and deployed forces, offering the best near- and long-term approaches to ballistic missile defense in Europe. We support application of appropriately modified Phased Adaptive Approaches in other key regions, as outlined in the Ballistic Missile Defense Review Report.

I can also assure you that U.S. senior military leaders monitored very closely all provisions related to conventional prompt global strike (CPGS) throughout the negotiation process. During that process, the Russian Federation publicly declared on several occasions that there should be a ban on placement of conventional warheads on strategic delivery systems. In the end, we agreed that any reentry vehicle (nuclear or non-nuclear-armed) contained on an existing type of ICBM or SLBM would be counted under the central limits of the treaty. Importantly, the New START Treaty allows the United States not only to deploy CPGS systems but also to continue any and all research, development, testing, and evaluation of such concepts and systems. It is true that intercontinental ballistic missiles with a traditional trajectory would be accountable under the treaty, but the treaty's limits accommodate any plans the United States might pursue during the life of the treaty to deploy conventional warheads on ballistic missiles.

Further, the United States made clear during the New START negotiations that we would not consider non-nuclear, long-range systems, which do not otherwise meet the definitions of the New START Treaty (such as boost-glide systems that do not fly a ballistic trajectory), to be accountable under the treaty.

Finally, I am comfortable that the Administration remains committed to sustainment and modernization of the nuclear triad and has outlined its plans to do so in the so-called Section 1251 report to Congress, as well as a recent update to that report and a letter from Secretary of Defense Gates to Senator Lugar dated 10 December. Plans for sustainment and replacement of current ICBMs, ballistic missile submarines, heavy bombers, and air launched cruise missiles are in various stages of development, in a process that will be implemented over the next three decades and across multiple administrations.

The Administration's proposed ten-year, $85B commitment to the U.S. nuclear enterprise attests to the importance being placed on nuclear deterrence and the investments required to sustain it—especially given the country's present fiscal challenges. The increased funding commitment, if authorized and appropriated, allows the United States to improve the safety, security, and effectiveness of our nuclear weapons and develop the responsive nuclear weapons infrastructure necessary to support our deterrent. I also fully support a balanced Department of Energy program that sustains the science, technology, and engineering base.

In summary, I continue to believe that ratification of the New START Treaty is vital to U.S. national security. Through the trust it engenders, the cuts it requires, and the flexibility it preserves, this treaty enhances our ability to do that which we in the military have been charged to do: protect and defend the citizens of the United States. I am as confident in its success as I am in its safeguards. The sooner it is ratified, the better.

Sincerely,

M.G. MULLEN,
Admiral, U.S. Navy.

Mr. CORKER. Mr. President, I would like to point out, too, just for clarification, if you look at the makeup of our Joint Chiefs—Admiral Mullen, General Cartwright, General Schwartz, General Casey, Admiral Roughead—every single one of these gentlemen was appointed by a Republican President. In addition to them, we have General Amos. My sense is, based on some of the comments he has made over the course of time, he would have Republican leanings. But all of these people have firmly stated their support for this treaty.

In closing, I will also ask unanimous consent that the statement of Robert Gates, again appointed by a Republican President, head of our Defense Department, where yesterday he said:

The treaty will enhance the strategic stability at lower numbers of nuclear weapons, provide a rigorous inspection regime including on-sight access to Russian missile silos, strengthen our leadership role in stopping the proliferation of nuclear weapons, and provide the necessary flexibility to structure our strategic nuclear forces to best meet the national security interests.

This treaty stands on its merits and its prompt ratification will strengthen U.S. national security.

I ask unanimous consent that this be printed in the RECORD.

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

[From the U.S. Department of Defense, News Release, Dec. 21, 2010]

STATEMENT BY SECRETARY ROBERT GATES ON THE NEW START TREATY

I strongly support the Senate voting to give its advice and consent to ratification of the New START Treaty this week.

The treaty will enhance strategic stability at lower numbers of nuclear weapons, provide a rigorous inspection regime including on-site access to Russian missile silos, strengthen our leadership role in stopping the proliferation of nuclear weapons, and provide the necessary flexibility to structure our strategic nuclear forces to best meet national security interests.

This treaty stands on its merits, and its prompt ratification will strengthen U.S. national security.

Mr. CORKER. There has been a lot of discussion about the role of the Senate in this ratification. There are a lot of things that go into the ratification of a treaty. I have laid out a number of things we have discussed that are relevant to the ratification of this treaty.

As we move through a process such as this, I try to make sure all of the t's are crossed and i's are dotted that can possibly be crossed and dotted to ensure that I, as a U.S. Senator, feel comfortable that the type of agreement we are entering into is one that is in the best interests of our country. I have done that over the last year working on nuclear modernization. Again, my hat is off to Senator KYL and his great leadership in that regard. I have done that over the course of this last year as we have looked at missile defense. We spent incredible amounts of time in our committee making sure people on my side of the aisle had tremendous input into the resolution of ratification. We have worked through to make sure that if we are going to have fewer warheads deployed—again, we have thousands more that are not deployed—that we, in fact, can assure the American people that they will operate, that they are actually there for our national security.

The question for me and for all of us who care so deeply about our country's national security is, Will we say yes to yes? I firmly believe that signing this treaty, that ratifying this treaty, and that all the things we have done over the course of time as a result of this treaty are in our country's national interest, and I am here today to state my full support for this treaty. I look forward to its ratification, and I hope many others will join me in that process.

I yield the floor.

Mr. UDALL of Colorado. Mr. President, before I begin the focus of my remarks and the reason I came to the floor, I wish to commend the Senator from Tennessee for his thoughtful remarks and what I think is a thoughtful and important position he is taking on the START treaty. I listened with great interest, and I learned additional information about the importance of putting this treaty in effect. I also acknowledge the Senator's concerns about missile defense, about tactical nuclear weapons, and the other concerns that have been raised in this very important and obviously historic debate on the floor of the Senate. I thank the Senator from Tennessee for his leadership.

TRIBUTES TO RETIRING SENATORS

ARLEN SPECTER

I also wanted to associate myself with the remarks of Senator BENNET, the Senator from Colorado, in regard to Senator SPECTER's farewell address to the Senate. In particular, I think Senator SPECTER laid out a thoughtful and comprehensive way we can change the Senate rules in the upcoming 112th Congress in ways that respect the rights of the minority but also provide the Senate with some additional ways to do the people's business.

I know the Presiding Officer spent significant time on finding a way forward for the Senate. I look forward to the debate that will begin when we convene in just a couple of weeks for the 112th Congress.

NOMINATION OF WILLIAM MARTINEZ

Let me turn to the reason I came to the floor initially, and that is to urge my colleagues to support an outstanding nominee to the Federal bench, Mr. William Martinez. Bill's story is an inspirational one, and I will share that with you in a moment, but I wanted to first talk about why there is such an urgency to confirm this fine nominee.

The situation in our Colorado District Court is dire, and I don't use that word lightly. There are currently five judges on the court and two vacancies, both of which are rated as judicial emergencies by the Administrative Offices of the U.S. Courts. These five judges have been handling the work of seven judges for nearly 2 years. It has

been over 3 years since our court had a full roster of judges.

I know the Presiding Officer is familiar with the need for a fully stocked Federal bench as a former attorney general.

There is even more to the story. In 2008, based on the significant caseload in Colorado, the Judicial Conference of the United States recommended the creation of an eighth judgeship on the Colorado District Court.

This is a pressing situation, but I know it is not unique just to Colorado. Of the 100 current judicial vacancies, 46 are considered judicial emergencies—almost half of those vacancies. I understand the Senate has confirmed just 53 Federal circuit and district court nominees since President Obama was elected, including the judges over the last weekend. This is half as many as were confirmed in the first 2 years of the Bush administration and represents a historic low, which, no matter who is to blame, is very detrimental to our system of justice.

Bill Martinez was nominated in February of this year, had a hearing in March, and was referred favorably by the Judiciary Committee to the full Senate in April. So today his nomination has been sitting on the Senate's Executive Calendar for over 8 months.

I am not going to complain about partisan delays, although I know this continues to plague the Senate. Instead, in hope that we might improve the nomination process, I want my colleagues to hear the real effect of imposing these delays on nominees.

The people of Colorado deserve well-qualified justices, but what the Senate put Bill Martinez through should make each of us question where our priorities are—and I say that because, unlike other judicial nominees before the Senate, Bill Martinez' life has been turned upside down because of this delay in his confirmation. While many other nominees—and I don't begrudge them this—continued their judicial careers because they were sitting on the bench, he has essentially had to dismantle his law practice to avoid Federal conflicts and even limit taking clients to ensure they continue to receive representation once he is confirmed. Both his life and his livelihood have been put on hold just because he was willing to become a dedicated public servant. If we continue this record or this habit of needlessly delaying judicial nominations, we risk chasing off qualified nominees such as Bill Martinez.

His long and winding road began last year when Senator BENNET and I convened a bipartisan advisory committee, chaired by prominent legal experts in Colorado, to help us identify the most qualified candidates for the Federal bench. The committee interviewed many impressive individuals, and then, based on his life experience, his record of legal service, and his impressive abilities, both Republicans and Democrats on this panel together recommended Bill Martinez for a Federal judgeship. The President agreed and then subsequently nominated Bill for the vacant judgeship I mentioned.

There is no doubt that being nominated for a Federal judgeship is a prestigious honor, but since being nominated, Senate delays have not only affected Bill and his family, but those delays have sent a discouraging message to future nominees. Despite these disruptions the process has caused for Bill and the dangerous precedent his delay may have set, I am relieved that the Senate is finally giving this qualified candidate the confirmation vote he deserves today.

I have spoken about his impressive intellect and experience on the floor before, but in advance of my vote, I would like my colleagues to hear one more time why Bill Martinez was selected by the bipartisan advisory committee for this judgeship.

In addition to being an accomplished attorney and a true role model in our community in Colorado, he has a personal story that captures what is great about America and highlights what can be accomplished with focus, discipline, and extraordinary hard work.

Bill was born in Mexico City, and he immigrated lawfully to the United States as a child. He worked his way through school and college and toward a career in law, becoming the first member of his family to attend college. He received undergraduate degrees in environmental engineering and political science from the University of Illinois and earned his law degree from the University of Chicago.

As a lawyer, Bill has become an expert in employment and civil rights law. He first began his legal career in Illinois, where he practiced with the Legal Assistance Foundation of Chicago, litigating several law reform and class action cases on behalf of indigent and working-class clients. For the last 14 years, he has been in private practice and previously served as a regional attorney for the U.S. Equal Employment Opportunity Commission in Denver.

As you can imagine, over the years Bill has been a very active member of the Denver legal community. During the 1990s, he was an adjunct professor of law at the University of Denver College of Law and has been a mentor to minority law students. He is currently vice chair of the Committee on Conduct for the U.S. District Court for the District of Colorado, and he has been a board member and officer of the faculty of Federal Advocates.

Bill also sits on the board of directors of the Colorado Hispanic Bar Association, where he serves as the chair of the bar association's Ethics Committee. More recently, he was appointed by the Colorado Bar Association to the board of directors of Colorado Legal Services and by the chief justice of the Colorado Supreme Court to the Judicial Ethics Advisory Board.

Like all of us, I believe in a strong, well-balanced court system that serves the needs of our citizens. Bill Martinez will bring that sense of balance because of his broad legal background, professionalism, and his outstanding intellect. I am proud to have recommended Bill, and I am certain that once confirmed he will make an outstanding judge.

Before I conclude, I did want to give special acknowledgment to my general counsel, Alex Harman, who has worked night and day on this nomination. Alex has worked tirelessly to see that Bill Martinez receives the vote he deserves, and I want to acknowledge him here on the floor of the Senate.

I ask my colleagues to give their full support to this extraordinary candidate and vote to confirm his nomination to the Colorado District Court as a new Federal judge.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. BROWN of Ohio. Mr. President, I appreciate the words from the senior Senator from Colorado. His comments about the delays in the judicial process here, the selection of Federal judges, the nomination and confirmation, are identical to the situation for so many of the rest of us. Very qualified people are put forward. At times, the White House, perhaps, didn't move as fast as we would like. But the delays on these judges is pretty outrageous.

NOMINATION OF BENITA PEARSON

Judge Pearson, who sits as a U.S. magistrate in the Northern District Court in Ohio, didn't have the same disruption in her life as soon-to-be, I hope, Justice Martinez had, having a law practice to put aside and having to wrap it up and figure out all that, but she has waited since February when Senator LEAHY and his Judiciary Committee voted her out, had a wait of 9 months, almost 10 months, until we are about ready to confirm.

I speak perhaps in criticism of the other party but, more importantly, how do we fix this so people are not dissuaded, discouraged from wanting to fill these very important jobs?

When I interview potential judicial candidates, I always ask them: Are you willing to put your life on hold for at least a year before you can actually be confirmed and sworn in, if it gets to that?

All are surprised, some are shocked, and some walk away and say: Find somebody else. That is going to start happening. So I thank the Senator from Colorado and his comments.

I rise in support of another very strong candidate for a Federal judgeship, the nomination of Magistrate Judge Benita Pearson to become a judge in the U.S. District Court in the Northern District of Ohio.

Magistrate Pearson will make an excellent addition to the bench. That is not just my opinion. She has tremendous support from the judges with whom she serves today and whose ranks she will soon join. She knows them from her work, obviously, as a

magistrate. Judge James Carr, the chief U.S. district judge at the time of her nomination, lauded Judge Pearson as ''a splendid choice . . . eminently well-qualified by intelligence, experience . . . and judicial temperament.'' Judge Carr's successor, Solomon Oliver, who now is the chief U.S. district judge, is just as supportive of her nomination.

Support for that nomination extends throughout the State. The other day when I gave a few remarks in the wake of Senator VOINOVICH's farewell address, I neglected to mention how much I appreciated Senator VOINOVICH's cooperation in the process of selecting candidates for nomination to the Federal bench.

Senator VOINOVICH and I did something, and I do not know if any other Senator in this body does this, any other pair of Senators—I do know nobody in Ohio has done this—I asked Senator VOINOVICH, as the Senator from the President's party—and, generally, by tradition, the Senator who suggests nominees to the President—I asked Senator VOINOVICH to be part of the selection system with me. We chose 17 people. We chose 17 people from northern Ohio to interview Southern District of Ohio potential judges, and 17 people in southern Ohio—central and southern Ohio—to interview prospective judges for the Northern District.

These panels, one of them was a Republican majority, the other was a democratic majority, I believe, by one vote. These panels met, took this job very seriously. Each of the 17 people was given the name of a candidate, one of the people who was applying to interview, references and all that. Each candidate got an hour in front of the 17-member committee, this Commission we appointed, and were subjected, after filling out a very lengthy questionnaire designed, again, bipartisanly by my predecessor, Republican Senator DeWine, in large part, to, after filling out this questionnaire, testifying, spending an hour in front of this panel of 17 very distinguished judges, some who are lawyers, some, I believe, former judges, all people who were very interested in the Federal judiciary.

Anybody who came out of that had to have a strong supermajority recommendation from the 17. I then interviewed the top three, made the selection, cleared it with Senator VOINOVICH, and brought the name forward.

That produced Judge Timothy Black, who has been confirmed, sits in the Southern District. It also produced Judge Benita Pearson. A similar selection committee, not identical but a similar selection committee, enabled me, helped me come to the conclusion to reappoint a Bush appointee to the U.S. marshal's job in Cleveland, Pete Elliott, to appoint the first—to send to the President, nominate, and confirm the first female U.S. marshal in the Southern District of Ohio, Cathy Jones, and then the first African-American U.S. attorney in Columbus, and a very qualified U.S. attorney in Cleveland.

So that is the process we have in Ohio to make sure we get the best qualified people. As I said, they put in a tremendous amount of time and energy, and I wish to thank those 17 members of each of those Commissions, the 34 people who served again from both parties, prominent jurists and lawyers and community activists, to come up with Judge Pearson and others.

Judge Pearson currently resides in Akron but was born in Cleveland. I got a chance to meet her mother and many of her family and friends almost 1 year ago when she testified before the Judiciary Committee. They were understandably proud of her, her achievements, and the honor of her nomination, certainly, but I got the sense they were most proud of her as a daughter, as a sister, as a family member. Nobody knows us better than our family.

Judge Pearson earned her J.D. from Cleveland State University, her bachelor's degree from Georgetown. Before law school, she spent several years as a certified public accountant. I asked her how being a CPA would help her in the judiciary as a judge. She said you can tell stories with numbers. She smiled when she said it. She, clearly, had kind of thought through what this means to be a Federal judge and what qualifications she brings. Throughout her career, Judge Pearson has litigated and presided over a range of criminal and civil matters, including housing, public corruption cases. In addition to her work as a magistrate judge since 2008, her legal experience includes serving as an adjunct professor at Cleveland State's law school, 8 years as an assistant U.S. attorney in Cleveland, the Northern District, and several years in private practice.

If confirmed, Judge Pearson will become the first African-American woman to serve as a Federal judge in Ohio. She will also be the only U.S. district judge in the Youngstown courthouse, which, because of delays here, for no apparent reason, has lacked a judge since this past summer.

Last year, at the Akron Bar Association's annual Bench-Bar luncheon, she urged attorneys to improve in two ways: to be better prepared to litigate their cases and to be more civil to one another. Good advice to this body and for all of us, I suppose, in our daily lives.

Judge Pearson's community service includes more than a decade of ongoing work as a board member of Eliza Bryant Village. Eliza Bryant Village is a multifacility campus, providing services for impoverished elderly citizens. It was founded and named after the daughter of a freed slave.

The facility began simply as a nursing facility built to serve Eliza's mother and other African Americans who had been turned away from nursing homes simply because of their race.

Judge Pearson's background as a prosecutor, as a private attorney, as a CPA, and as a Federal magistrate make her uniquely qualified to serve as U.S. district judge. Members of the law enforcement and legal community throughout northern Ohio have attested to Judge Pearson's ability and impartiality. As a magistrate and prosecutor, she, of course, as I said, is supported by our State's senior Senator, Republican GEORGE VOINOVICH. First assistant U.S. attorney, David Sierlega, for example, called Judge Pearson ''an extremely hardworking bright lawyer'' with an exemplary track record in handling public corruption cases.

When asked to describe the ''most significant legal activities'' she has been engaged in, Judge Pearson replied: ''My most significant legal activity has been my steadfast commitment to administering equal justice for all . . . the poor and the rich, the likable and unlikable . . . the first-time offender and the repeat offender.''

At the end of the day, it is this demonstrated commitment to equal justice, delivered after thorough consideration and fidelity to the law, that distinguishes Judge Pearson as an invaluable asset to Ohio's judicial system.

I urge my colleagues, this afternoon, to quickly confirm her in her new position as U.S. district judge for the Northern District of Ohio.

I would close with thanking two people on my staff who have gone above and beyond the call of duty: Mark Powden, my chief of staff, who has, almost weekly, spoken with Judge Pearson, talking about the delays and what is going to get this back on track and how are we going to get her confirmed. I appreciate the work Mark Powden has done. And Patrick Jackson in her office, who, while all this was going on, was getting married. He got married earlier this month, and he was doing that at the same time as we were doing all this. I am grateful to both of them. I thank my colleagues.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

LITTORAL COMBAT SHIP

Mr. SHELBY. Mr. President, I rise today in support of the Navy's acquisition strategy to purchase 20 littoral combat ships, LCS.

The Navy's plan would allow 20 littoral combat ships to be awarded to two shipyards: Austal, which will build 10 ships in Mobile, AL, and Lockheed Martin, which will build 10 ships in Wisconsin.

Under the new procurement strategy, our sailors will receive the ships they need to operate in shallow waters and

combat the threats of surface craft, submarines, and mines. These ships will be used for a variety of security issues from sweeping for mines in coastal waters to fighting pirates and chasing drug smugglers. They are a needed asset for our Navy.

The Navy's dual acquisition plan, included in the continuing resolution, brings significant advantages to the LCS program.

Our Navy will receive this capability faster, bring assets into operational service earlier, and will assist the Navy in reaching a 313-ship Navy sooner.

The LCS strategy will stabilize the program and the industrial base with an initial award of 20 ships. This will sustain competition throughout the life of the program.

It is critical to ensure that the capabilities of our naval fleet are the very best and that our Armed Forces receive the equipment they need in executing future operations.

However, as the foundation of our ability to project force globally for the next half century, we must obtain the best platform for the taxpayer investment.

The LCS dual award does both.

The dual procurement of the LCS will bring tremendous cost savings to the program that would not have been realized had the Navy moved forward with a down select of designs.

According to the Navy, the acquisition savings for a dual award is projected to be $2.9 billion as measured against the President's fiscal year 2011 request. Of these savings, approximately $1 billion is directly attributable to the dual award.

Acquisition decisions made in the near term will affect fleet effectiveness and operating costs for decades to come.

This is the best outcome for all involved. The Navy will be able to obtain the best solution for the taxpayer investment.

I urge my colleagues to support the dual acquisition strategy included within the continuing resolution.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The Senator from Alabama.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, through the Chair to my friend from Alabama, would it be agreeable to the Senator that I do a UC request so we can find out what we are going to do?

Mr. SESSIONS. Mr. President, I would be pleased to yield to the majority leader for that. And if I could ask consent to be recognized afterward. I would note I did have time set aside for these remarks.

Mr. REID. Yes. I understand.

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

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that at 2 p.m. today, all postcloture time be considered expired and that the second-degree amendment be withdrawn; that no further amendments or motions be in order; that the Senate then proceed to vote on the Reid motion to concur in the House amendment to the Senate amendment to H.R. 3082 with amendment No. 4885; that upon disposition of the House message, the Senate proceed to executive session to consider Executive Calendar Nos. 703 and 813; that all time under the order governing consideration of the nominations be yielded back, except for 8 minutes to be divided 4 minutes on each nomination, equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that upon the use or yielding back of all time with respect to the two nominations, the Senate then proceed to vote on confirmation of the nominations in the order listed; that upon disposition of the nominations, the other provisions of the order remain in effect, except that the Senate remain in executive session and there then be 4 minutes of debate, equally divided and controlled between the leaders or their designees, prior to the vote on the motion to invoke cloture on the New START treaty; that upon the use of the time, the Senate then proceed to vote on the motion to invoke cloture on the treaty; that after the first vote in this sequence, the second and third votes be limited to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that Members have until 1:30 p.m. today to file any germane second-degree amendments to the New START treaty.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I further ask unanimous consent that following Senator SESSIONS, Senator HARKIN then be recognized, to be followed by Senator VOINOVICH for up to 20 minutes.

I say to my friend from Iowa, how much time—15 minutes.

Does that give us enough time to do all that? It appears it does. So Senator HARKIN would be recognized for 15 minutes and then Senator VOINOVICH for 20 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I was pleased to yield to the majority leader and just observe that although we do fuss a lot around here, many things are done by agreement. Senator REID has obviously talked with the Republican leaders and reached this agreement on how we can proceed on some of these matters, and I was pleased to yield to him.

Mr. REID. Mr. President, I would say to my friend from Alabama, my friend from Alabama and I do not always agree on the substantive issues, but there is no one more of a gentleman and easier to work with than the Senator from Alabama, Mr. SESSIONS.

The PRESIDING OFFICER. The Senator from Alabama.

NOMINATION OF WILLIAM MARTINEZ

Mr. SESSIONS. Mr. President, I rise to speak on the President's nomination of Mr. William Martinez to the United States District Court for Colorado. I will oppose the nomination, and I have several reasons for doing so. He has a lot of good friends and people who respect him and like him, but we are trying to make a decision about a lifetime appointment to the federal district court. There are some concerns with this nomination that are serious and, in particular, trends of the President to nominate individuals with judicial philosophies outside the mainstream.

There is one reason in particular that concerns me about Mr. Martinez. It is his longtime affiliation with the American Civil Liberties Union and the questions we asked him about that were answered insufficiently for me. We have had a number of ACLU nominations. I have supported some and opposed others. The ACLU is a very leftwing organization. It seeks openly to defy the will of the American people in many lawsuits while at the same time they endeavor to undermine and oppose traditions and institutions that make up the very fabric of our culture, our national identity, and who we are as a people, assuming those things are insignificant and only pure philosophical approaches, as they have, of an extreme nature should guide our Nation.

Mr. Martinez has been a member of the ACLU in Colorado for nearly a decade, and since 2006 served on its legal panel. In this role he reviews memorandum prepared by ACLU staff and attorneys and decides whether to pursue litigation, a very significant post in that organization. Of course that is not disqualifying. One can be a member of an organization, even though some of us might not like it or agree with the organization. But any nominee from a conservative organization who takes extreme positions would certainly have to answer those positions and justify why they might take them. Likewise it is fair and appropriate to ask questions about this nominee and about this organization and whether the nominee agrees with them or why, if they don't agree, they are a member.

A lot of people say they didn't agree with this position or that position. I was left asking: Why are you a member? It is on their Web site.

When asked about some of the positions on important issues, he failed to

clearly respond and repeatedly refused to answer questions in a direct and clear manner. For example, at his hearing I asked whether he agreed with the ACLU's position that the death penalty was unconstitutional in all circumstances. He refused to answer. Instead he noted that the Supreme Court has held the death penalty constitutional, adding:

What my view would be as a sitting Federal district judge is something that would be quite different from my views as a personal citizen or an advocate or a litigant and member of the ACLU.

I asked him whether he personally thinks the death penalty violates the Constitution and whether he had ever expressed that view. He again failed to answer, stating only that he had never expressed any view.

So I put the question to him again, and again he did not answer.

Let me stop and say why I think this is a very important issue. The Constitution was passed as a unified document with 10 amendments. The American people ratified it. Some people, in recent years, have come up with the ingenious idea that they could disqualify and eliminate the death penalty without a vote of the people, without the popular will to change laws that exist all over the country. They decided they could change it by finding something in the Constitution that would say the death penalty is wrong, and they reached out to the provision that says you should not have cruel and unusual punishment. They said the death penalty is cruel and unusual and is unconstitutional, which is not sound. Let me be respectful.

Why is that not a sound policy? There are multiple references in the Constitution to a death penalty. It talks about capital crimes, taking life without due process. it is in the Constitution. How could one say, when there are multiple provisions explicitly providing for the death penalty, how could we reach over here and take a position on cruel and unusual punishment which was designed to prevent people from being hung on racks and tortured and that kind of thing? But that is the ACLU position.

This nominee, who is going to be given a lifetime appointment, the power to interpret the Constitution on this very real issue of national import that good lawyers know about, refused to state that the Constitution is clear, that the death penalty is legal.

In fact, I note parenthetically that every Colony, every State had a death penalty at the time, and so did the United States Government. Surely the people, when they ratified it, had no idea that somebody coming along in 2000 would create the view that the Constitution prohibits the death penalty.

I also asked Mr. Martinez whether he agreed with the President's so-called empathy standard, but rather than state flatly that empathy should play no role in decisionmaking, as did Justice Sotomayor when she came up—she flatly said no, a judge has to be impartial; one should decide it on the facts and the law, not on feelings—he said that empathy ''can provide a judge with additional insight and perspective as to the intent and motivations of the parties appearing before the court.'' Empathy, to me, is far too much like politics, far too much like something other than law. It is certainly not law.

When a nominee such as Mr. Martinez, who has dedicated so much time and legal expertise to the ACLU, refuses to answer basic questions about these issues, it is fair and appropriate to conclude that perhaps he agrees with the other positions of the ACLU. I have done a little checking on that.

What is this organization of which he is a member? Some people like the position they take on this issue or that issue. But what overall are some of the policy and legal positions taken by the ACLU? Over the last several decades it has taken positions far to the left of mainstream America and the ideals and values the majority of Americans hold dear. Roger Baldwin, the ACLU's founder, was openly vocal about his support and belief in ''socialism, disarmament, and ultimately for abolishing the State itself as an instrument of violence and compulsion.''

He was quoted as saying:

I seek social ownership of property, the abolition of the profited class and sole control by those who produce wealth. Communism is the goal.

Mr. Baldwin's influence and impact on the ACLU could not be overstated. As former ACLU counsel Arthur Hays says:

The American Civil Liberties Union is Roger Baldwin.

As I mentioned earlier, the ACLU opposes the death penalty under any circumstances, even for child rapists. They filed a brief recently in Kennedy v. Louisiana arguing that a State could not apply the death penalty to a child rapist regardless of the severity of the crime or the criminal history unless the child died from his or her injuries. Here the defendant had raped his own 8–year-old stepdaughter and caused horrific injuries that a medical expert said were the most severe he had ever seen. The defendant had done the same thing to another young girl within the family a few years earlier. Even President Obama, when the case came before the Supreme Court, said he opposed that view. Yet President Obama continues to nominate a host of ACLU lawyers to the Federal bench and presumably has some sort of sympathy with the views they have been taking.

In recent years, the ACLU has litigated on behalf of sex offenders, including suing an Indiana city on behalf of a repeat sex offender who was barred from the city's park after he admitted stalking children who played there. Even though the convicted offender had admitted that he thought about sexually abusing the children in the park, the ACLU sued to give him full access to the park and the children. I agree with the mayor of the city who said:

Parents need to be able to send their children to a park and know they are going to be safe, not being window shopped by a predator.

I would hope all nominees would share this view rather than the ACLU's position on the subject. Although many view the ACLU as a neutral defender of the Bill of Rights, the ACLU takes a very selective view of the rights it advocates.

That is just a fact. Otherwise, if they were defending the Constitution and what it says plainly, they would defend the constitutionality of the death penalty. It should not take them 2 seconds to figure that out. They have an agenda.

As it explains on its Web site, the ACLU openly disagreed with the Supreme Court's landmark ruling in the Heller case—the right to keep and bear arms—in Washington because the ACLU does not believe the second amendment confers an individual right to keep and bear arms. Well, OK. So the lawyers might disagree on that. But if this institution, this ACLU, is so committed to constitutional rights and opposes the power of the State, why would they not read the plain words of the second amendment: The right to keep and bear arms shall not be infringed. Why wouldn't they defend that individual right of free Americans to be armed and oppose the power of the State to take away what has historically been an American right? I think it represents and reveals a political agenda as part of this organization.

It also has a selective view of what exactly is protected by the first amendment. It has done some good work on the first amendment, the ACLU has, but it has gone to great lengths to limit freedom of religion, as provided for in the first amendment, suing religious organizations and groups such as the Salvation Army and even individuals and supported the removal of ''under God'' from the Pledge of Allegiance and ''in God we trust'' from our currency. It sued the Virginia Military Institute to stop the longstanding tradition of mealtime prayer for cadets. You do not have to bow your head if you go to lunch and somebody wants to have a prayer. Nobody makes you pray. But if other people want to take a moment before they partake of their meal and, say, acknowledge a bit of appreciation for the blessings they have received, what is wrong with that? I do not believe it violates the first amendment.

The Constitution says that you cannot establish a religion in America, and we cannot prohibit the free exercise of religion either. The establishment clause and the free exercise clause are both in that amendment. But the ACLU only sees one. They see everything as an establishment of religion.

The ACLU has also argued for the removal of religious symbols and scriptures from national parks and monuments and cemeteries that have stood for years regardless of how innocuous they may be.

I am very surprised we do not have the ACLU filing a lawsuit to deal with those words right over that door: ''In God We Trust.'' It won't be long. They will want to send in gendarmes with chisels to chisel it off the wall. It is an extreme view of the first amendment, and has never been part of what we understood the Constitution to be about. The reference in a public forum to a ''higher being'' is not prohibited by the Constitution—except in the minds of some extremists.

So the ACLU has argued for the removal of all vestiges of Christmas, going so far as to sue school districts to bar them from having Santa Claus at school events and threatening to sue if Christmas carols are sung anywhere on school grounds. Give me a break.

In addition, the ACLU has sought to limit or remove the rights of children to salute the U.S. flag, recite the Pledge of Allegiance, and openly pray.

It has sued the Boy Scouts—I am honored to have been an Eagle Scout at one time in my life—and government entities that have supported this honorable institution. It has sued them.

It has fought for the rights of child pornographers and against statutes seeking to stop its production and distribution or limit children's exposure to it. The ACLU absolutely not only opposes adult pornography laws, they oppose laws that prohibit child pornography, which is where so much of the problem of pedophilia occurs.

The ACLU has sought to overturn the will of the people by challenging numerous State laws that define marriage as between a man and a woman and has encouraged city mayors across the country to openly defy State law by granting same-sex marriage licenses, even in contradiction to law.

It has vehemently opposed the 1996 Defense of Marriage Act, calling it ''a deplorable act of hostility unworthy of the United States Congress.'' That passed a year before I came here—not too long ago. It just said that if one State allows a marriage to be between members of the same sex, another State would not be forced to acknowledge it and recognize it. That is what the Defense of Marriage Act did, and it passed here not too many years ago.

The ACLU has consistently opposed all restrictions on abortion—all restrictions—including partial-birth abortion, the Unborn Victims of Violence Act, and statutes requiring parental notification before a minor child can have an abortion. If they want to defend the innocent against wrongdoing, what about defending a child partially born whose life is taken from them? The ACLU's extreme advocacy on abortion would force even religious health care providers—doctors and nurses—to perform abortions as a condition of Medicare or Medicaid reimbursement eligibility. A doctor could not say: I will treat you, but I don't do abortions. Oh, if you take Medicare or Medicaid money, then under the ACLU's position, you would have to do so.

According to the ACLU:

> There is no basis for a hospital to impose its own religious criteria on a patient to deny [her] emergency care.

So this type of religious liberty is not, I think, what the Founders said. I do not think a hospital that is founded on personal values and has certain moral values should be required to give them up as a capitulation to State domination, which is what they were asking for actually, having the State be able to tell a hospital that did not believe in abortion.

What about other issues that may come up, such as end-of-life issues. Hospitals ought to be able to have—and doctors and nurses should be able to have moral views about those matters and not do something they think is wrong and not have to give up their practice or their hospital in order to comply with what this group thinks is the right way to do business.

So those are some of the examples of the ACLU's out-of-the-mainstream point of view. It is no secret that this administration shares this kind of legal reasoning. This is, of course, one of a long line of ACLU nominees whom we have seen, and this kind of reasoning and legal thought is well to the left of and out of touch with the American people and, I think, for the most part, established law. It seeks to impose its liberal progressive agenda any way it can, including by filing lawsuits and having judges—unelected lifetime appointed judges who have been popped through the Senate—ratify what the people who filed the lawsuits want to achieve as a matter of policy, not being neutral umpires who adjudicate disputes and decide them narrowly but to try to use the courts as a vehicle to advance an agenda. That is what has really been at the core of the debate in recent years over judicial nominations.

So it is not surprising that many of the President's judicial and executive branch nominees have been deeply involved in the ACLU—many of them. For example, President Obama's first nominee, Judge David Hamilton, who was confirmed to the Seventh Circuit last year, was a leading member of the Indiana Civil Liberties Union for 9 years, where he served as a board member and its vice president for litigation. Judge Gerard Lynch, who now sits on the Second Circuit, was a cooperating attorney and member of the ACLU for 25 years. Judge Rogeriee Thompson, who was confirmed to the First Circuit earlier this year, had been a member of the ACLU for 10 years. Judge Dolly Gee, who now sits on the District Court for the Central District of California, had been a member of the ACLU for 9 years. Carlton Reeves, who was confirmed two days ago to the Southern District of Mississippi, was a member for 12 years and served as a board member.

Three of President Obama's most controversial judicial nominees have had extensive involvement with the ACLU. Edward Chen, nominated to the Northern District of California, was a staff attorney on staff and member of the ACLU of Northern California for 16 years. Goodwin Liu, a professor, one of the most extreme nominees now pending, was nominated to the Ninth Circuit, already the most activist circuit in America. He was a member of the board of directors of the ACLU of northern California for years. Jack McConnell, nominated to the district of Rhode Island, was a volunteer lawyer for the ACLU as recently as last year.

A number of nominees who were recently considered by the Judiciary Committee also have significant ties to the ACLU. Amy Totenberg, nominated to the Northern District of Georgia, has been a member for 21 years. Robert Wilkins, nominated to the District of DC, was also a member. Michael Simon, nominated to the District of Oregon, has been a member since 1986. He served on the lawyers committee and the board of directors and as its vice president for legislation and vice president for litigation.

That is more than I thought when we started going back and looking at this. I am sure less than 1 percent of the lawyers in America are members of the ACLU, but it seems if you have the ACLU DNA, you get a pretty good leg up on being nominated by this President. It is clear the President, our President, a community activist, a liberal progressive, as his own friends have described him, and former law professor is attempting to pack the courts with people who share his views and who will promote his vision of, as he has said about judges, what America ''should be.'' That was his phrase. He said, We want judges who help advance a vision of what America should be.

But that is not good. We all have visions of what America should be. I wish to see us be a more frugal nation, more local government, more individual responsibility. I do not support cradle-to-grave government. His vision is what? That we want judges on the bench promoting an agenda because they were picked by a President who shares that agenda? That is not the classical American heritage of what judges should be about. Judges should take the bench and they should attempt, as objectively as they possibly can, having put on that robe and having taken an oath to do equal justice to the poor and the rich, and to be not a respecter of persons, but to analyze that case objectively and decide it based on the law and the facts, not on their empathy and not on what their vision of what America should be because it may not be what the people's vision is.

Democracy is undermined if a judge gets on the bench and feels that they

can promote visions. I have to tell my colleagues, they are not appointed to be vision promoters. They are appointed to decide the strict matters of law and fact, to the best of the ability the Lord gives them.

We can't stand idly by and allow that heritage of law that benefits us so greatly, the American rule of law and the greatest strength this Nation has, in my opinion, to be altered by promoting a Federal judiciary that is agenda oriented. Any individual—regardless of the position to which they have been nominated, to what kind of court position they are nominated to—who demonstrates unwillingness to subordinate his or her personal views, religious, political, ideological, social, liberal, or conservative. Conservatives can't promote their views, either—if they can't be faithful to the law and the Constitution, they should not be on the bench.

I am not going to support such nominees and no Senator should support them. I have given it a lot of thought. I know Mr. Martinez has had a long affiliation with the ACLU. He refused to give clear answers to these questions I posed to him. I am not convinced that those views, which I think are outside legitimate constitutional theory, have been objected to and are not by Mr. Martinez—indeed, it appears he supports them because he has not with clarity rejected a single one. He has not made any defense to participating in an organization that openly advocates these kinds of legal views.

We ask a lot of the nominees: Do you believe the Constitution prohibits the death penalty? They said, No. Even though they were part of an organization and some of them—a lot—have been confirmed and I have voted for a number of them, but I am not able to vote for this one.

I have to say this: We are paid to judge and to vote, and when it comes down to some of the positions taken by the ACLU—let's take the one that the Constitution prohibits the death penalty—are so extreme and are so nonlegal that if a person can't understand that, I have serious doubt that they can understand any other significant constitutional principle.

Therefore, I have concluded I would not be able to support the nominee, although I respect my colleagues who think he will do well. I certainly don't think he is a bad person. I think he is an able person who has a wonderful background, but his legal history evidences an approach to law that I think is outside the mainstream and I will oppose the nomination. We are not blocking a vote. We will allow him to have his up-or-down vote and Senators will cast their vote based on how they conclude it should be decided.

I thank the Chair and I yield the floor.

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

NEW START TREATY

Mr. VOINOVICH. Mr. President, I rise today to discuss the Senate's deliberation of the New START treaty and the treaty's implications for our friends and allies in Eastern and Central Europe and, more importantly, the national security of the United States.

On November 17, I came to the Senate floor to discuss my concerns about the treaty and the President's reset policy. Following my remarks, I received a significant amount of feedback—some positive, some critical—and throughout my deliberations on the treaty, my intention was to contribute to advancing this important debate in a meaningful way.

First, I wish to make it clear I remain concerned about the direction of Russia in terms of its commitment to human rights and an effort to reassert its influence over what Russia considers Eastern and Central Europe, their sphere of influence—those countries I often describe as the captive nations. One cannot ignore the statement of Vladimir Putin when he described the collapse of the Soviet Union as the greatest geopolitical catastrophe of the 20th century.

Two years ago, after listening to Russia's Foreign Minister Sergey Lavrov at the German Marshall Fund Forum in Brussels, I concluded that Russia's internal political dynamic suggested that its people were deeply concerned by the growth in U.S. influence through NATO expansion and incursion into their part of the world. The Russian people, it seems, believed there was a post-Cold War promise, once the Iron Curtain came down, to not interfere in the region.

As one of the leaders in helping the captive nations movement and to this day regretting the way our brothers and sisters in these countries were treated during the postwar conferences at Yalta and Tehran—I must say I never thought the wall would come down or their curtain torn, but once it did, I did everything I could to ensure these newly democratized countries were invited to join NATO. In 1998, as chairman of the National Governors Association, I worked to get a resolution passed encouraging the United States to invite Poland, the Czech Republic, and Hungary to join the alliance.

One of the proudest moments as a Senator was when I joined President Bush, Secretary of State Powell, Secretary of Defense Rumsfeld, and Chairman of the Joint Chiefs of Staff General Myers at the NATO summit in Prague on November 21, 2002. I was in the room when NATO Secretary General Lord Robinson officially announced the decision to invite Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia into NATO. I mention all of this history for a simple reason. I don't think there is a Member of the Senate more wary of the intentions of Russia toward the former captive nations than I.

So it brings me back to the subject of the treaty now pending before the Senate. I take the Senate's constitutional advice and consent duties very seriously. Since the treaty was signed in April, I have attended numerous meetings and classified briefings on the treaty. I suspect I have spent at least 10 to 12 hours on it. Since I last spoke on this floor about the treaty in November, I have held additional consultations with a number of former Cabinet Secretaries, ambassadors, and experts from the intelligence community, including former Secretaries of State Albright, Powell, and Rice, seeking their views about the treaty's effect on our bilateral relationship with Russia, as well as our relationship with our Eastern and Central European allies. While some of those I met with had concerns about specific technical aspects of the treaty, I continually heard that we should ratify the treaty.

I believe it is noteworthy that five former Republican Secretaries of State, including Kissinger, Shultz, Baker, Eagleburger, and Powell, in a December 2, 2010 Washington Post opinion piece urged the Senate:

> . . . to ratify the New START Treaty signed by President Obama and Russian President Dmitry Medvedev. It is a modest and appropriate continuation of the START I treaty that expired almost a year ago.

These former Republican Secretaries of State described some of the outstanding issues with the treaty, but describe convincingly, in my opinion, why ultimately it is in our national interest to ratify the treaty.

Mr. President, I ask unanimous consent that the op-ed piece from the Washington Post be printed in the RECORD.

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

[From the Washington Post, Dec. 2, 2010]

THE REPUBLICAN CASE FOR RATIFYING NEW START

(By Henry A. Kissinger, George P. Shultz, James A. Baker III, Lawrence S. Eagleburger and Colin L. Powell)

Republican presidents have long led the crucial fight to protect the United States against nuclear dangers. That is why Presidents Richard Nixon, Ronald Reagan and George H.W. Bush negotiated the SALT I, START I and START II agreements. It is why President George W. Bush negotiated the Moscow Treaty. All four recognized that reducing the number of nuclear arms in an open, verifiable manner would reduce the risk of nuclear catastrophe and increase the stability of America's relationship with the Soviet Union and, later, the Russian Federation. The world is safer today because of the decades-long effort to reduce its supply of nuclear weapons.

As a result, we urge the Senate to ratify the New START treaty signed by President Obama and Russian President Dmitry Medvedev. It is a modest and appropriate continuation of the START I treaty that expired almost a year ago. It reduces the number of nuclear weapons that each side deploys while enabling the United States to maintain a strong nuclear deterrent and preserving the flexibility to deploy those forces as we see fit. Along with our obligation to protect the homeland, the United States has responsibilities to allies around the world. The commander of our nuclear forces has

testified that the 1,550 warheads allowed under this treaty are sufficient for all our missions—and seven former nuclear commanders agree. The defense secretary, the chairman of the Joint Chiefs of Staff and the head of the Missile Defense Agency—all originally appointed by a Republican president—argue that New START is essential for our national defense.

We do not make a recommendation about the exact timing of a Senate ratification vote. That is a matter for the administration and Senate leaders. The most important thing is to have bipartisan support for the treaty, as previous nuclear arms treaties did.

Although each of us had initial questions about New START, administration officials have provided reasonable answers. We believe there are compelling reasons Republicans should support ratification.

First, the agreement emphasizes verification, providing a valuable window into Russia's nuclear arsenal. Since the original START expired last December, Russia has not been required to provide notifications about changes in its strategic nuclear arsenal, and the United States has been unable to conduct on-site inspections. Each day, America's understanding of Russia's arsenal has been degraded, and resources have been diverted from national security tasks to try to fill the gaps. Our military planners increasingly lack the best possible insight into Russia's activity with its strategic nuclear arsenal, making it more difficult to carry out their nuclear deterrent mission.

Second, New START preserves our ability to deploy effective missile defenses. The testimonies of our military commanders and civilian leaders make clear that the treaty does not limit U.S. missile defense plans. Although the treaty prohibits the conversion of existing launchers for intercontinental and submarine-based ballistic missiles, our military leaders say they do not want to do that because it is more expensive and less effective than building new ones for defense purposes.

Finally, the Obama administration has agreed to provide for modernization of the infrastructure essential to maintaining our nuclear arsenal. Funding these efforts has become part of the negotiations in the ratification process. The administration has put forth a 10-year plan to spend $84 billion on the Energy Department's nuclear weapons complex. Much of the credit for getting the administration to add $14 billion to the originally proposed $70 billion for modernization goes to Sen. Jon Kyl, the Arizona Republican who has been vigilant in this effort. Implementing this modernization program in a timely fashion would be important in ensuring that our nuclear arsenal is maintained appropriately over the next decade and beyond.

Although the United States needs a strong and reliable nuclear force, the chief nuclear danger today comes not from Russia but from rogue states such as Iran and North Korea and the potential for nuclear material to fall into the hands of terrorists. Given those pressing dangers, some question why an arms control treaty with Russia matters. It matters because it is in both parties' interest that there be transparency and stability in their strategic nuclear relationship. It also matters because Russia's cooperation will be needed if we are to make progress in rolling back the Iranian and North Korean programs. Russian help will be needed to continue our work to secure ''loose nukes'' in Russia and elsewhere. And Russian assistance is needed to improve the situation in Afghanistan, a breeding ground for international terrorism.

Obviously, the United States does not sign arms control agreements just to make friends. Any treaty must be considered on its merits. But we have here an agreement that is clearly in our national interest, and we should consider the ramifications of not ratifying it.

Whenever New START is brought up for debate, we encourage all senators to focus on national security. There are plenty of opportunities to battle on domestic political issues linked to the future of the American economy. With our country facing the dual threats of unemployment and a growing federal debt bomb, we anticipate significant conflict between Democrats and Republicans. It is, however, in the national interest to ratify New START.

Mr. VOINOVICH. Mr. President, I believe many of these experts remain concerned, as do I, that a failure to ratify the treaty would be exploited by those factions in Russia who wish to revert back to our Cold War posture. Such a failure could easily be used by those factions to play on Russian nationalism, which I fear, from what I have heard from some people, is bordering on paranoia. Since I last spoke about the treaty, a number of our new NATO allies have come out and supported the treaty because they believe the treaty's approval should help advance other issues related to Russia, including the lack of compliance with the Conventional Forces in Europe Treaty, tactical nuclear weapons, and cooperation on missile defense.

For example, during his recent visit to Washington, Polish President Bronislaw Komorowski has stated he supports the treaty's ratification. And at a press conference at the conclusion of the NATO Lisbon Summit, Hungarian Foreign Minister Janos Martonyi stated:

My country has a very special experience with Russia, and also a special geographic location . . . We advocate ratification of START. It is in the interest of my nation, of Europe and most importantly for the transatlantic alliance.

During this press conference, Lithuania's Foreign Minister pointed out that he saw the treaty as a prologue to additional discussions with Russia about other forms of nuclear arms in the region such as tactical nuclear weapons. About three weeks ago, I received a call from President Zatlers, the President of Latvia, urging me: Mr. Senator, please ratify the START treaty.

Still, as history has taught us, the United States must make clear in regard to our relationship with Russia that it will not be at the expense of our NATO allies. Thus, I was pleased to see President Obama provided the leaders of our Central and European allies public reassurance regarding the U.S. commitment to article V of the North Atlantic Treaty during the recent NATO summit in Lisbon which, by the way, was one of the best NATO summits I think that has been held in the last dozen years. The President reaffirmed this commitment in his December 18, 2010 letter to the majority and minority leaders, and I hope that letter from the President has been circulated among my colleagues. It is very clear on where the President stands.

This NATO Summit meeting in Lisbon last month underscore, we are proceeding with a missile defense system in Europe designed to provide full coverage for NATO members on the continent, as well as deployed U.S. forces, against the growing threat posed by the proliferation of ballistic missiles.

I know that some of my colleagues are concerned with issues related to the treaty, including the modernization of our nuclear infrastructure, missile defense, and verification, and I will discuss each of these issues to explain why I believe they have been adequately addressed.

First of all, as others have pointed out—and I reiterate—Senator KYL has made a valiant effort to ensure we modernize the U.S. nuclear infrastructure. I have worked with Senator KYL on reviewing the treaty. I believe his hard work has led to nuclear modernization receiving the attention it deserves. It is long overdue. I remember Pete Domenici talking about the fact that we needed to do something about it and, frankly, we ignored Senator Domenici.

In a December 1, 2010, letter to Senators KERRY and LUGAR, the National Lab Directors from Lawrence Livermore, Los Alamos, and Sandia stated:

We are very pleased by the update to the Section 1251 report, as it would enable the laboratories to execute our requirements for ensuring a safe, secure, reliable, and effective stockpile under the Stockpile Stewardship and Management Plan.

I ask unanimous consent to have that letter printed in the RECORD.

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

DECEMBER 1, 2010.

Hon. JOHN KERRY,
Hon. RICHARD LUGAR,
Senate Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR CHAIRMAN KERRY AND RANKING MEMBER LUGAR: This letter is a joint response to the letters received November 30, 2010, by each of us in our current roles as directors of the three Department of Energy/National Nuclear Security Administration (NNSA) laboratories—Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Sandia National Laboratories.

We are very pleased by the update to the Section 1251 Report, as it would enable the laboratories to execute our requirements for ensuring a safe, secure, reliable and effective stockpile under the Stockpile Stewardship and Management Plan. In particular, we are pleased because it clearly responds to many of the concerns that we and others have voiced in the past about potential future-year funding shortfalls, and it substantially reduces risks to the overall program. We believe that, if enacted, the added funding outlined in the Section 1251 Report update—for enhanced surveillance, pensions, facility construction, and Readiness in Technical Base and Facilities (RTBF) among other programs—would establish a workable funding level for a balanced program that sustains the science, technology and engineering base. In summary, we believe that the proposed budgets provide adequate support to sustain the safety, security, reliability and effectiveness of America's nuclear deterrent within the limit of 1550 deployed strategic warheads established by the New START Treaty with adequate confidence and acceptable risk.

As we emphasized in our testimonies, implementation of the future vision of the nuclear deterrent described by the bipartisan Strategic Posture Commission and the Nuclear Posture Review will require sustained attention and continued refinement as requirements are defined and baselines for these major projects are established. We appreciate the fact that this 1251 update calls out the importance of being flexible and the need to revisit these budgets every year as additional detail becomes available.

We look forward to working with you and the Administration to execute this program to ensure the viability of the U.S. nuclear deterrent.

Sincerely,

DR. GEORGE MILLER,
Lawrence Livermore National Laboratory,
DR.MICHAEL ANASTASIO,
Los Alamos National Laboratory,
DR. PAUL HOMMERT,
Sandia National Laboratories.

Mr. VOINOVICH. Mr. President, a number of experts I have consulted with have pointed out—and I have agreed with—the need for the President to provide public assurances regarding the U.S. commitment to a robust missile defense system. So I was pleased with the President's letter to our leadership reiterating such support. Here I quote directly from the President's letter:

Pursuant to the National Missile Defense Act of 1999, it has long been the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack, whether accidental, unauthorized, or deliberate.

With regard to the Russian assertion—and we have heard this—that the treaty's preamble prohibits the buildup in missile defense capabilities, the President has stated in very clear language that the ''United States did not and does not agree with the Russian statement. We believe the continued development and deployment of U.S. missile defense systems, including qualitative and quantitative improvements to such systems, do not and will not threaten the strategic balance with the Russian Federation. . . . we believe the continued improvement and deployment of U.S. missile defense systems do not constitute a basis for questioning the effectiveness and the viability of the New START Treaty, and therefore would not give rise to circumstances justifying Russia's withdrawal from the Treaty.''

Mr. President, as I have discussed, I know many of my colleagues have concerns about the treaty. But after my own research and consultations with current and former Secretaries of State and numerous foreign policy experts, including many conservative experts, as well as yesterday's 3-hour closed session in the Old Senate Chamber, I support this treaty and do not believe the concerns that we have heard from some of our colleagues rise to the level at which the Senate should reject the treaty.

The President signed the treaty in April. It is now December, and we are coming up on 1 full year without any verification regime in place. I believe we should work to get this treaty done because these verification procedures are needed now. I am not the only one who believes this. I recently received a letter from Bulgaria's Ambassador to the United States, Elena Poptodorova. I have known her a long time and worked with her to get Bulgaria into NATO. She wrote:

A failure to swiftly ratify the treaty would mean discontinuation of the verification regime that could result in negative consequences in the nuclear disarmament, especially taking into consideration the significant strategic nuclear advantage of Russia.

In my view, it will also put at risk the future cooperation with Russia and will impede the negotiations on priorities, such as conventional forces and tactical nuclear weapons in Europe. It is of utmost importance that Russia be kept at the negotiating table beyond the scope of the New START Treaty, in particular on issues like Iran, Afghanistan and other global security challenges.

I ask unanimous consent that her letter be printed in the RECORD.

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

EMBASSY OF THE
REPUBLIC OF BULGARIA,
Washington DC, December 6, 2010.

DEAR SENATOR VOINOVICH: I am writing to you on an urgent note regarding the pending ratification of the New START.

Firstly, I would like to reiterate the strong support of the Bulgarian government for the treaty. As you may know, already on the margins of the NATO Summit, the Bulgarian Foreign Minister Nickolay Mladenov, together with his colleagues from Denmark, Latvia, Lithuania, Hungary and Norway, explicitly pointed out that the treaty is in the interest of European and global security. I firmly believe that it is indeed key to the national security interest of each country as well as to the stability of the transatlantic alliance.

Secondly, Bulgaria shares the assessment that the treaty allows the United States to maintain an effective and robust nuclear deterrent and to keep modernizing its nuclear weapons complex. It is crucial that it does not put any constraints on the US missile defense programs and allows for the deployment of effective missile systems.

Furthermore, a failure to swiftly ratify the treaty would mean discontinuation of the verification regime that could result in negative consequences in the nuclear disarmament especially taking into consideration the significant strategic nuclear advantage of Russia. In my view, it will also put at risk the future cooperation with Russia and will impede the negotiations on priorities such as conventional forces and tactical nuclear weapons in Europe. It is of utmost importance that Russia be kept at the negotiating table beyond the scope of the New START, in particular on issues like Iran, Afghanistan and other global security challenges.

I strongly urge you, dear Senator, to consider the arguments above and act in favor of a swift ratification of the New START. The new treaty is yet another step toward guaranteeing our common security and the United States leadership is absolutely essential in this respect.

I trust I will be taken in good faith.

Sincerely,

ELENA POPTODOROVA,
Ambassador.

Mr. VOINOVICH. Mr. President, I also bring to my colleagues' attention a July 14, 2010, letter to Senators LEVIN, KERRY, MCCAIN, and LUGAR, from former commanders of the Strategic Air Command and U.S. Strategic Command. Again, I hope my colleagues will read that letter. They list three reasons for support of the treaty. I quote from their second and third reasons:

The New START Treaty contains verification and transparency measures—such as data exchanges, periodic dated updates, notification, unique identifiers on strategic systems, some access to telemetry and onsite inspections—that will give us important insights into Russian strategic nuclear forces and how they operate those forces.

We will understand Russian strategic nuclear forces much better with the treaty that would be the case without it.

These former military commanders go on to state that the U.S. nuclear armaments—again, I think this is for all of us as American people to realize—''will continue to be a formidable force that will ensure deterrence and give the President, should it be necessary, a broad range of military options.''

I ask unanimous consent that letter sent to the Foreign Relations Committee be printed in the RECORD.

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

July 14, 2010.

Senator CARL LEVIN,
Chairman,
Senate Armed Services Committee.
Senator JOHN F. KERRY,
Chairman,
Senate Foreign Relations Committee.
Senator JOHN MCCAIN,
Ranking Member,
Senate Armed Services Committee.
Senator RICHARD G. LUGAR,
Ranking Member,
Senate Foreign Relations Committee.

GENTLEMEN: As former commanders of Strategic Air Command and U.S. Strategic Command, we collectively spent many years providing oversight, direction and maintenance of U.S. strategic nuclear forces and advising presidents from Ronald Reagan to George W. Bush on strategic nuclear policy. We are writing to express our support for ratification of the New START Treaty. The treaty will enhance American national security in several important ways.

First, while it was not possible at this time to address the important issues of non-strategic weapons and total strategic nuclear stockpiles, the New START Treaty sustains limits on deployed Russian strategic nuclear weapons that will allow the United States to continue to reduce its own deployed strategic nuclear weapons. Given the end of the Cold War, there is little concern today about the probability of a Russian nuclear attack. But continuing the formal strategic arms reduction process will contribute to a more productive and safer relationship with Russia.

Second, the New START Treaty contains verification and transparency measures—such as data exchanges, periodic data updates, notifications, unique identifiers on strategic systems, some access to telemetry and on-site inspections—that will give us important insights into Russian strategic nuclear forces and how they operate those forces. We will understand Russian strategic forces much better with the treaty than

would be the case without it. For example, the treaty permits on-site inspections that will allow us to observe and confirm the number of warheads on individual Russian missiles; we cannot do that with just national technical means of verification. That kind of transparency will contribute to a more stable relationship between our two countries. It will also give us greater predictability about Russian strategic forces, so that we can make better-informed decisions about how we shape and operate our own forces.

Third, although the New START Treaty will require U.S. reductions, we believe that the post-treaty force will represent a survivable, robust and effective deterrent, one fully capable of deterring attack on both the United States and America's allies and partners. The Department of Defense has said that it will, under the treaty, maintain 14 Trident ballistic missile submarines, each equipped to carry 20 Trident D–5 submarine-launched ballistic missiles (SLBMs). As two of the 14 submarines are normally in long-term maintenance without missiles on board, the U.S. Navy will deploy 240 Trident SLBMs. Under the treaty's terms, the United States will also be able to deploy up to 420 Minuteman III intercontinental ballistic missiles (ICBMs) and up to 60 heavy bombers equipped for nuclear armaments. That will continue to be a formidable force that will ensure deterrence and give the President, should it be necessary, a broad range of military options.

We understand that one major concern about the treaty is whether or not it will affect U.S. missile defense plans. The treaty preamble notes the interrelationship between offense and defense; this is a simple and long-accepted reality. The size of one side's missile defenses can affect the strategic offensive forces of the other. But the treaty provides no meaningful constraint on U.S. missile defense plans. The prohibition on placing missile defense interceptors in ICBM or SLBM launchers does not constrain us from planned deployments.

The New START Treaty will contribute to a more stable U.S.-Russian relationship. We strongly endorse its early ratification and entry into force.

Sincerely,

GENERAL LARRY WELCH, *USAF, Ret.*
GENERAL JOHN CHAIN, *USAF, Ret.*
GENERAL LEE BUTLER, *USAF, Ret.*
ADMIRAL HENRY CHILES, *USN, Ret.*
GENERAL EUGENE HABIGER, *USAF, Ret.*
ADMIRAL JAMES ELLIS, *USN, Ret.*
GENERAL BENNIE DAVIS, *USAF, Ret.*

Mr. VOINOVICH. Mr. President, I also ask unanimous consent to have printed in the RECORD a September 7, 2010, opinion piece from the Wall Street Journal by former Secretary of State George Shultz, who served under President Reagan. I think all of us who are familiar with George Shultz's record have high respect and regard for him.

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

[From the Wall Street Journal, Sept. 7, 2010]

LEARNING FROM EXPERIENCE ON ARMS CONTROL

(By George P. Shultz)

The New Start treaty provides an instructive example of how, when everyone works at it, an important element of arms control treaties can be improved by building on past treaties and their execution.

I remember well the treaty on Intermediate-Range Nuclear Forces (INF), as I had a hand in negotiating the treaty and in getting implementation started. Our mantra was stated almost endlessly by President Ronald Reagan, to the point that Soviet leader Mikhail Gorbachev would join in: ''Trust but verify.''

Reagan insisted on, and we obtained, on-site inspection of the critical elements in the treaty: the destruction of all missiles and a method of ensuring that new ones were not produced. This critical element in the treaty built on an earlier one. The Stockholm Agreement of 1986 was the first U.S.-Soviet agreement to call for on-site observation of military maneuvers. Although not as intrusive as a close look at nuclear facilities, it was, nevertheless an important conceptual breakthrough. The idea of on-site inspection had been accepted and put in practice.

When the Strategic Arms Reduction Treaty (Start) was negotiated and finally signed in 1991, a different problem presented itself. On-site inspection of missile destruction is one thing; on-site inspection of an active inventory is something else again. You are looking at an ongoing operation. Nevertheless, the challenge was met in part by counting delivery vehicles, clearly building on the successful experience of both sides with the INF treaty.

However, the political relations between the United States and the then Soviet Union had not yet reached the level of cooperation required to count the number of actual warheads directly without concern about compromising secret design information. The result was a process of attribution derived from access to telemetry—that is, the data transmitted from flight tests of missiles. This allowed for a cap on the maximum number of warheads that could be delivered, which was the number attributed in Start.

Periodic on-site inspections of the missile sites were provided for under Start, but the experience of both sides was that this process, conducted in a fragmented way, disrupted normal operations and so was unnecessarily burdensome to both sides.

The Strategic Offensive Reduction Treaty (SORT), negotiated in 2002 under the George W. Bush administration, simply relied on the Start verification regime. In a joint declaration, President Bush and President Vladimir Putin agreed on the desirability of greater transparency, but they left it at that.

Along came the New Start treaty, signed by President Barack Obama and Russian President Dmitry Medvedev on April 8, 2010. People responsible for monitoring the original Start treaty were included in the negotiations, so operating experience was present at the table. The result was a further advance, building on the transparency measures already in place under the Start treaty. On-site inspection now allows the total number of warheads on deployed missiles literally to be counted directly.

Thus, up-close observation is substituted for the telemetry that was essential in the original Start treaty. But some cooperation in sharing telemetry information was included in the New Start treaty. This provides some additional transparency and can serve, over time, as a confidence-building measure. It is well that some telemetry cooperation will occur so that the principle is retained.

The New Start treaty, like others before it, was built on previous experience. And, like earlier treaties, it provides a building block for the future. As lower levels of warheads are negotiated, the importance of accurate verification increases and the precedent and experience derived from New Start will ensure that a literal counting process will be available. The New Start treaty also sets a precedent for the future in its provision for on-site observation of nondeployed nuclear systems—important since limits on nondeployed warheads will be a likely next step.

The problem of interruptions in operations posed by the original Start treaty and identified by the executors of the treaty on both sides is addressed in the New Start treaty in a way that gives more information but is less disruptive. First of all, a running account in the form of regular data exchanges is provided every six months on a wide range of information about their strategic forces, and numerous inspection procedures have been consolidated.

The United States will have the right to select, for purposes of inspection, from all of Russia's treaty-limited deployed and nondeployed delivery vehicles and launchers at the rate of 18 inspections per year over the life of New Start. It is also important that each deployed and nondeployed intercontinental ballistic missile (ICBM) or submarine-launched ballistic missile (SLBM) or heavy bomber will have assigned to it a unique code identifier that will be included in notifications any time the ICBM or SLBM or heavy bomber is moved or changes status. The treaty establishes procedures to allow inspectors to confirm the unique identifier during the inspection process.

The notification of changes in weapon systems—for example, movement in and out of deployed status—will provide more information on the status of Russian strategic forces under this treaty than was available under Start. Information provided in notifications will complement and be checked by on-site inspection as well as by imagery from satellites and other assets which collectively make up each side's national technical means of verification.

Having been involved in the Stockholm Treaty when a breakthrough in on-site inspection was made and when intrusive on-site inspection of key events was a main element of the INF Treaty, I am pleased to see that the building process is continuing, especially since the New Start treaty includes some improved formulations that bode well for the future. Seeing is not quite believing, but it helps. Learning is not limited to what you get from experience, but it helps.

The original Start treaty expired last December. The time has come to start seeing again, with penetrating eyes, and to start learning from the new experience.

Mr. VOINOVICH. In his piece, the Secretary discusses the importance of verification and closes with this thought:

The original START Treaty expired last December. The time has come to start seeing again, with penetrating eyes, and to start learning from the new experience.

In other words, the provisions in terms of verification are new compared to the old START treaty.

Finally, I ask my colleagues to take note of Secretary Rice's statement that ''the treaty helpfully reinstates onsite verification of Russian nuclear forces, which lapsed with the expiration of the original START treaty last year. Meaningful verification was a significant achievement of Presidents

Reagan and George H.W. Bush, and its reinstatement is crucial.''

I ask unanimous consent that her article in the Wall Street Journal be printed in the RECORD.

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

[From the Wall Street Journal, Dec. 7, 2010]

NEW START: RATIFY, WITH CAVEATS

(By Condoleezza Rice)

When U.S. President Bush and Russian President Putin signed the Moscow Treaty in 2002, they addressed the nuclear threat by reducing offensive weapons, as their predecessors had. But the Moscow Treaty was different. It came in the wake of America's 2001 withdrawal from the Anti-Ballistic Missile Treaty of 1972, and for the first time the United States and Russia reduced their offensive nuclear weapons with no agreement in place that constrained missile defenses.

Breaking the link between offensive force reductions and limits on defense marked a key moment in the establishment of a new nuclear agenda no longer focused on the Cold War face-off between the Warsaw Pact and NATO. The real threat was that the world's most dangerous weapons could end up in the hands of the world's most dangerous regimes—or of terrorists who would launch attacks more devastating than 9/11. And since those very rogue states also pursued ballistic missiles, defenses would (alongside offensive weapons) be integral to the security of the United States and our allies.

It is in this context that we should consider the potential contribution of the New Start treaty to U.S. national security. The treaty is modest, reducing offensive nuclear weapons to 1,550 on each side—more than enough for deterrence. While the treaty puts limits on launchers, U.S. military commanders have testified that we will be able to maintain a triad of bombers, submarine-based delivery vehicles and land-based delivery vehicles. Moreover, the treaty helpfully reinstates on-site verification of Russian nuclear forces, which lapsed with the expiration of the original Start treaty last year. Meaningful verification was a significant achievement of Presidents Reagan and George H.W. Bush, and its reinstatement is crucial.

Still, there are legitimate concerns about New Start that must and can be addressed in the ratification process and, if the treaty is ratified, in future monitoring of the Obama administration's commitments.

First, smaller forces make the modernization of our nuclear infrastructure even more urgent. Sen. Jon Kyl of Arizona has led a valiant effort in this regard. Thanks to his efforts, roughly $84 billion is being allocated to the Department of Energy's nuclear weapons complex. Ratifying the treaty will help cement these commitments, and Congress should fully fund the president's program. Congress should also support the Defense Department in modernizing our launchers as suggested in the recent defense strategy study coauthored by former Secretary of Defense Bill Perry and former National Security Adviser Stephen Hadley.

Second, the Senate must make absolutely clear that in ratifying this treaty, the U.S. is not re-establishing the Cold War link between offensive forces and missile defenses. New Start's preamble is worrying in this regard, as it recognizes the ''interrelationship'' of the two. Administration officials have testified that there is no link, and that the treaty will not limit U.S. missile defenses. But Congress should ensure that future Defense Department budgets reflect this.

Moscow contends that only current U.S. missile-defense plans are acceptable under the treaty. But the U.S. must remain fully free to explore and then deploy the best defenses—not just those imagined today. That includes pursuing both potential qualitative breakthroughs and quantitative increases.

I have personally witnessed Moscow's tendency to interpret every utterance as a binding commitment. The Russians need to understand that the U.S. will use the full-range of American technology and talent to improve our ability to intercept and destroy the ballistic missiles of hostile countries.

Russia should be reassured by the fact that its nuclear arsenal is far too sophisticated and large to be degraded by our missile defenses. In addition, the welcome agreements on missile-defense cooperation reached in Lisbon recently between NATO and Russia can improve transparency and allow Moscow and Washington to work together in this field. After all, a North Korean or Iranian missile is not a threat only to the United States, but to international stability broadly.

Ratification of the treaty also should not be sold as a way to buy Moscow's cooperation on other issues. The men in the Kremlin know that loose nukes in the hands of terrorists—some who operate in Russia's unstable south—are dangerous. That alone should give our governments a reason to work together beyond New Start and address the threat from tactical nuclear weapons, which are smaller and more dispersed, and therefore harder to monitor and control. Russia knows too that a nuclear Iran in the volatile Middle East or the further development of North Korea's arsenal is not in its interest. Russia lives in those neighborhoods. That helps explain Moscow's toughening stance toward Tehran and its longstanding concern about Pyongyang.

The issue before the Senate is the place of New Start in America's future security. Nuclear weapons will be with us for a long time. After this treaty, our focus must be on stopping dangerous proliferators—not on further reductions in the U.S. and Russian strategic arsenals, which are really no threat to each other or to international stability.

A modern but smaller nuclear arsenal and increasingly sophisticated defenses are the right bases for U.S. nuclear security (and that of our allies) going forward. With the right commitments and understandings, ratification of the New Start treaty can contribute to this goal. If the Senate enters those commitments and understandings into the record of ratification, New Start deserves bipartisan support, whether in the lame-duck session or next year.

Mr. VOINOVICH. Mr. President, in my opinion, the jury has returned its verdict, and the overwhelming evidence is that the Senate should ratify the treaty. Support for the treaty should not be viewed through the lens of being liberal or conservative, Republican or Democrat, but rather what is in the best interest of our national security, the best interest of the United States of America, the best interest of our relationships with those countries who share our values and understand that nuclear proliferation is the greatest international threat to our children and grandchildren.

Mr. President, I urge my colleagues to support this treaty. I am prayerful that we have a good vote for it to demonstrate that we have come together on a bipartisan basis to do something that needs to be done, and something that liberals, conservatives, Republicans and Democrats, can come together on to make a difference for the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, very shortly, the Senate will be voting on the continuing resolution that will fund the operations of our Federal Government through March—I think, if I am not mistaken, through March 4. I want to take this time to take a look at what happened recently with our appropriations bill, the so-called omnibus bill, that was defeated by our colleagues on the other side of the aisle.

Again, without getting into who caused what and did what to whom first, which is a game we play a lot around here, the fact remains that none of our appropriations bills were passed this year, even though our subcommittees on appropriations passed out all of our bills. We passed them through the Appropriations Committee and brought them to the Senate for consideration, but they were not taken up on the floor. Again, we can go into all the reasons why yes, why no. But that is water over the dam. The fact is, they weren't; therefore, they weren't passed.

At the end of the year, a week ago, Leader REID wanted to put together all the bills that had been passed out of committee with both Republican and Democratic support. Of the 13 bills—and I could be a little mistaken—only 1 or 2 had any minor changes or votes against them in committee. They were almost all unanimous by Republicans and Democrats.

So to keep the government going, we had this omnibus—in other words, putting all the bills together in one package and passing that. My friends objected to that. Because that was objected to, we now face having a continuing resolution to continue the funding from last year on into fiscal year 2011 until March.

When the Republicans killed this Omnibus appropriations bill last week, certain things happened. For example, they chose to close Head Start classrooms that serve 65,000 low-income children. By killing the omnibus, my friends on the other side of the aisle decided to cut childcare subsidies for 100,000 low-income working families. They rejected the opportunity to provide lifesaving drugs to people living with AIDS, who are on waiting lists for lifesaving medication. They passed on the chance to provide 4½ million more meals to seniors in need.

All of these programs would have received badly needed increases in the appropriations bill, but my friends on the other side of the aisle said no. They insisted on just keeping the present funding until March.

Here is another result of killing the omnibus: Millions of American students who receive Pell grants—low-income students—to go to college no

longer know if they will be able to afford college next year.

We cannot let that happen. The continuing resolution we will vote for in a few minutes includes a provision that would close the so-called Pell grant shortfall and ensure there is no cut to the Pell grants to our poor students.

The Pell Grant Program is the backbone of our Nation's financial aid system. More than 9 million low-income students and middle-income students use these grants toward a postsecondary education or vocational training.

People might say: Why has the Pell grant grown so much over the last few months? When the economy is bad, more people tend to go to college and more people in lower income brackets tend to go to college and try to better themselves. That means the cost of providing Pell grants goes up, even when the maximum Pell grant award a person can receive stays the same.

Right now, the maximum Pell grant award is $5,550 a year. Nearly 90 percent of the students who receive that level come from families whose annual income is less than $40,000 for a family of four. Without Pell, most of them would have no chance of receiving a postsecondary education. This is truly a program for low-income students and families seeking to better themselves.

The omnibus bill that was killed last week would have provided the additional funding to close that shortfall, to keep the maximum grant at $5,550. That was $5.7 billion. Again, that money did not just fall from the sky. Other programs across the Federal Government were cut to offset that spending. We appropriators decided that maintaining Pell was so important that it was worth reducing or eliminating other programs, which we did.

When my friends on the other side killed the omnibus, they put the Pell Grant Program in jeopardy and endangered the future of millions of disadvantaged students. According to the recent estimates from OMB, if we do not close the Pell shortfall before February, the maximum award will drop by $1,840, and the Pell grants of all those students with a family income of less than $40,000 will fall by 33 percent—from $5,550 to $3,710 next school year. An estimated 435,000 students who currently receive Pell grants would get nothing, zero. Their entire grant would be cut off. Why do I say that? Because if the award drops by $1,840, if your Pell grant was $1,800, you get nothing. So 435,000 students will get no Pell grants whatsoever. That is the situation facing students all over the country today.

We are 4 days away from Christmas. More than 9 million students who depend on Pell grants do not know if their financial aid will be drastically cut or if they will get any financial aid at all. Hopefully, in about 10 minutes, we are going to change that because I am hopeful we will all join together today in supporting this continuing resolution because as a part of the continuing resolution, we close that Pell grant shortfall so we can undo or redo what was undone by not taking up the omnibus bill.

We can keep the government running, but we can also make this fix. It is so important to do that now because of certain rules and regulations that go into effect after the first of the year that will drastically impinge on the Pell Grant Program unless we take this action today.

I hope all Republicans and Democrats will join in supporting the continuing resolution and so do more than 9 million American students who depend on Pell grants for their college education.

Again, I point out that other appropriations will not be settled even if we pass the continuing resolution today. Those decisions are kicked down the street until March 4 when the continuing resolution expires.

We are going to face a tough situation on March 4. My friends on the other side of the aisle have said that their plan is to cut nonsecurity-related appropriations, to cut everything except defense, homeland security, military construction, and VA by $100 billion. When you exclude all that and you want to cut $100 billion, that is a 21-percent cut from everything else.

Do Republicans really want to cut 21 percent from childcare subsidies for working families in this economy—a 21-percent cut? Do you really want to cut 21 percent from job training programs in this economy? Do you really want to cut 21 percent from programs that educate disadvantaged children, title I programs, in this economy? Do our friends on the other side of the aisle want to cut 21 percent from the AIDS drug assistance program? Do you want to cut 21 percent from senior meals programs? Do we want to cut 21 percent from the Social Security Administration in this economy?

That is what is coming down the pike on March 4. We kick the ball down the field a little bit, but on March 4, the battle will be joined again.

If my friends on the other side of the aisle try to decimate these programs that are so critical to the well-being of so many families in this country—children, working parents who need childcare, the elderly who rely on a lot of these meals—I had it happen in my own family. Meals on Wheels keeps people from going to the hospital, lets them stay at home and get a decent diet, senior meals programs; job training programs so people can train for new jobs—all part of getting our country back up again. If they are going to cut 21 percent from all this, I want to say there is going to be a battle. We are not going to sit back and let these programs be decimated, these programs that mean so much to so many families.

In the meantime, we have to keep the government running, and that is what the continuing resolution is all about. As I said, what is so important is to make sure the Pell grant shortfall is closed, which it is on this continuing resolution.

I urge all my colleagues to support the continuing resolution and hopefully when March 4 comes, again we can agree on a bipartisan basis not to decimate so many programs that help so many people in our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

NOMINATION OF BENITA Y. PEARSON

Mr. COBURN. Mr. President, I ask unanimous consent to have printed in the RECORD two letters that have been received by the Senate in regard to the nomination of Judge Benita Pearson—one from the National Cattlemen's Beef Association; the other from the Farm Animal Welfare Coalition.

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

NATIONAL CATTLEMEN'S BEEF ASSOCIATION,
Washington, DC, December 21, 2010.

Hon. HARRY REID,
Senate Majority Leader, Capitol Building, Washington, DC.

Hon. MITCH MCCONNELL,
Senate Republican Leader, Capitol Building, Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: The National Cattlemen's Beef Association (NCBA) opposes the nomination of Judge Benita Pearson to the United States District Court for the Northern District of Ohio. After reviewing answers she gave to the Senate Judiciary Committee earlier this year, we believe that Judge Pearson's connections to the Animal Legal Defense Fund (ALDF) would make it hard for her to be an impartial judge in cases regarding actions by animal activists. ALDF is an activist organization involved in numerous federal lawsuits and advocates giving animals the same legal rights as humans.

NCBA expects the Senate to confirm judges who can hear cases and make decisions based on facts and law, rather than judges with strong biases that could lead to legislating from the bench. While we continue to discover more about Judge Pearson's animal activist work, we think her connection to ALDF alone is enough to block her nomination in order for Senators to do more research into her background and character.

NCBA is the nation's oldest and largest national trade association representing U.S. cattle producers with more than 140,000 direct and affiliated members. On behalf of our producers, we urge you to oppose the nomination of Judge Benita Y. Pearson to the United States District Court for the Northern District of Ohio.

Sincerely,

STEVE FOGLESONG,
President.

DECEMBER 20, 2010.

Re Nomination of Benita Y. Pearson to the U.S. District Court for the Northern District of Ohio.

To: The U.S. Senate.

From: The Farm Animal Welfare Coalition: American Farm Bureau Federation, American Feed Industry Association, American Sheep Industry Association, Biotechnology Industry Organization, Farm Credit System, Livestock Marketing Association, National Milk Producers Federation, National Pork Producers Council, National Renderers Association, United Egg Producers.

The Farm Animal Welfare Coalition (FAWC), an ad hoc coalition of America's largest farm/ranch, input and related organizations seeks to ensure all federal policy decisions regarding the welfare of food animals are based upon sound science, producer expertise and the rule of law. We write to express our concerns related to the nomination of Benita Y. Pearson to be a judge on the U.S. District Court for the Northern District of Ohio.

Our concerns stem from Ms. Pearson's membership and participation in the Animal Legal Defense Fund (ALDF), an animal rights organization which uses the courts to impose upon farmers, ranchers, biomedical researchers, animal breeders and other legitimate users of animals its parochial view of animal welfare. ALDF also provides legal support for political organizations dedicated to furthering animal rights in the U.S. ALDF's website is rife with references to ''factory farming,'' and other pejorative descriptions of U.S. farm animal husbandry, as well as touting its current and past lawsuits brought against agriculture interests. Its political positions affecting contemporary American agriculture are well known to us.

ALDF works to secure ''standing'' for animals in the courts, a legal evolution with multiple potential negative consequences for food production and the survivability of farmers and ranchers in the U.S. Consider the following from ALDF's Executive Director Steven Wells:

''One day, hopefully, animals will have more opportunities to be represented in courts so that we can more effectively fight the many injustices they face—perhaps as another kind of recognized 'legal person.' In the meantime we must be resourceful and creative in bringing lawsuits to win justice for animals.''

Ms. Pearson's membership in ALDF demonstrates the willingness of a prospective jurist to go beyond the academic or philosophical contemplation of the legal and political issues of animal rights. Her membership in ALDF translates her personal philosophy into implicit action in support of the goals of the animal rights movement.

We are encouraged by Ms. Pearson's written statement it is never appropriate for judges to ''indulge their own values in determining the meaning of statutes and the U.S. Constitution;'' however, her responses remain exceedingly vague when it comes to animal rights issues.

Given one of the ALDF's long-standing priorities is the legal adoption of its so-called ''animal bill of rights''—which calls for the undefined ''right of farm animals to an environment that satisfies their basic and psychological needs''—it seems disingenuous of Ms. Pearson to say she is unaware of this priority or even the existence of the ''bill of rights'' given she is a self-described member of the ALDF. She also teaches animal law courses at Ohio's Cleveland-Marshall College of Law—including a section on constitutional standing—which, we assume, must touch at some point on the ALDF's 30-year-old political philosophy and history of legal actions.

Ms. Pearson stated she does not use the term ''animal rights'' and is ''not an advocate for animal rights'' but ''an advocate for doing what is in the best interest of animals.'' However, she does not explain on what sources of information she relies when determining what is ''the best interest of animals,'' but simply her belief the law ''is intended to do what is in the best interest of animals and humans.''

While it is not a judge's role to legislate from the bench—and we are gratified Ms. Pearson appears to concur—judicial decisions set precedent and can precipitate legislation and regulations. It is unsettling that in Ms. Pearson's written responses to direct questions posed by Senate Judiciary Committee members Sens. Charles Grassley, Jeff Sessions and Tom Coburn, she simply restates existing law as relates to animal rights, animal standing, etc. Hence, we do not get a clear picture of her views regarding animal rights and legal standing.

We would welcome a meeting with Ms. Pearson to discuss these concerns.

Thank you for consideration of our views. Please feel free to contact any of the organizations listed on this letter or FAWC's coordinator, Steve Kopperud, at 202–776–0071 or skopperud@poldir.com.

Mr. COBURN. Mr. President, I wish to spend a short time addressing the remarks of my friend from Iowa.

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

Mr. COBURN. Mr. President, the situation we find ourself in is that no appropriations bills came to the floor. We did not control that. If that had been under our control, I assure you they would have come to the floor—and they should. No matter who is in charge, they should come. I think he agrees with that. But I will address the greater issue we have in front of us.

Our Nation has a very short time with which to reassess and reprioritize what is important in our fiscal matters. That period of time, I believe, is shorter than many of my colleagues believe. But I have not been wrong in the past 6 years as to where we are coming. I have been saying it for 6 years. We are now there.

The fact is everything is going to have to be looked at—everything—every project, for every Senator, every position, every program—if we are to solve the major problems that are facing this country.

We all want to help everybody we can, but the one thing that has to be borne in mind as we try to help within the framework of our supposed limited powers is there has to be a future for the country. The things that are coming upon us in the very near future will limit our ability to act if we do not act first.

I take to heart my colleague's very real concern for those who are disadvantaged in our country. It is genuine. It is real. We are going to have a choice to help them or we are going to have a choice to make a whole lot more people disadvantaged. What we have to do is try to figure out how compassionately we can do the most we can do and still have a country left. That is the question that is going to come before us.

I have no doubt we will have great discussions over the next few years on what those priorities are. But we cannot wait to make those priorities. We are going to have to squeeze wasteful spending from the Pentagon. We have no choice. We have no choice with which to make the hard choices in front of us. And it does not matter what happened in the past. What is going to matter is what happens in the future and whether we have the courage to meet the test that is getting ready to face this country.

There is a lot of bipartisan work going on right now behind the scenes in the Senate planning for next year to address those issues.

I say to my colleague from Iowa, the way to have the greatest impact on that issue is to join with us to, No. 1, agree with the severity of the problem and the urgency of the problem, and then let's build a framework on how we solve it, knowing nobody is going to get what they want.

TRIBUTES TO RETIRING SENATORS

RUSS FEINGOLD

Mr. President, I wish to take 2 more minutes to pay a compliment to one of my colleagues.

When I came to the Senate, I visited almost every Member of the Senate on the other side of the aisle. I had a wonderful visit with the Senator from Wisconsin. We actually—although we are totally opposite in our philosophical leanings—had a wonderful time visiting together.

Senator FEINGOLD is my idea of a great Senator. I want to tell you why.

I left that meeting, and about a week later, I got a note from him first of all thanking me for taking the initiative to come and meet with him, but also a commitment that he would always be straight with me, that when he gave me his word and handshake, it would always be that way, and that I could count on him standing for what he believed in but knowing he would do the things we needed to do to get things done.

My observation in the last 6 years in this Chamber is I have watched one man of great integrity keep his word and hold to his values through every crisis and every vote. And every time it was taken where we had to come together to do something, this gentleman kept his character. He kept his word. He fulfilled the best aspects of the tradition of the Senate.

Although I often—most of the time—am on the opposite side of issues from Senator RUSS FEINGOLD, I want to tell you, he has my utmost admiration and my hope that more would follow his principled stand and his wonderful comity as he deals with those on the other side of the aisle.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I understand the UC has us voting at 2 o'clock; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. Mr. President, I support the continuing resolution. One of the many reasons is that the Navy's urgent request for authority for the littoral combat ship, (LCS),—program is included.

The original LCS acquisition plan in 2005 would have had the Navy buying both types of LCS vessels for some time while the Navy evaluated the capabilities of each vessel. At some time in the future, the Navy would have had the option to down select to building one type of vessel. But in any case, the Navy would have been operating some number of each type of LCS vessel in the fleet, which means that the Navy would have been dealing with two shipyards, two supply chains, two training pipelines, etc. Last year, after the bids came in too high, the Navy decided upon a winner-take-all acquisition strategy to procure the fiscal year 2010 vessels under a fixed-price contract, with fixed-price options for two ships per year for the next 4 years. This revised strategy included obtaining the data rights for the winning ship design and competing for a second source for the winning design starting in fiscal year 2012. Again, the Navy made this course correction because the Navy leadership determined that the original acquisition strategy was unaffordable.

Earlier this year, the Navy released the solicitation under that revised strategy and has been in discussion with the two contractor teams and evaluating those proposals since that time. The bids came in, the competition worked, and the prices were lower than the Navy had expected. Both teams have made offers that are much more attractive than had been expected, and both are priced well below the original, noncompetitive offers.

The Navy has now requested that we approve a different LCS acquisition strategy, taking advantage of the low bids and keeping the industrial base strong. The Armed Services Committee held a hearing on the subject of the change in the Navy's acquisition strategy. We heard testimony from the Navy that, after having reviewed the bids from the two contractor teams, they should change their LCS acquisition strategy.

The Navy testified that continuing the winner-take-all down select would save roughly $1.9 billion, compared with what had been budgeted for the LCS program in the Future-Years Defense Program, or FYDP.

The Navy further testified that revising the acquisition strategy to accept the offers from both LCS contractor teams, rather than down selecting to one design and starting a second source building the winning design, would save $2.9 billion, or $1 billion more than the program of record, and would allow the Navy to purchase an additional LCS vessel during the same period of the FYDP—20 ships rather than 19 ships.

The Navy also testified that additional operation and support costs for maintaining two separate designs in the fleet for their service life over 40 to 50 years, using net present value calculations, would be much less than the additional saving that could be achieved through buying both the ships during the FYDP period—approximately $250 million of additional operating and support costs vs. approximately $900 million in savings.

Those are the facts of the case as we heard from the Navy. Let me relay a few quotes from the Navy witnesses at the hearing to amplify on these points.

Secretary of the Navy Raymond E. Mabus, Jr., referring the authority to revise the acquisition strategy, said the following:

> This authority, which I emphasize, requires no additional funding, will enable us to purchase more high-quality ships for less money and get them into service in less time. It will help preserve jobs in our industrial shipbuilding base and will create new employment opportunities in an economic sector that is critical to our Nation's military and economic security.

ADM Gary Roughead, the Chief of Naval Operations, said:

> The dual award also allows us to reduce costs by further locking in a price for 20 ships, enabling us to acquire LCS at a significant savings to American taxpayers and permitting the use of shipbuilding funds for other shipbuilding programs.

From a broad policy perspective, I believe that the Navy approach of a competitive, dual source alternative could help ensure maximum competition throughout the lifecycle of the program, meeting the spirit and intent of the Weapon Systems Acquisition Reform Act of 2009, MSARA. Specifically, it calls for two shipbuilders in continuous competition to build the ships for the life of the program. The Navy plans to build a total of 55 of these ships, so that could take a number of years.

Some have raised concerns because the Navy has been unable to reveal the specific bid information from the two contractors. Unfortunately, the Navy has been prevented from sharing specific bid information because that would violate the competitive source selection process by revealing proprietary information about the two contactors' bids. Because of these constraints, I do not know what is in the bids. But I take comfort from knowing that these bids are for fixed- price contracts and not for cost-type contracts where a contractor has little to lose from underbidding a contract.

As far as the capability of the two vessels, we heard from Admiral Roughead at the hearing that each of the two vessels would meet his requirements for the LCS program. I asked Admiral Roughead: ''Do both of these vessels in their current configuration meet the Navy's requirements?'' Admiral Roughead replied: ''Yes, Senator, they do. Both ships do.''

Some have raised the possibility that development of the mission packages could cause problems in the shipbuilding program and lead to unexpected cost growth, and thereby fail to achieve the extra savings the Navy is projecting. In some other shipbuilding programs that might be a concern, but I believe that the Navy's fundamental architecture of the LCS program divorces changes in the mission package from changes that perturb the ship design and ship construction. In the past, when there were problems with developing the right combat capability on a ship, this almost inevitably caused problems in the construction program. In the case of the LCS, the combat capability largely resides in the mission packages that connect to either LCS vessel through defined interfaces. What that means is that changes inside the mission packages should not translate into changes during the ship construction schedule—i.e., they are interchangeable. And whatever is happening in the mission package development program would apply equally to either the down select strategy or the dual source strategy.

In terms of the proposal's effects on the industrial base and on competition, I believe that there would be a net positive. The Navy would have the opportunity to compete throughout the life of the program, and any erosion in contractor performance could be corrected by competitive pressures. For the industrial base, there would be more stability in the shipbuilding program. Countless Navy witnesses have testified to the Armed Services Committee and the other defense committees that achieving stability in our shipbuilding programs is one of the best things we in the government can do to help the Navy support the shipbuilding industry.

The Navy's proposal to change to a dual source selection strategy would promote that goal of stability, while effectively continuing competition throughout the program, and at the same time reducing acquisition costs and buying an additional ship over the FYDP.

Why don't we just wait until sometime after the new Congress convenes to deliberate this changed acquisition strategy? Senator JACK REED asked the Navy about this very issue at the hearing. He asked, ''What is lost or what do you gain or lose by waiting?'' Assistant Navy Secretary Sean Stackley answered that question as follows: ''Workforce is leaving, hiring freezes are in effect, vendors are stressed in terms of their ability to keep faith with the proposals, the fixed price proposals that they have put in place. They will need to have to then go back with any further delay and reprice their proposals.''

What that means is, if we were to let the bids expire at the end of December, we would lose the full benefits of the competition and our savings will likely be reduced.

Mr. President, I support including the authority for the Navy to make this change in the continuing resolution before us.

Mr. McCAIN. Mr. President, I rise to oppose the littoral combat ships, LCS,

provision in the continuing resolution, CR. That provision—which, according to the Congressional Budget Office, CBO, and the Congressional Research Service, CRS, could cost taxpayers as much as $2.9 billion more than the current acquisition strategy—simply does not belong in the CR. But once again we are looking at a cloture vote on a piece of ''must-pass'' legislation where the majority leader has filled the amendment tree and no amendments will be allowed.

The LCS program has a long, documented history of cost overruns and production slippages and yet we now find ourselves inserting an authorization provision at the 11th hour to yet again change the acquisition strategy of a program that has been plagued by instability since its inception.

Let's look at its track record over the past 5 years:

1st LCS funded in 2005—LCS 1 Commissioned in Nov 2008 at cost of $637 million;

2nd LCS funded in 2006—LCS 2 Commissioned in Jan 2010 at cost of $704 million;

3rd LCS funded in 2006—Canceled by Navy in April 2007, because of cost, and schedule growth;

4th LCS funded in 2006—Canceled by Navy in Nov 2007, because of cost and schedule growth;

5th LCS funded in 2007—Canceled by Navy in Mar 2007, because of cost and schedule growth;

6th LCS funded in 2007—Canceled by Navy in Mar 2007, because projected costs too high;

7th LCS funded in 2008—Canceled by Navy in Sep 2008, because projected costs too high;

8th LCS funded in 2009—Christened in Dec 2010 is about 80 percent complete; ''New LCS 3'';

9th LCS funded in 2009—Under construction is about 40 percent complete; ''New LCS 4.''

When the Navy first made its proposal to Congress just over 6 weeks ago, it failed to provide Congress with basic information we need to decide whether it should approve the Navy's request—including the actual bid prices, which would tell us how realistic and sustainable they are, and specific information about how capable each of the yards are of delivering the ships as needed, on time and on budget. Why don't we have that information? Because it's sensitive to the on-going competition.

Last week, in testimony before the Senate Armed Services Committee, the General Accountability Office, GAO, the Congressional Research Service, CRS, and the Congressional Budget Office, CBO, raised important questions that Congress should have answers to before it considers approving the proposal.

Those questions included not only ''how much more (or less) would it cost for the Navy to buy LCS ships under its proposal'' but also ''how much would the cost be to operate and maintain two versions of LCS, under the proposal''. They also asked ''how confident can we be that the Navy will be able to stay within budgeted limits and deliver promised capability on schedule—given that all of the deficiencies affecting LCS' lead ships have not been identified and fully resolved'' and ''has the combined capability of the LCS seaframes with their mission modules been sufficiently demonstrated so that increasing the Navy's commitment to seaframes at this time would be appropriate?''

Those questions, and others, that GAO, CRS and CBO raised last week, are salient and should be answered definitively before we approve of the Navy's proposal. Every one of those witnesses conceded that more time would help Congress get those answers. And, considering this provision in connection with a Continuing Resolution, brought up at the 11th hour; during a lame-duck session; outside of the congressional budget-review period; and without specific information or the opportunity for full and open debate by all interested Members, does not give us that time. Buying into this process would be an abrogation of our constitutional oversight responsibility.

From 2005 to date, we have sunk $8 billion into the LCS program. And, what do we have to show for it? Only two boats commissioned and one boat christened—none of which have been shown to be operationally effective or reliable—and a trail of blown cost-caps and schedule slips. I suggest that, having made key decisions on the program hastily and ill-informed, we in Congress are partly to blame for that record. But, with the cost of the program from 2010 to 2015 projected to be about $11 billion, we can start to fix that—by not including this ill-advised provision in the CR.

I ask unanimous consent that my December 10, 2010, letter to the chairman and ranking member of the Appropriations Committee, asking them not to include the LCS provision in any funding measure, a letter from the Project on Government Oversight to Senator LEVIN and me, and the exchange of letters between me and the Chief of Naval Operations, CNO, be printed in today's RECORD.

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

CHIEF OF NAVAL OPERATIONS,
NAVY PENTAGON,
Washington, DC, November 22, 2010.

Hon. JOHN S. MCCAIN,
Ranking Member, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: Thank you for affording me the opportunity to discuss the Littoral Combat Ship (LCS) program. This program is vital to the future force structure of the United States Navy, and I am committed to its success. The Navy tackled aggressively and overcame the program's past cost and schedule challenges, ensuring affordability of this new critical warfighting capability.

The Department has taken action on all four of the recommendations of the August 2010 General Accountability Office (GAO) LCS report.

The Navy has been operating both LCS designs and collecting design performance data. There are mechanisms in place to ensure design corrections identified in building and testing the first four ships are incorporated in the operating ships, ships under construction, and ships yet to be awarded.

The Navy will update the Test and Evaluation Master Plan (TEMP) for the LCS, to reflect the Program of Record following the Milestone B (MS B) decision.

The Navy will update test and evaluation and production of LCS seaframes and mission modules following the MS B decision.

The Navy has completed a robust independent cost analysis of the LCS lifecycle using estimating best practices and submitted this estimate to the Office of the Secretary of Defense (OSD) for comparison with the Cost Assessment and Program Evaluation (CAPE) group independent estimate.

These recommendations and the Department's responses apply for either the down-select or the dual block-buy approach and the Department's concurrence and related actions with the recommendations (included in Appendix III of the August GAO report) will not change in either case.

As you know, Navy has taken delivery of the first two ships and the third and fourth ships are under construction. The performance of the USS FREEDOM (LCS 1) and USS INDEPENDENCE (LCS 2) and their crews are extraordinary and affirm the value and urgent need for these ships. For the Fiscal Years (FYs) 2010–2014 ships, Navy has been pursuing the congressionally authorized down-select to a ten ship block-buy. Competition for the down-select has succeeded in achieving very affordable prices for each of the ten ship bids which reflect mature designs, investments made to improve performance, stable production, and continuous labor learning at their respective shipyards.

The result of this competition affords the Navy an opportunity to award a dual block-buy award (for up to 20 ships between FYs 2010–2015) with fixed-price type contracts, which achieves significant savings for the taxpayer, while getting more ships to the Fleet sooner and providing greater operational flexibility. The dual block-buy provides much needed stability to the shipbuilding industrial base; from vendors, to systems providers to the shipyards. This will pay important dividends to the Department, and to potential Foreign Military Sales customers, in way of current and future program affordability. The fixed-price type contract limits the government's liability and incentivizes both the government and the shipbuilder to aggressively pursue further efficiencies and tightly suppress any appetite for change. Navy will routinely report on the program's progress and Congress retains control over future ship awards through the annual budget process.

The agility, innovation and willingness to seize opportunities displayed in this LCS competition reflect exactly the improvements to the way we do business that the Department requires in order to deliver better value to the taxpayer and greater capability to the warfighter.

I greatly appreciate your support for the LCS Program. As always, if I can be of further assistance, please let me know.

Sincerely,

G. ROUGHEAD,
Admiral, U.S. Navy.

PROJECT ON GOVERNMENT OVERSIGHT,
Washington, DC, December 9, 2010.

Senate Armed Services Committee,
Senate Russell Office Building,
Washington, DC.

DEAR CHAIRMAN LEVIN AND RANKING MEMBER MCCAIN, The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable,

open, and ethical federal government. We are troubled by a rushed proposal to change the Navy Littoral Combat Ship (LCS) sea frame acquisition strategy.

The Navy notified Congress of its proposal to change its acquisition strategy for LCS on November 3, 2010. The proposed strategy, under which the Navy intends to buy up to 20 sea frames from two separate shipyards, is a substantial change from the current strategy. Currently, the Navy's strategy is to ''down select'' (i.e. choose a winner) to one yard and (with the winning design in hand) hold another competition later to build a total of 19 ships—only 10 of which are now authorized under law. To implement the new strategy, the Navy needs Congress to sign off on it and wants Congress to do so by mid-December.

Congress should require that the Navy give it more time to get answers to the serious questions raised by, among others, the Congressional Research Service (CRS) in its November 29, 2010, report (attached) and the Government Accountability Office (GAO) in reports issued in August and December 2010. As CRS asked:

''Does the timing of the Navy's proposal provide Congress with enough time to adequately assess the relative merits of the down select strategy and the dual-award strategy? . . . Should the Navy ask the contractors to extend their bid prices for another, say, 30 or 60 or 90 days beyond December 14, so as to provide more time for congressional review of the Navy's proposal?''

Congress needs time to consider whether the Navy's new plan is fiscally responsible or whether it increases risks that already exist in the program. Congress should require that the Navy to ask the two contractor teams to extend their bid prices up to 90 days beyond December 14. The two contractor teams are led by, respectively, Lockheed Martin and Austal USA.

The Navy's justification for its new strategy is the purportedly low prices that both bidders have submitted in the current competition. But it is not clear if these low bids are reasonable. The use of fixed-price contracts won't necessarily prevent an underperforming shipyard from simply rolling its losses into its prices for follow-on ships.

There can be no doubt that the LCS program has already had significant problems. For example, the sea frames were originally intended to cost about $220 million each. But the ones built and under construction have ballooned up to over $600 million each. Yet without any real data indicating that the program is likely to perform adequately in the future (the Navy has failed to meaningfully implement many of GAO's recommendations in its August report), the Navy wants Congress's help to lock the program into 20 ships over the next five years.

The Navy has not demonstrated the combined capabilities of the LCS sea frame(s) with its mission packages. It's important to bear in mind that the LCS sea frame is effectively a ''truck.'' The LCS's combat effectiveness derives from its modular ''plug-and-play'' mission packages (e.g., anti-submarine, mine-countermeasures, and surface warfare). The LCS program has been struggling with developmental challenges with these mission packages that have led to postponed testing. As the GAO states, ''Until mission packages are proven, the Navy risks investing in a fleet of ships that does not deliver promised capability.'' Without effective mission capabilities, the LCS will be ''largely constrained to self-defense as opposed to mission-related tasks.''

Furthermore, it is likely that other shipyards that may be just as capable of building LCS sea frames as the two that would be awarded contracts under the dual-award strategy. Some, including CRS, have asked whether other shipyards will be frozen out of the LCS program—even after the first 20 ships have been built. For that reason, we believe that, before approving the Navy's proposal, Congress should carefully evaluate whether it may in fact stifle, rather than encourage, competition throughout the program's lifecycle, as is required under the recently enacted weapon systems acquisition reform law.

This is not the first time the Navy has given Congress insufficient time to evaluate its LCS acquisition strategy. The last time the Navy asked Congress to approve its LCS acquisition strategy—just last year—there was short notice. In 2002, the Navy gave ''little or no opportunity for formal congressional review and consideration'' of the Navy's proposed LCS acquisition strategy, according to CRS. This is deja vu all over again. The taxpayers deserve the careful consideration of Congress.

In sum, Congress should not approve the Navy's acquisition strategy without a clear picture of the likely costs and risks. Furthermore, Congress should not allow the Navy to continue to skirt oversight. We appreciate your review of this letter and your time, and look forward to working with you on the Littoral Combat Ship Program. If you have any questions, please do not hesitate to contact Nick Schwellenbach.

Sincerely,

DANIELLE BRIAN,
Executive Director.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, December 10, 2010.

Hon. DANIEL INOUYE,
Chairman, Senate Committee on Appropriations, Washington, DC.

Hon. THAD COCHRAN,
Vice Chairman, Senate Committee on Appropriations, Washington, DC.

DEAR CHAIRMAN INOUYE AND VICE CHAIRMAN COCHRAN: The House-passed Full-Year Continuing Appropriations Act, 2011 (H.R. 3082) contains a provision that would authorize the Department of the Navy to acquire 20 Littoral Combat Ships (LCS) in lieu of the 10 that were authorized under the National Defense Authorization Act, 2010. As you finalize your Omnibus Appropriations Bill, I wanted to express my opposition to including this provision in the Omnibus Appropriations Bill or any other stop-gap funding measure that you may be considering.

As you know, the Navy first conveyed to the Senate its proposal that gave rise to this provision just a few weeks ago, and the competition for the LCS ship construction contract is still open. As such, not only has the Senate been given an unusually short time to review such an important proposal but it also has been unable to obtain basic information (on cost and capability, for example) it needs to consider the proposal carefully because they remain source-selection sensitive.

Moreover, recent reviews of the proposal released by the General Accountability Office (GAO) and the Congressional Research Service (CRS) just yesterday raise a number of salient concerns about it. In the aggregate, those concerns indicate the proposal needs more careful and open deliberation than would be afforded by including it in a late cycle Omnibus or continuing resolution.

In particular, the GAO identified a full range of uncertainties (relating to, for example, design changes, operations and support costs, mission-package development) that would determine whether the proposal will realize estimated savings—savings that, in its own report release just today, the Congressional Budget Office (CBO) suggests that the Navy may have overstated. GAO also negatively assessed the Navy's implementation of some of the recommendations it made in its August 2010 report—recommendations with which the Department of Defense concurred. Against that backdrop, GAO observed that ''decisionmakers do not have a clear picture of the various options available to them related to choosing between the down-select and dual award strategies''.

Similarly posing a number of important questions (on, for example, the potential relative costs and risks of the two strategies, the proposal's impact on the industrial base, and its effect on competition) in its recent review of the proposal, CRS too noted that this is the third time that the Navy has presented Congress with a difficult choice about how to buy LCS ships late in Congress' budget-review cycle—after budget hearings and often after defense bills have been written.

Given the foregoing, without the basic information and the time necessary for the Senate to discharge its oversight responsibilities with respect to the Navy's proposal responsibly and transparently, I oppose including this provision in the any funding measure now under consideration. With the LCS' program's troubled history, I suggest that such measures would serve as inappropriate vehicles to make dramatic changes to the program.

Thank you for your consideration.

Sincerely,

JOHN MCCAIN,
Ranking Member.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, December 8, 2010.

Admiral GARY ROUGHEAD, USN,
Chief of Naval Operations,
Navy Pentagon, Washington, DC.

DEAR ADMIRAL ROUGHEAD: About a month ago, the Navy first proposed that Congress let it fundamentally change how it buys seaframes under the Littoral Combat Ships (LCS) program—a program that has had serious difficulty on cost, schedule and performance.

However, in August 2010 and again just today, the General Accountability Office (GAO) issued a report raising serious concerns about the program. In today's report, it also conveyed criticism about the Navy's implementation of its recommendations.

When you and I met, on November 18, 2010. I asked that you describe how the Navy has implemented GAO's recommendations. In that regard, your letter of November 22, 2010, was unhelpful. Not only did it cite what the Navy will do to implement GAO's recommendations as examples of action it had already taken, most of the action items it described didn't even correspond to GAO's actual recommendations. Indeed, the whole thrust of the Navy's proposal appears basically inconsistent with the recommendation that the Navy not buy excess quantities of ships and mission packages before their combined capabilities have been sufficiently demonstrated.

Until deficiencies affecting the lead ships have been fully identified and resolved, I simply cannot share your optimism that the LCS program will stay within budgeted limits and deliver required capability on time—an assumption that underpins the Navy's proposal. And, without basic information needed to consider the proposal responsibly (because, with the competition still open, they remain sensitive), I cannot support it at this time.

Finally, I would like to comment on how undesirable the process by which the Navy has made this proposal has been—outside of ''regular order''; during an open competition; in a way that precludes full and open debate

by all interested Members; and without full information. I respectfully suggest that neither this program nor the Navy's shipbuilding enterprise have been served well by Congress' making decisions in this way in the past. I, therefore, respectfully ask that this process not be repeated.

Thank you for your visit. I look forward to continuing to work with you in support of our sailors.

Sincerely,

JOHN MCCAIN,
Ranking Member.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 10, 2010.

Hon. JOHN MCCAIN,
Ranking Member, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SENATOR: As you know, the Navy is planning to acquire a fleet of 55 littoral combat ships (LCSs), which are designed to counter submarines, mines, and small surface craft in the world's coastal regions. Two of those ships have already been built, one each of two types: a semiplaning steel monohull built jointly by Lockheed Martin and Marinette Marine in Wisconsin and an all-aluminum trimaran built by Austal in Alabama. The Navy also has two more ships (one of each type) under construction. The remaining 51 ships would be purchased from 2010 through 2031. In response to your request, the Congressional Budget Office (CBO) analyzed the cost implications of the Navy's existing plan for acquiring new LCSs and a new plan that it is currently proposing:

Existing ''Down-Select'' Plan: In September 2009, the Navy asked the two builders to submit fixed-price-plus-incentive bids to build 10 ships, 2 per year from 2010 to 2014, beginning with funds appropriated for 2010. The Navy planned to select one of the two versions of the LCS, awarding a contract for those 10 ships to the winning bidder, and then, through another competition, to introduce a second yard to build 5 more ships of that same design from 2012 to 2014. In 2015, the Navy would purchase 4 more ships; the acquisition strategy for those vessels has not been specified. A total of 19 ships of one design would be purchased by 2015 (see Table 1). Any shipyard could bid in that second competition except the winner of the contract for the first 10 ships.

TABLE 1—LCS PROCUREMENT UNDER DIFFERENT ACQUISITION PLANS, 2010 TO 2015

[Number of ships procured]

	2010	2011	2012	2013	2014	2015	Total
Existing Down-Select Plan							
Winner	2	2	2	2	2	4	19
Second Builder	.....	.....	1	2	2	.....	.....
Proposed Dual-Award Plan							
Lockheed Martin/Marinette Marine	1	1	2	2	2	2	20
Austal	1	1	2	2	2	2	.....

Source: Congressional Budget Office based on data from the Navy.
Note: The Navy also purchased two ships from each builder between 2005 and 2009. Under the down-select plan, the Navy proposes to procure four ships in 2015. How the Navy would purchase those ships has not been determined.

Proposed ''Dual-Award'' Plan: In November of this year, the Navy proposed to accept the fixed-price-plus-incentive bids from both teams, purchasing 10 of each type of LCS (a total of 20 ships) by 2015, beginning with funds appropriated for fiscal year 2010.

According to the Navy, the bid prices received under the existing down-select plan were lower than expected, which would allow the service, under the dual-award plan, to purchase 20 ships from 2010 through 2015 for less than it had expected to pay for 19. (The total number of LCSs ultimately purchased would be the same under both plans.)

CBO has estimated the cost for the LCS program between 2010 and 2015 under both plans, using its standard cost-estimating model. By CBO's estimates, either plan would cost substantially more than the Navy's current estimates—but CBO did not have enough information to incorporate in its estimates the bids from both contractors for the 10-ship contract.

CBO's analysis suggests the following conclusions:

Whether one considers the Navy's estimates or CBO's, under either plan, costs for the first 19 ships are likely to be less than the amounts included in the Navy's 2011 budget proposal and the Future Years Defense Program (FYDP).

CBO's estimates show per-ship construction costs that are about the same for the two plans, but those estimates do not take into account the actual bids that have been received.

Adopting the dual-award plan might yield savings in construction costs, both from avoiding the need for a new contractor to develop the infrastructure and expertise to build a new kind of ship and from the possibility that bids now are lower than they would be in a subsequent competition, when the economic environment would probably be different.

Operating and maintaining two types of ships would probably be more expensive, however. The Navy has stated that the differences in costs are small (and more than offset by procurement savings), but there is considerable uncertainty about how to estimate those differences because the Navy does not yet have much experience in operating such ships. In addition, if the Navy later decided to use a common combat system for all LCSs (rather than the different ones that would initially be installed on the two different types of vessels), the costs for developing, procuring, and installing that system could be significant.

THE NAVY'S ESTIMATES OF COSTS BETWEEN 2010 AND 2015

In the fiscal year 2011 FYDP, the Navy proposed spending almost $12 billion in current dollars to procure 19 littoral combat ships between 2010 and 2015 under the down-select plan. (The Navy's budget estimate was submitted in February 2010, well before it received the two contractors' bids in the summer of 2010.) The Navy now estimates the cost under that plan to be $10.4 billion, about $1.5 billion (or 13 percent) less than its previous estimate.

Now that the Navy has the two bids in hand, it has formulated a new plan for purchasing LCSs. It estimates that it could purchase 20 ships—10 from each contractor—for about $9.8 billion through 2015, or $0.6 billion less than it currently estimates for the down-select plan and $2.1 billion less than the cost it had estimated for 19 ships in its 2011 FYDP. The Navy's projected cost per ship under this plan is 21 percent less than its estimate in the 2011 FYDP.

The Navy's block-buy contracts under either plan would be structured as fixed price plus incentive. Under the terms of the two contractors' bids, the ceiling price is 125 percent of the target cost, and that price represents the maximum liability to the government. The Navy and the contractor would share costs equally over the target price up to the ceiling price. If costs rose to the ceiling price, the result would be a 12.5 percent increase in price to the government compared with the target price at the time the contract was awarded. The Navy has stated that its budget estimates include additional funding above the target price to address some, but not all, of the potential cost increases during contract execution. There is also the potential for cost growth in other parts of the program, such as in the government's purchasing of equipment that it provides to the shipyard, that are not part of the shipyard contract. But the cost of government-furnished equipment is small; it is less than 5 percent of the total cost in the case of the third and fourth ships currently under construction.

The Navy indicates that its estimates reflect the experience the shipyards gained from building two previous ships and the benefits of competition. Under the down-select plan, the second shipyard that would begin building LCSs in 2012 would be inexperienced with whichever ship design was awarded, and the investments required in infrastructure and expertise would make the first ships it produced more expensive than those from a shipyard with an existing contract for LCS construction. Conversely, under the dual-award plan, each shipyard would benefit from its experience with building two of the first four LCSs. CBO cannot quantify the benefits of competition, although they undoubtedly exist. In light of the results of the competition for the 10-ship block, it is possible that the competition the Navy would hold in 2012 for the second source in the down-select plan might also yield costs that are below those the Navy (or CBO) estimates, in which case the current estimate of the costs for that plan would be overstated.

The Navy briefed CBO on some aspects of those estimates but did not provide CBO with the detailed contractor data or with the Navy's detailed analysis of those data. If the contractors' proposals for the 10-ship award are robust and do not change, the Navy's estimates would be plausible although not guaranteed. CBO has no independent data or means to verify the Navy's savings estimate, and costs could grow by several hundred million dollars if the shipbuilders or developers of the combat systems carried by those ships experience cost overruns.

COMPARISON OF CBO'S AND THE NAVY'S ESTIMATES

CBO's estimates of costs are higher and indicate little difference in the per-ship costs of the two plans. They reflect information about the ships currently being built, but they do not incorporate information about the contractors' bids because CBO does not

have access to that information. Thus, CBO's estimates do not incorporate any benefits of competition that may have arisen as a result of the Navy's existing down-select acquisition strategy—benefits the Navy argues would be locked in by the fixed-price-plus-incentive contracts.

CBO estimates that the down-select plan would cost the Navy about $583 million per ship—compared with an estimated cost of $591 million per ship under the dual-award plan (see table 2). Contributing to that difference is the loss of efficiency that would result from having two yards produce one ship per year in 2010 and 2011, rather than having one yard produce two ships per year. Given the uncertainties that surround such estimates, that difference, of less than 2 percent, is not significant.

CBO's estimates of the cost for the down-select and dual-award strategies are higher than the Navy's, by $680 million and $2.0 billion, respectively, because the contractors' prices are apparently much lower than the amounts CBO's cost-estimating model would have predicted and even lower than the Navy predicted in its 2011 budget. (CBO's model is based on well-established cost-estimating relationships, and it incorporates the Navy's experience with the first four LCSs.) For example, the Navy's estimate of the average cost for one ship in each of the two yards in 2010 and 2011 is lower than CBO's estimate of what the average cost would be to build (presumably, more efficiently) two ships in one yard. And those lower costs carry through to the years when each yard would be building two ships per year. In addition, again according to the Navy, the contractors were willing to accept a change in the number of ships purchased per year in 2010 and 2011 without increasing the total cost of the ships. The Navy stated that the contractors achieved a substantial savings in the cost of materials because, under the block buy, the Navy would be committing to purchase 10 ships from one or both shipyards. With the dual-award strategy, the Navy is attempting to capture the lower prices offered by both builders for 20 ships, rather than just for 10 ships under the down-select strategy.

TABLE 2—CBO'S AND THE NAVY'S ESTIMATES OF THE COSTS OF THE LCS PROGRAM UNDER DIFFERENT ACQUISITION PLANS, 2010 TO 2015

[Millions of current dollars]

	2010[a]	2011	2012	2013	2014	2015	Total	Average ship cost
CBO's Estimates								
19-Ship Down-Select Plan	1,080	1,150[b]	1,790	2,330	2,350	2,380	11,080	583
20-Ship Dual-Award Plan	1,080	1,450[b]	2,290	2,300	2,330	2,370	11,820	591
Navy's Estimates								
19-Ship Down-Select Plan	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	10,400	547
20-Ship Dual-Award Plan	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	9,800	490
Memorandum:								
2011 President's Budget and FYDP (19-ship plan)	1,080	1,509	1,808	2,334	2,417	2,748	11,893	626

Source: Congressional Budget Office.
Note: n.a. = not available; FYDP = Future Years Defense Program.
a. The amount for 2010 is the funding level provided in the Defense Appropriations Act, 2010.
b. The amounts for 2011 include additional funds CBO estimates would be needed to complete the 2010 ships.

With the Navy in possession of contract bids, it is not clear that CBO's cost-estimating model is a better predictor of LCS costs through 2015 than the Navy's estimates. Still, the savings compared with the 2011 FYDP might not be realized if the Navy changes the number of ships that are purchased after the contract has been let or makes design changes to address technical problems, regardless of which acquisition strategy the Navy pursues. Inflation or other escalation clauses in the contract also could add to costs.

Although CBO estimates that the dual-award plan would be slightly more costly, that approach might also provide some benefits. In materials delivered to the Congress about that strategy, the Navy stated, ''There are numerous benefits to this approach including stabilizing the LCS program and the industrial base with award of 20 ships; increasing ship procurement rate to support operational requirements; sustaining competition through the program; and enhancing Foreign Military Sales opportunities.'' CBO did not evaluate those potential benefits.

IMPLICATIONS OF THE TWO ACQUISITION PLANS FOR COSTS BEYOND 2015

A Navy decision to buy both types of ships through 2015 would have cost implications after 2015. But whether those long-term costs will be higher or lower would depend on at least three aspects of the Navy's decision:

Which of the two ship designs the Navy would have selected if it had kept to its original down-select plan;

Whether the Navy will buy one or both types of ships after 2015; and

Whether the Navy decides eventually to develop a common combat system for both types of ships or to keep the two combat systems (one for each type of ship) that it would purchase under the dual-award approach.

CBO cannot estimate those costs beyond 2015 because it does not know what the Navy is likely to decide in any of those areas. For example, if the Navy pursued its original down-select strategy and chose the ship with lower total ownership costs (the costs of purchasing and operating the ships), switching to the dual-award strategy would increase the overall cost of the program because the Navy would then be buying at least 10 more ships that have higher total ownership costs. Conversely, if the Navy were to choose the ship with higher total ownership costs under the down-select strategy, the dual-award strategy might produce an overall savings. However, some of those savings would be offset by the extra overhead costs of employing a second shipyard and by other types of additional costs described below. Added costs would also arise if the Navy selected the dual-award strategy through 2015 and then decided to build both types of ships after 2015 to complete the 55–ship fleet rather than selecting only one type, in keeping with its current plans.

The dual-award strategy might entail higher costs to support two full training and maintenance programs for the two ship designs. Under the down-select strategy, the Navy would need training, maintenance, and support facilities to sustain a fleet of 53 LCSs of the winning design. Facilities would be required for both the Pacific Fleet and the Atlantic Fleet—essentially one on each coast of the continental United States. A more modest set of facilities would be required to support the two ships of the losing LCS design, which the Navy could presumably concentrate at a single location. Under a dual-award strategy, the Navy would buy at least 12 ships of each type, with an additional 31 ships of either or both designs purchased after 2015. Thus, a more robust training, maintenance, and support program would be required for the version of the LCS that would have lost under the down-select strategy. The Navy has said that those costs are relatively small and more than offset by the savings generated by the shipyards' bids, but CBO did not have the data to independently estimate those additional costs.

Finally, another, potentially large, cost would hinge on whether the Navy decides in 2016 or later to select a common combat system for all LCSs. Currently, the two versions of the ship use different combat systems. If the Navy decided to have both versions of the LCS operate with the same combat system, it would incur research, development, and procurement costs, as well as costs to install the new system on 12 of the LCSs already equipped with an incompatible system. Combat systems for the LCS today cost about $70 million each, not including the cost to remove the old system and install the new one. At a minimum, the Navy would lose some efficiency in the production of the combat system under the dual-award plan because neither producer of the combat system would have provided more than 12 systems for installation on LCSs by 2015; under the down-select strategy, by contrast, one producer would have provided 19 systems by that year. Thus, the production costs of the combat system are likely to be higher for ships purchased after 2016 under the dual-award strategy than under the existing down-select approach because the manufacturers of those later ships would have had less experience building ships of the same type and thus fewer opportunities to identify cost-saving practices. Furthermore, the costs to operate two combat systems (or to switch to a single combat system later) would probably exceed the cost to operate a single system from the outset.

I hope you find this information helpful. If you have any more questions, please contact me or CBO staff. The CBO staff contact is Eric Labs.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Mr. LEAHY. Mr. President, I strongly support the alternate engine for the F–35 Joint Strike Fighter. The evidence and the logic for an alternate engine easily overwhelm the flawed arguments that have been used to attack it. Investments in fighter engine competition will reduce costs over the life of the F–35 program. Not only will competition cost less than a single engine monopoly; competition also forces contractors to be more responsive and reliable. And the F–35 will comprise a vast percentage of the U.S. strike aircraft fleet. With just one engine, our national security would rest on a single point of failure. Sole-sourcing the F–35 Joint Strike Fighter engine is simply

the wrong decision for our country, and I am glad that the continuing resolution will preserve funding for this program through March.

Though misinformation has been spread about the costs of the alternate engine, multiple nonpartisan reports suggest that it is highly likely to save taxpayer dollars. According to Government Accountability Office testimony, the Congress can reasonably expect to recoup investment costs over the life of the program. If the so-called ''Great Engine War'' of the F–16 program is any example, the F–35 alternate engine might even yield 30 percent cumulative savings for acquisition, 16 percent savings in operations and support, and 21 percent savings over the life cycle of the aircraft. Not only would we sacrifice these potential savings by killing the F–35 alternate engine program, but that decision would waste the investment we have already made in a competitive second engine. Ending fighter engine competition for the F–35 is pound foolish without even being penny wise.

GAO also points to several possible nonfinancial benefits of engine competition, including better system performance, increased reliability and improved contractor responsiveness. News reports about the broader F–35 program reveal what happens when we sole-source crucial large, multiyear defense programs. The F–35 faces a range of unanticipated problems, delays and cost overruns. Even the independent panel on the 2010 Quadrennial Defense Review—led by President Clinton's Defense Secretary, William Perry, and President Bush's National Security Adviser, Stephen Hadley—strongly advocated dual-source competition in major defense programs. Without competition, the American people will keep paying more and more to buy less and less.

Without competition, our country's strike aircraft would be one engine problem away from fleet-wide grounding. Putting all of our eggs in the single engine basket would elevate risks to our troops and their missions. Imagine our soldiers in Afghanistan stranded without air support simply because we were not wise enough to diversify the program to avoid engine-based groundings. With their lives on the line, we cannot afford to be irresponsible with this program.

The continuing resolution appropriately maintains funding for the alternate engine program. It does not allow for so-called new starts, but neither does it bring programs to a premature end without the debate and full consideration here in the Congress that they deserve. The alternate engine program will rightly continue, and I expect that when programs receive scrutiny during budget consideration next spring, the same will also be the case.

Ensuring engine competition is the right thing to do because it is the smart thing to do. Although some have stressed the up-front costs, taxpayers stand to save more money over the life of the F–35 program by maintaining competitive alternatives. Most importantly, we will purchase a better and more reliable product for the people who risk their lives to defend our country. I will continue to support engine competition that ensures the best product for the troops at the best price for the taxpayer.

Ms. MIKULSKI. Mr. President, I rise to speak about the appropriations process and the need to return it to regular order. I come to the floor very bitter that we have to pass this continuing resolution, CR. The power of the purse is our constitutional prerogative. I am for regular order. Regular order is the most important reform to avoid continuing resolutions and omnibus bills.

Regular order starts with the Appropriations subcommittees and then full committee marking up 12 individual bills. Chairman INOUYE has led these bills out of Committee for the last 2 years, as Chairman Byrd did before him. Then the full Senate considers 12 bills on the floor and all Senators have a chance to amend and vote on the bills. This, however, has not happened since the 2006 spending bills. Lack of regular order means trillion dollar omnibuses or continuing resolutions. If a bill costs a trillion dollars, then opponents ask why can't we cut it by 20 percent—what will it matter? But we are dealing with actual money; it is not authorizing, which is advisory. There are real consequences. If we are really going to tackle the debt, the Appropriations Committee must be at the table. Tackling the debt can't be done just through Budget and Finance Committees alone.

What are the real life consequences of this CR? Well, this CR means that it will be harder to keep America safe. Under this CR the FBI cannot hire 126 new agents and 32 intelligence analysts it needs to strengthen national security and counter terrorist threats. The FBI's cyber security efforts will also be stalled, even while our Nation faces a growing and pervasive threat overseas from hackers, cyber spies and cyber terrorists. Cyber security is a critical component to our Nation's infrastructure, but this CR doesn't allow the FBI to hire 63 new agents, 46 new intelligence analysts and 54 new professional staff to fight cyber crime. The DEA, ATF and FBI cannot hire 57 new agents and 64 new prosecutors to reduce the flow of drugs and fight violence and strengthen immigration enforcement along the Southwest border. Under this CR, we leave immigration courts struggling to keep pace with over 400,000 immigration court cases expected in 2011 because they cannot add Immigration Judge Teams who decide deportation and asylum cases. We cannot hire 143 new FBI agents and 157 new prosecutors for U.S. attorneys to target mortgage and financial fraud scammers and schemers who prey on America's hard working, middle class families and destroy our communities and economy. We miss the chance to add at least 75 new U.S. deputy marshals to track down and arrest the roughly 135,000 fugitive, unregistered child sexual predators hiding from the law and targeting children.

This CR stifles innovation and workforce development. In September, Norm Augustine and the National Academy of Sciences updated the 2005 ''Rising Above the Gathering Storm'' report, sounding the alarm that the U.S. is still losing ground in science that fuels innovations, and brings us new products and new companies. Everyone says they are for science, but it appears that no one wants to pay for it. So, under this CR, our science agencies, like the National Institute of Standards and Technology, NIST, and the National Science Foundation, NSF, will be flat funded. For NSF, this would mean 800 fewer research grants, and 7,000 fewer scientists and technicians working in labs across the country on promising research in emerging fields like cyber security and nanotechnology. Under a CR, we will let the world catch up by not making new investments in science education. We won't just lose the Ph.D.s who open avenues of discovery and win the Nobel Prize. We will also lose the technicians who are going from making steel and building ships to the new, innovation-based manufacturing economy, creating the next high tech product. We will also lose the chance to build up technical education in key fields like cyber security. Under this CR, we cannot expand the supply of cyber security specialists who are responsible for protecting U.S. Government computers and information. We miss the opportunity to triple funding for the NSF program to train cyber professionals for Federal careers, which has brought us more than 1,100 cyber warriors since 2002 and of whom more than 90 percent take jobs with Federal agencies.

I am also disappointed we will be passing this CR because I believe in the separation of powers established by the Constitution. Congress should not cede power to the Executive Branch, regardless of which party is in the White House. The Constitution gives the power of the purse to Congress. I will not cede the power to meet compelling human or community needs or create jobs for America and for Maryland. I don't want to leave all funding decisions to bureaucracy.

On the Appropriations Committee, we did our work by reporting 12 separate bills to the full Senate, but none came to the Senate floor. My Commerce, Justice, Science—or CJS—Subcommittee held 6 hearings with 14 witnesses to examine agencies' budget requests and policies. We heard from 4 inspectors general, IGs, from our major departments and agencies: Todd Zinser at Commerce, Glenn Fine at Justice, Paul Martin at NASA and Allison Lerner at NSF. We listened to agencies' officials, representatives of organizations from sheriffs to scientists

and interested Senators. My CJS Subcommittee worked in a bipartisan way to craft a bill that makes America safer, invests in the American workforce of the future and is frugal and gets value for taxpayer dollars. Under this CR, all of that work is wasted. Instead of fulfilling our constitutional duty of the power of the purse, we are leaving it to the Executive Branch to make key funding decisions with minimal direction from Congress.

As I travel around Maryland, people tell me that they are mad at Washington. Families are stretched and stressed. They want a government that's on their side, working for a strong economy and a safer country. They want a government that is as frugal and thrifty as they are. They want to return to a more constitutionally based government. This CR is not the solution.

Some Members might say that a CR is OK, it will save money, it doesn't matter. Well, even though the CR provides less funding for CJS, it doesn't do it smarter because the CR is essentially a blank check for the executive branch. Regular order provides direction, telling the government to be smarter and more frugal, making thoughtful and targeted cuts and modest increases where justified—not government on autopilot.

For example, my CJS appropriations bill tells agencies to cut reception and representation funds by 25 percent; eliminate excessive banquets and conferences; cut overhead by at least 10 percent—by reducing non-essential travel, supply, rent and utility costs; increase funding to IGs, the taxpayers' watchdogs at the agencies, and have those IGs do random audits of grant funding to find and stop waste and fraud; and notify the committee when project costs grow by more than 10 percent so that we have an early warning system on cost overruns. These reforms are lost in any CR.

We should refocus on the Appropriations Committee. Many Senators have only been elected for the first time in the last 6 years, so most have never seen regular order and don't know what Appropriations Committee is supposed to be. The Appropriations Committee is ''the guardian of the purse,'' which puts real funds in the Federal checkbook for the day-to-day operations of Federal agencies in Washington, and around the Nation and the world. It performs oversight of spending by Federal agencies. And it serves as Congress's main tool to influence how agencies spend money on a daily basis. Why does this matter? It matters because the Appropriations Committee is the tool for aggressive oversight and meeting the needs of our constituents. Agencies must respond to Appropriations—their budgets depend on it.

We must preserve the separation of powers, oversight of Federal agencies and advocacy for our States and our constituents. I urge my colleagues to return to the regular order, and look forward to consideration of all 12 appropriations bills on the floor next year.

Mr. LAUTENBERG. Mr. President, when our colleagues from across the aisle blocked the Omnibus appropriations bill they decided to leave our Nation less safe and less prepared to thwart the next terrorist attack. They chose to put our homeland security on autopilot for the next few months—and that is just too risky.

We had before us an Omnibus bill that addressed the evolving threats to our homeland security. As chairman of the Homeland Security Appropriations Subcommittee, I can attest to the diligent, bipartisan work that went into crafting this legislation, which met our security challenges in a fiscally responsible manner. But our colleagues across the aisle chose instead to fund our homeland security at the status quo levels under a continuing resolution. The terrorists aren't operating under the status quo and neither should we.

The terrorists are constantly searching for new ways to threaten our way of life. We are approaching the 1-year anniversary of the Christmas Day bombing attempt, when a terrorist boarded a flight to Detroit with explosives sewn into his underwear. And just in October, printer cartridges being shipped from Yemen were found to contain explosives that were meant to blow up on cargo planes flying over the east coast of the U.S.

Homegrown terrorism is also a growing threat, as evidenced by the Fort Hood shooting, the Times Square bombing attempt and the New York City subway plot. Earlier this month, the FBI arrested a suspect who was planning to blow up a military recruitment center in Baltimore. And last month, the FBI stopped a U.S. citizen who planned a terrorist bombing at a Christmas tree-lighting ceremony in Portland, OR.

Because of the opposition to the Omnibus, our Department of Homeland Security and first responders across the country will not have the resources they need to anticipate, thwart, and respond to these threats: The Transportation Security Administration will not be able to purchase new explosive-tracing equipment or hire more intelligence officers and canine teams. We won't be able to hire more Federal air marshals, who have been stretched thin since the Christmas Day bomb plot was foiled. Our airports and seaports won't get new equipment to detect radiation and nuclear material. We will have fewer resources to secure air cargo and eliminate threats like the package bombs from Yemen. We will have less funding to secure our rail and transit systems, which are prime targets for terrorists—as we've seen everywhere from Madrid and Russia to DC and New York City. The Coast Guard won't be able to hire 100 new maritime inspectors or improve their capacity to respond to an oil spill. Immigration and Customs Enforcement may have to cut back investigations into human trafficking, drug smuggling and identity theft. There will be fewer Customs officers on duty to keep dangerous cargo and terrorists out of our country. Our ability to prepare for natural disasters and other emergencies will suffer. Fewer local fire departments will receive needed assistance to pay for equipment and training.

In short, the Republicans' decision to kill the Omnibus will shortchange our safety and take chances with our security—and that is wrong for our country.

Beyond homeland security, the Republicans' actions will leave our troops worse prepared and our children without the education they deserve.

The Omnibus crafted by Senator INOUYE, on the other hand, responsibly met all of these needs. And it did so at the exact same funding level proposed by the Republican leader in the Appropriations Committee earlier this year. In June, 40 Republicans voted to support funding the government at this level. Moreover, the Omnibus was crafted on a bipartisan basis—and included earmarks and other spending requested by Republicans.

So it is the height of hypocrisy and cynicism for our Republican colleagues to attack this bill as wasteful or bloated. Adding to the hypocrisy, just two days after killing the Omnibus, which included a quarter billion dollars more for border security than the CR, Republicans killed the DREAM Act—on the alleged basis that we should secure the border first. They are clearly more concerned with handing a defeat to our President and to congressional Democrats than with governing in a responsible way. Republicans have put politics first and it is our troops, our security and our children that will pay the price.

In the aftermath of the wreckage caused by the Republicans' opposition to the Omnibus, Senator INOUYE was faced with the challenge of drafting a slimmed-down continuing resolution that would not leave the country vulnerable. This was an extremely difficult task, but Senator INOUYE was able to craft a bill that provides the most vital resources our government needs to function over the next few months. This was no small feat and I commend the chairman for his tireless work on this bill and throughout this year's appropriations process.

The PRESIDING OFFICER. The Senator from Colorado.

NOMINATION OF BILL MARTINEZ

Mr. UDALL of Colorado. Mr. President, I rise in response to Senator SESSIONS' comments about a nominee we are going to consider shortly, Bill Martinez.

Senator SESSIONS just spoke about the ACLU for 30 minutes, trying to define Bill Martinez—a district court nominee, not the appeals court as SESSIONS noted—as an ACLU-like nominee and then criticizing his hearing responses on the death penalty and the

empathy standard. I wanted to clarify for the record three points of misinformation.

Bill Martinez did not work for the ACLU. He served on an advisory board regarding cases in Denver. Several Bush nominees were members of the Federalist Society and contributors to other conservative litigation centers and were confirmed just a few years ago. Bill Martinez is not the ACLU, and we ought to be careful to avoid setting false standards.

From the Martinez Hearing:

Senator Sessions: Have you ever acted as counsel in a matter on behalf of the ACLU? If so, please provide the Committee with a citation for each case, a description of the matter, and a description of your participation in that matter.

Martinez Response: No.

Senator SESSIONS claimed he was dissatisfied with Bill Martinez's response regarding the death penalty, stating that he was not clear in his beliefs. This is misleading and the record states otherwise.

From the Martinez Hearing:

Senator Sessions: Please answer whether you personally believe that the death penalty violates the Constitution.

Martinez Response: It is clear under current Supreme Court jurisprudence that, with very limited exceptions, the death penalty does not violate the Eighth Amendment to the U.S. Constitution. *Gregg* v. *Georgia*, 428 U.S. 153 (1976); *Roper* v. *Simmons*, 543 U.S. 551 (2005); *Kennedy* v. *Louisiana*, 129 S.Ct. 1 (2008). Consistent with this precedent, I do not believe the death penalty is unconstitutional.

Senator SESSIONS also claimed that Bill Martinez stated empathy can be taken into consideration with legal decisions. This is misleading and the record states otherwise.

From the Martinez Hearing:

Senator Sessions: Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Martinez Response: No.

Let me end on this note. Bill Martinez is a man of high character, he is a good man, and he will make an excellent Federal judge. Let us vote to confirm Bill Martinez to the Colorado U.S. District Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). Under the previous order, the second-degree amendment is withdrawn. The question is on agreeing to the motion to concur.

Mr. UDALL of Colorado. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Missouri (Mr. BOND).

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

The result was announced—yeas 79, nays 16, as follows:

[Rollcall Vote No. 289 Leg.]

YEAS—79

Akaka	Franken	Murkowski
Alexander	Gillibrand	Murray
Barrasso	Grassley	Nelson (FL)
Baucus	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Hutchison	Reid
Bennett	Inouye	Roberts
Bingaman	Johanns	Rockefeller
Boxer	Johnson	Sanders
Brown (MA)	Kerry	Schumer
Brown (OH)	Kirk	Sessions
Bunning	Klobuchar	Shaheen
Cantwell	Kohl	Shelby
Cardin	Kyl	Snowe
Carper	Landrieu	Specter
Casey	Lautenberg	Stabenow
Cochran	Leahy	Tester
Collins	Levin	Thune
Conrad	Lieberman	Udall (CO)
Coons	Lincoln	Udall (NM)
Corker	Lugar	Voinovich
Dodd	Manchin	Warner
Dorgan	McCaskill	Webb
Durbin	McConnell	Whitehouse
Ensign	Menendez	Wicker
Enzi	Merkley	
Feinstein	Mikulski	

NAYS—16

Burr	Feingold	McCain
Chambliss	Graham	Nelson (NE)
Coburn	Hatch	Risch
Cornyn	Inhofe	Vitter
Crapo	Isakson	
DeMint	LeMieux	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The motion was agreed to.

EXECUTIVE SESSION

NOMINATION OF BENITA Y. PEARSON TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

NOMINATION OF WILLIAM JOSEPH MARTINEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to consider the following two nominations, which the clerk will report.

The legislative clerk read the nomination of Benita Y. Pearson, of Ohio, to be United States District Judge for the Northern District of Ohio.

The legislative clerk read the nomination of William Joseph Martinez, of Colorado, to be United States District Judge for the District of Colorado.

Who yields time? The Senator from Alabama.

Mr. SESSIONS. Mr. President, is there an agreement as to the time?

The PRESIDING OFFICER. There is 8 minutes total, 4 minutes on each side on both nominations in combination.

Mr. SESSIONS. Mr. President, I would assume the chairman, who will be speaking in favor, would want to go first, and I yield to Senator LEAHY.

Mr. LEAHY. No, go ahead.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, the two nominees today are nominees who came out of the Judiciary Committee with substantial negative votes. Mr. Martinez is a long-time member of the American Civil Liberties Union. He has refused, when asked at the hearing, by myself and in written questions, to state whether he believes the Constitution of the United States prohibits the death penalty—not whether he believed in it. That is his prerogative. He hid behind the answer that the Supreme Court says it is. But the ACLU holds to the view that the cruel and unusual punishment provision of the Constitution prohibits the imposition of the death penalty and, therefore, it is unconstitutional.

He refused to answer that question, and I believe that is an untenable view. There are four references, at least, in the Constitution to the death penalty, and I do not know how somebody could take the cruel and unusual clause to override specific references to the death penalty which was provided for in every Colony and the Federal Government when the Constitution passed.

With regard to the other nominee, Mrs. Benita Pearson, she has some very extreme views on animal rights. When asked by Senator COBURN whether it would be in the best interests of a steer to be slaughtered—she was asked that in the committee—she said probably not in the best interests of the steer, sir. But then you have to look beyond that. I mean, the steer is going to lose its life. It is a painful situation. And steers, evidence has shown, may have some idea or apprehension about the slaughter that is impending. But the next step is, is it necessary to slaughter the steer in order to provide food for those who might otherwise go hungry or perhaps be malnourished without the sustenance that this steer's flesh and hide could provide in terms of clothing and matters necessary for the well-being of animals.

Basically, what I understand this to be is that she is suggesting a court should enter into some sort of balancing test on whether it is legitimate to slaughter a steer, and also she is a member of the ALDF, the defense of animals group, that is very extreme in its views.

For that reason, the National Cattleman's Beef Association and the Farm Animal Welfare Coalition strongly oppose the nomination. I think her views on this issue are out of the mainstream.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, President Obama nominated William J. Martinez to fill a judicial emergency vacancy on the District of Colorado last February. Mr. Martinez is a well-respected legal practitioner in Denver who has the strong support of both of his home State Senators. The statements earlier today from Senator UDALL and Senator

BENNET were compelling. They have been steadfast, forthright and exceedingly patient. I wholeheartedly agree with them that Bill Martinez should now, at long last, be confirmed. When he is, he will become only the second Hispanic to serve Colorado as a district court judge.

The Judiciary Committee favorably reported his nomination over 8 months ago, on April 15. It has been delayed ever since. In May we received a letter from the chief judge of the District of Colorado, Judge Wiley Y. Daniel, urging us to confirm Mr. Martinez because without additional judges ''it is impossible for the court to possess the judicial resources that are necessary to effectively discharge the business of the court.'' Despite that plea from the chief judge of the district, the Senate has not been allowed to consider this nomination until today.

This is another example of the unnecessary delays that have led to a judicial vacancies crisis throughout the country. Judicial vacancies have skyrocketed to over 100 while nominations are forced to languish without final Senate action. In fact, President Obama's nominees have been forced to wait on average six times longer to be considered than President Bush's judicial nominees reported by the Judiciary Committee during the first 2 years of his Presidency.

I still do not understand why this nomination was subjected to a party-line vote before the Judiciary Committee. I recall all the Bush nominees who were members of the Federalist Society and other conservative litigation centers who were confirmed just a few years ago. Can it be that some are seeking to apply a conservative activist ideological litmus test and discount Mr. Martinez' qualifications and work experience?

Our ranking Republican Senator, Senator SESSIONS, reflected on the confirmation process last year, saying:

> What I found was that charges come flying in from right and left that are unsupported and false. It's very, very difficult for a nominee to push back. So I think we have a high responsibility to base any criticisms that we have on a fair and honest statement of the facts and that nominees should not be subjected to distortions of their record.

I listened closely to the Senator's statement against Mr. Martinez but heard nothing about anything Mr. Martinez had done or even any position taken by the Colorado ACLU in which Mr. Martinez was involved. There was nothing on which to base opposition to this qualified nominee. Certainly not the ''gotcha'' questions he was asked months ago.

More than two dozen Federal circuit and district court nominations favorably reported by the Judiciary Committee still await a final Senate vote. These include 17 nominations reported unanimously and another 2 reported with strong bipartisan support and only a small number of no votes. These nominations should have been confirmed within days of being reported. In addition, 15 nominations ready for final action are to fill judicial emergency vacancies. With judicial vacancies at historic highs, we should act on these nominations. During President Bush's first 2 years in office, the Senate proceeded to votes on all 100 judicial nominations favorably reported by the Judiciary Committee. That included controversial circuit court nominations reported during the lame-duck session after the election in 2002. In contrast, during the first 2 years of President Obama's administration, the Senate has considered just 55 of the 80 judicial nominations reported by the Judiciary Committee.

Adding to the letters we have received recently urging us to take action to fill vacancies is one sent this week to the Senate leaders by the National Association of Assistant United States Attorneys, a group of career prosecutors. John E. Nordin, vice president for membership and operations, writes:

> Judicial vacancies in our federal courts are reaching historic highs. Our members—career federal prosecutors who appear daily in federal courts across the nation—are concerned by the increasing number of vacancies on the federal bench. These vacancies increasingly are contributing to greater caseloads and workload burdens upon the remaining federal judges. Our federal courts cannot function effectively when judicial vacancies restrain the ability to render swift and sure justice.

I ask unanimous consent that this letter be printed in the RECORD. It concludes, ''[w]e believe that all judicial nominees approved by the Senate Judiciary Committee are deserving of a prompt up-or-down floor vote.'' I agree with these career Federal prosecutors who understand the vital importance of functioning courts and rely on them every day. It is time for the Senate to act on the dozens of judicial nominees that have been stalled from final consideration before we adjourn.

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

NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS,
Lake Ridge, VA, December 17, 2010.

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

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

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: Judicial vacancies in our federal courts are reaching historic highs. Our members—career federal prosecutors who daily appear in federal courts across the nation—are concerned by the increasing numbers of vacancies on the federal bench. These vacancies increasingly are contributing to greater caseloads and workload burdens upon the remaining federal judges. Our federal courts cannot function effectively when judicial vacancies restrain the ability to render swift and sure justice.

As you know, thirty-eight judicial candidates have been approved by the Senate Judiciary Committee and await a Senate floor vote. A large number of these candidates have been approved without controversy by unanimous consent. Some candidates have been named to judgeships whose vacancies have been designated as ''judicial emergencies'' by the Judicial Conference, because of their high caseloads and the significant periods of time that these judgeships have remained unfilled.

We believe that all judicial nominees approved by the Senate Judiciary Committee are deserving of a prompt up-or-down floor vote. Thank you for taking the time to consider our views on this issue and for your leadership.

Sincerely,

JOHN E. NORDIN, II,
Vice President for Membership, and Operations.

Mr. LEAHY. Mr. President, today, the Senate is finally considering a judicial nomination that has been stalled since February on the Executive Calendar. The nomination of Benita Y. Pearson to serve on the Northern District of Ohio was reported favorably by the Judiciary Committee more than 10 months ago. Judge Pearson is currently a Federal magistrate judge on the court to which she is nominated. When confirmed, she will become the first African-American woman to serve as a Federal judge in Ohio.

I have reviewed the record and considered the character, background and qualifications of the nominee and join with the Senators from Ohio, one a Democrat and the other a Republican, in supporting this nominee. Frankly, the opposition is a dramatic departure from the traditional practice of considering district court nominations with deference to the home State Senators that know the nominees and their districts best. I commend Senator BROWN on his statement in support of the nomination today. As he noted, he worked closely with Senator VOINOVICH, the Republican Senator from his State and a judicial screening commission in making this recommendation to the President.

The obstruction of these district court nominations is unprecedented, a sign that a different standard is being applied to President Obama's nominees that has never before been applied to the nominees of any President, Democratic or Republican. Out of the 2,100 district court nominees reported by the Judiciary Committee since 1945, only five have been reported by party-line votes. Four of these party-line votes have been in this Congress, including the two of the nominations we consider today. In fact only 19 of those 2,100 nominees were reported by any type of split rollcall vote at all, but five of them—more than 25 percent of the total—have been this Congress.

The party-line vote against this nomination in the Judiciary Committee was without explanation. Judge Pearson has been a Federal judge magistrate for 8 years and a prosecutor before that. Nothing in her professional background justifies the delay or opposition to this nomination.

At her hearing, there were some who tried to make a mountain out of a mole hill with respect to a statement she made about animals. I just worked

with Senator KYL and Senator MERKLEY on a constitutional, legal prohibition against vicious videos that show animals being crushed. That bill passed unanimously. No Senators thought twice about approving that important legislation. I remember a couple of years ago when a famous professional football player went to prison for his participation in a dog fighting ring. Many Americans were outraged by those activities and no Senator questioned the State and Federal laws against such activities. Are those who oppose this nomination also now opposed to the Humane Society of the United States and to the legislative actions we took since they involved animals?

I join the Senators from Ohio in urging the Senate to confirm Judge Pearson without further delay.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, there has been concern, as the chairman pointed out and the ranking member pointed out, on Benita Pearson's views on animal law. With all due respect to my colleague, you know it is a red herring. If you look at the record of Ohio's Northern District, which goes back to 1839, there has been exactly one case on animal welfare. Some 20 years ago, the Cleveland Zoo was sued to stop the transfer of Timmy the gorilla to the Bronx Zoo—I am not making this up—from transferring Timmy the Gorilla to the Bronx Zoo for mating purposes. The case was dismissed. One case in 170 years.

Judge Pearson is qualified, say the two former presiding judges, Chief Judges Carr and White, and the sitting presiding judge, Judge Oliver from the Northern District—a combined 50 years' experience on the district court.

Judge James Carr, the Chief U.S. District Judge at the time of her nomination, lauded Judge Pearson as ''a splendid choice . . . eminently well-qualified by intelligence, experience . . . and judicial temperament.'' His successor, Chief Judge Solomon Oliver, is just as supportive of her nomination.

So is former Chief Judge George White, who wrote that:

> Magistrate Judge Pearson's record as a Judicial Officer and her litigation and business experience do more than idly suggest her readiness to assume the position of District Court Judge. Taken all together, you will be hard-pressed to find a more suitable candidate.

Mr. BROWN of Ohio. These judges have made glowing reports on Judge Benita Pearson, who has been a magistrate, a CPA, practiced privately, worked for the U.S. Attorney's Office. She will be the first African-American woman to sit on the Federal bench in Ohio. She has been supported by Senator VOINOVICH and a bipartisan commission of 17 lawyers who picked her. She is a great choice. I ask the concurrence of my colleagues. I yield to Senator UDALL.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. I rise to support the nomination of Bill Martinez. Senator LEAHY made the case for his nomination and for him to be confirmed. I have great affection for my friend from Alabama, but I want to set the record clear that Bill Martinez did not work for the ACLU, he advised the ACLU. If we are going to raise that standard and change the rules, then we ought to remember that the Bush nominations often included Federalist Society members and contributors.

We ought to be careful about setting false standards. Bill Martinez was recommended by a bipartisan nominating commission that Senator BENNET and I created. He is a good man. His story is a quintessential American story. He will be an excellent judge. I urge us all to vote for his confirmation today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. How much time is remaining on this side?

The PRESIDING OFFICER. The Senator has 1 minute 5 seconds.

Mr. SESSIONS. Mr. President, Mr. Martinez, I know, has a lot of good supporters and friends, as I have noted. But he did refuse to answer a simple question of whether the U.S. Constitution prohibits the death penalty, which I believe the ACLU, of which he was a member and a member of the legal panel, definitely favored.

I do believe Judge Pearson's view that somehow there should be a balancing test about whether we should actually slaughter a steer based on the need for food or hide is an extreme view also.

We have had about 15 members of the ACLU confirmed by this administration. But we expect this President to submit mainstream judges. The ACLU is not mainstream in its positions. I do believe the administration needs to understand that this is going to be a more contentious matter if we keep seeing the ACLU chromosome as part of this process.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I would like nothing better than to vote on the judges. We have a number of them who came out unanimously from the Senate Judiciary Committee. My friends from the other side are not even allowing votes on them.

We did not do that to President Bush in his first 2 years.

The PRESIDING OFFICER. The Senator's time has expired.

The question is, Will the Senate advise and consent to the nomination of Benita Y. Pearson, of Ohio, to be United States District Judge for the Northern District of Ohio?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator for Indiana (Mr. BAYH), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Missouri (Mr. BOND).

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

The result was announced—yeas 56, nays 39, as follows:

[Rollcall Vote No. 290 Ex.]

YEAS—56

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kerry	Rockefeller
Brown (OH)	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Conrad	Levin	Tester
Coons	Lieberman	Udall (CO)
Dodd	Lincoln	Udall (NM)
Dorgan	Manchin	Voinovich
Durbin	McCaskill	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	

NAYS—39

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Brown (MA)	Graham	Murkowski
Bunning	Grassley	Nelson (NE)
Burr	Hatch	Risch
Chambliss	Hutchison	Roberts
Coburn	Inhofe	Sessions
Cochran	Isakson	Shelby
Collins	Johanns	Snowe
Corker	Kirk	Thune
Cornyn	Kyl	Vitter
Crapo	LeMieux	Wicker

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The nomination was confirmed.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William Joseph Martinez, of Colorado, to be U.S. District Judge for the District of Colorado?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Missouri (Mr. BOND).

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

The result was announced—yeas 58, nays 37, as follows:

[Rollcall Vote No. 291 Ex.]

YEAS—58

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Brown (MA)	Kerry	Rockefeller
Brown (OH)	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Collins	Levin	Tester
Conrad	Lieberman	Udall (CO)
Coons	Lincoln	Udall (NM)
Dodd	Manchin	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	
Feinstein	Mikulski	

NAYS—37

Alexander	Enzi	McConnell
Barrasso	Graham	Murkowski
Bennett	Grassley	Risch
Bunning	Hatch	Roberts
Burr	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Johanns	Thune
Corker	Kirk	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker
DeMint	Lugar	
Ensign	McCain	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The nomination was confirmed.

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

TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS—Resumed

The PRESIDING OFFICER. The clerk will report the treaty.

The assistant legislative clerk read as follows:

Treaty with Russia on Measures for Further Reduction and Limitation of Strategic Offensive Arms.

Pending:

Corker modified amendment No. 4904, to provide a condition and an additional element of the understanding regarding the effectiveness and viability of the New START Treaty and United States missile defenses.

The PRESIDING OFFICER. There will now be 4 minutes of debate equally divided and controlled between the two leaders or their designees.

Who yields time?

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I believe the Senator from Arizona is prepared to yield back time, and I will also yield back time.

CLOTURE MOTION

The PRESIDING OFFICER. Having all time yielded back, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

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 Treaties Calendar No. 7, Treaty Document No. 111–5, the START treaty.

Harry Reid, Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, John F. Kerry, Sheldon Whitehouse, Mark L. Pryor, Jack Reed, Robert Menendez, Mark Begich, Benjamin L. Cardin, Kent Conrad, Bill Nelson, Amy Klobuchar, Patty Murray, Barbara A. Mikulski, Christopher J. Dodd, Richard G. Lugar.

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 Treaty Document No. 111–5, the New START treaty, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), and the Senator from New Hampshire (Mr. GREGG).

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

The yeas and nays resulted—yeas 67, nays 28, as follows:

[Rollcall Vote No. 292 Ex.]

YEAS—67

Akaka	Feinstein	Murkowski
Alexander	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bennett	Inouye	Reed
Bingaman	Isakson	Reid
Boxer	Johnson	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Snowe
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Cochran	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Coons	Lugar	Voinovich
Corker	Manchin	Warner
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	
Feingold	Mikulski	

NAYS—28

Barrasso	Graham	McConnell
Bunning	Grassley	Risch
Burr	Hatch	Roberts
Chambliss	Hutchison	Sessions
Coburn	Inhofe	Shelby
Cornyn	Johanns	Thune
Crapo	Kirk	Vitter
DeMint	Kyl	Wicker
Ensign	LeMieux	
Enzi	McCain	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The PRESIDING OFFICER. On this vote, the yeas are 67, the nays are 28. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Who yields time?

The Senator from Idaho.

PREDATOR WOLVES

Mr. CRAPO. Madam President, I wish to rise to speak about an issue that has been at the center of debate in the northern Rockies for quite some time; that is, the issue of the wolf. The wolf was introduced into the northern Rockies in the 1990s and has flourished. Wolves are now abundant in the region, but, unfortunately, we have not been able to return the management of the wolves to the State, mostly due to litigation and to the inflexibility of the Endangered Species Act. In the meantime, wolf populations are growing at a rate of about 20 percent a year, resulting in substantial harm to our big game herds and domestic livestock.

Whenever I am back in Idaho, I hear from hunters who are angry their favorite hunting spots are no longer rich with elk and deer or from sheep and cattle ranchers who have lost many a head of cattle or sheep due to the wolf predation.

The State of Idaho has done everything it has been asked to do in order to manage wolves, and we continue to be denied that much needed opportunity. As such, it is time for Congress to act.

I intend to make a unanimous consent request in a few moments. First, I yield a few moments to my colleague from Idaho, Senator RISCH.

Mr. RISCH. Madam President, I join my colleague from Idaho in underscoring the difficulty we have on this issue. Most people on this floor don't have a full appreciation of what those of us in the West have to deal with. Two out of every three acres in Idaho are owned by the Federal Government. The Federal Government came in, in the mid-1990s, and forced the wolf upon the State. The Governor didn't want it, the legislature didn't want it, and the congressional delegation didn't want it. Nonetheless, the Federal Government brought us 34 wolves. Now they have turned into well over 1,000, and nobody knows exactly how many breeding pairs there are. The result is that there has been tremendous havoc wreaked on our preferred species in Idaho, the elk. We have done an outstanding job of managing elk, the preferred species, but they are also the preferred species for the wolf to eat. They are not vegetarians.

As a result, we have had a tremendous problem with wolves in Idaho, and we have brought a bill to the Senate to turn the management of wolves over to the State. All the other animals are managed by the State. We have done a great job for well over 100 years of managing two other difficult predators, the bear and various cats. We have done it responsibly, on a sustained basis, and we want to do the same thing with wolves.

The Federal Government has to let go of this. We have tried. We have the Federal courts that have stepped in. I don't quite understand how the Federal

court can claim the wolf is still an endangered species, when they can turn 34 wolves into over 1,000 and the population has exploded. Nonetheless, they have. It is time for Congress to act.

I yield back to Senator CRAPO.

Mr. CRAPO. Madam President, I will make this request on behalf of myself, Senator RISCH, and the Senators from Utah, Mr. HATCH and Mr. BENNETT, and the Senators from Wyoming, Mr. ENZI and Mr. BARRASSO.

I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of S. 3919, and that the Senate proceed to its immediate consideration; that the bill be read the third time and passed; that the motions to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD, as if read.

The PRESIDING OFFICER. Is there objection?

Mr. CARDIN. Madam President, reserving the right to object, and I do intend to object, first, let me point out to Senator CRAPO, he and I have worked together on the Water and Wildlife Committee and the Environment and Public Works Committee. I think we have had a fine relationship over the past couple years, and we have worked together on a series of bills that I think will improve water and wildlife in this Nation. This legislation has not had a hearing and has not been approved by the Environment and Public Works Committee. It deals with undermining one of the most important laws in our country, the Endangered Species Act. That is one of our most important environmental laws and has protected iconic species such as the bald eagle. The act has long enjoyed bipartisan support. President Nixon signed the ESA into law on December 28, 1973.

This bill attempts to solve politically what should be done by good science. Despite many disagreements in the more than three decades of the ESA, there has never been a removal of a species by Congress. Also, there have been efforts made to work out a reasonable compromise as it relates to the wolf. It is my understanding that it has been blocked on the Republican side in trying to get that compromise brought forward.

I will make one more suggestion to my friend, Senator CRAPO. As you know, the work product of our subcommittee, along with other bills in the Environment and Public Works Committee, and some lands bills have been combined into one bill, Calendar No. 30, S. 3003. I encourage the Senator to look at that package. If we can get consent to include a compromise on the gray wolf, we would be willing to try to get it done in the remaining hours of this session. I offer that to my friend.

Madam President, in its current form, I do object.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CRAPO. Madam President, I appreciate the comments of my colleague from Maryland and I appreciate working with him on the committee and I intend to continue working with him. This is an issue of utmost importance in those States in this region of the United States. The longer we wait to resolve this issue, the more difficult it will be. Cooperation is the key in order for us to get this resolution accomplished.

I thank the Chair. I yield the floor.

Mr. BAUCUS. Madam President, I say to all my friends, it is imperative we work together to find a compromise. As both Senators from Idaho know, you and other Senators have been working on a compromise. Under that compromise, Idaho could have a wolf hunt, as they should. The State of Montana could have a wolf hunt, as Montana should. Northern Utah could. All wolves in Utah would be off the endangered species list. I and others have suggested that wolves in northern Utah be totally off the endangered species list. This proposal we have been working on—you, myself, and others, including Secretary Salazar and the Assistant Secretary of the Interior, Fish and Wildlife Services, a short time ago, all agreed we should allow wolf hunts in all the States I mentioned. Yet I have to be honest, your side of the aisle has objected to that. You are not coming up with a total abolition, taking the wolf out of the Endangered Species Act. That is a solution that will not pass. We need a compromise.

I end where I began. I strongly urge Senators, next year, to keep working on a compromise. This is not going to work when the House passes a bill that totally takes the wolf off the Endangered Species list, which I know is the game plan. If that happens, we are back into the soup again. Let's find a solution and compromise that achieves the results we all want. It is within our reach. It is right there. Because of this interchange, we will not get it done this year. Our States desperately need a solution. That proposal was the solution. It was a compromise that achieved the results intended. I very much hope we can find a compromise to resolve this.

Mr. CRAPO. Madam President, the compromise the Senator from Montana refers to—and he is correct, we have been intensely working on this issue to find a compromise with the administration and the affected States. The compromise he refers to would have required a change in the management of the wolf in Idaho that was unacceptable to the Governor in Idaho and others, including myself and Senator RISCH. Although there was a proposal made, it is not correct that it was approved by everybody. I believe, though, we are making progress.

I am willing to work with the Senator from Montana and the Senator from Maryland and others to try not only to find further progress at this late date in this session or next year, if necessary, to try to find our way to that solution. I appreciate the willingness of both Senators to work with us in trying to find that compromise that will work.

The PRESIDING OFFICER. The Senator from Texas is recognized.

FCC VOTE ON INTERNET REGULATION

Mrs. HUTCHISON. Madam President, I know the subject we are on now is the New START Treaty. It is a very important subject. I appreciate so much all the debate we have had. I hope we will be able to go forward and allow people to have amendments within this time because it is a huge issue for our country.

I wish to speak on a different subject right now because it is so timely. Today, the Federal Communications Commission voted 3 to 2 to impose new regulations on the Internet. This is an unprecedented power grab by the unelected members of the Federal Communications Commission, spearheaded by its chairman.

The FCC is attempting to push excessive government regulation of the Internet through without congressional authority. These actions threaten the very future of this incredible technology. The FCC pursuit of Net neutrality regulations involves claiming authority under the Communications Act that they do not have. Congress did not provide the FCC authority to regulate how Internet service providers manage their network, not anywhere in the Communications Act nor any other statute administered by the Commission.

Adopting and imposing Net neutrality regulations is, in effect, legislating. It takes away the appropriate role of Congress in determining the proper regulatory framework for the fastest growing sector of our economy. The real-world impact of the FCC's action today is that it will be litigated. It will take 18 months to 2 years to sort through the briefings and the court decisions, and it will probably go to the Supreme Court of the United States. In the meantime, capital investment will slow in core communications networks, and I cannot think of a worse possible time for that, as we attempt to create jobs and fuel a recovery from the most significant recession in years.

Elected representatives should determine if regulation is necessary in this area. Hearings would bring opposing parties to the table, and the process would be open. Instead, an unelected and unaccountable group of regulators are creating new authority to intervene in an area that represents one-sixth of the Nation's economy.

I wish to go through a few of the specific provisions in this FCC order. The first one is an order to require broadband providers, such as Comcast and AT&T, to allow subscribers to send and receive any lawful Internet traffic, to go where they want, say what they want, to use any nonharmful online devices or applications they want to use.

These principles are widely supported. I don't object and neither

would probably anyone. However, these principles are already in use. We don't need a big regulatory intervention to accomplish these principles. It is the rest of the order that is diametrically opposed to this statement of openness and freedom. It installs a government arbiter to force their idea of freedom on the users of the Internet and on the companies that are trying to make the Internet the economic engine of America.

The first provision that deals with this is that networks must be transparent. It says networks must be transparent about how they manage their networks, i.e., decisions about engineering, traffic routing, and quality of service. Transparency requirements usually translate to reporting and consumer disclosure requirements that are heavily prescribed and expensive to comply with, and the possible disclosure of proprietary information could affect competition. The real-world impact of this is higher costs to consumers. The Commission will increase regulatory reporting and consumer disclosure requirements as a result of this provision, and the cost will be passed along to, of course, the consumers in the form of more expensive services.

The second provision is that you may not unreasonably discriminate. The FCC's order states that providers may not unreasonably discriminate against lawful Internet traffic. That sounds fine. But the devil is in the details. The term is vaguely defined in the order, and how the FCC interprets and enforces what is unreasonable will determine how limiting this restriction is. For instance, if a provider notices that a small number of users are sharing huge files that are leading to congestion on the network and determines that slowing down those connections would relieve the congestion for the majority of other users, the FCC would have the right, under this order, to determine that such an action is unreasonable.

The real-world impact is that this would diminish the company's flexibility in managing their own services. The unreasonable discrimination provision could undermine the providers' ability to manage their network and guarantee all the users a high quality of service. Companies that build and maintain the networks that make up the Internet need the flexibility to manage the exploding demand for services on their network.

Regrettably, the FCC's order curtails that by establishing that the FCC would be an approval portal that companies would have to pass through to manage their day-to-day operations. Surely, there is a better way.

The next provision requires that broadband providers must justify new specialized services. Under the FCC orders, providers would now have to come to the FCC in order to offer consumers a new service, something that would be creative and innovative. Instead of offering it to the marketplace and having the competitive advantage from something new, they have to now expose it to all of their competitors by going through a regulatory adjudication at the FCC.

Let me give an example of what could happen.

A hospital might want to work with a provider, such as Verizon, to offer a new telemedicine service for Verizon subscribers that allows patients at home to interact with their doctors via high-definition video and uninterruptible remote medical monitoring.

In order to do this, Verizon might have to prioritize that telemedicine traffic ahead of regular Internet traffic to ensure the appropriate quality of service, particularly if there is a life-threatening situation.

The FCC order allows the Commission to determine on a case-by-case basis whether such prioritization is actually unreasonable discrimination because presumably the hospital that is offering the service would be giving better treatment for that telemedicine traffic than the user's regular traffic.

Going through a whole regulatory process in order to offer that service is a burden we do not need and that will stifle the innovation that has been a hallmark of the Internet, which led to the explosion of opportunities there.

The Commission says it wants innovation to occur, but the language of the order clearly discourages innovation by forcing companies to pass through a government regulatory turnstile to determine whether a particular service, an innovative service, something new that might be a competitive advantage, something new for quality of life, should be allowed. This puts the FCC in the position of picking winners and losers among the new innovative services, and it certainly slows down the opportunity to have new things coming on the market in what is usually a fast-paced economic environment.

In some cases, this may be enough to discourage providers from even entering into the special arrangements necessary to offer such services. It is a cumbersome process and, furthermore, it is unnecessary.

In another provision, the FCC order will treat wireless broadband services more lightly than wireline broadband services, at least for now. The FCC reserves rights in this order, which are taken without congressional authority, in my opinion—and certainly the courts will litigate that and make its decisions—the FCC reserves the right to regulate wireless just as harshly in the future as they are now attempting to regulate wireline. For now, wireless providers will have more leeway to innovate and to manage their networks. But how much investment are they going to make for the long term if they do not know what the FCC might foresee in the future that needs fixing, even if it is not apparently broken.

The real world impact is that wireless is the fastest growing area of communications markets. The threat that the Commission might later apply the wireline prohibitions it has ordered today to this wireless marketplace is a major concern.

I commend the two members of the Commission who dissented in the vote today—Rob McDowell and Meredith Atwell Baker. They each did op-eds, one in the Wall Street Journal and one in the Washington Post. I would say the common theme is that this is a solution where there is no problem. We have an open Internet. We have an Internet that is working. It does not need the heavy hand of government. It does not need a government prism through which to determine if the Internet providers are doing an allowable service. We have a marketplace, and the marketplace is working.

This is a time for Congress to take a stand. These regulations will raise uncertainty about the methods and practices communications companies may use to manage their networks. Heavy-handed regulation threatens investment and innovation in broadband services, placing valuable American jobs at risk.

Why would this be happening in a recession where we are trying to increase jobs, where we are trying to stop the trajectory of unemployment in our country?

We need to lay off, and it is time for Congress to take a stand. Individuals and businesses alike are rightfully concerned about government attempts to seize control of the Internet. Senator ENSIGN, who is the ranking member of a Commerce subcommittee—I am the ranking member on the full Commerce Committee—together we are going to submit a resolution of disapproval under the Congressional Review Act in an effort to overturn this troubling regulatory overreach by the FCC. It is time for Congress to say we have not delegated this authority to the FCC. The FCC tried to do this once before using another part of the Communications Act. They were struck down by the courts. Now they have gone to a different interpretation in a different section of the act to try to gain the capability to obstruct freedom on the Internet.

It is a huge and serious issue on which I hope Congress will take the reins and say to the FCC: If we need regulation in this area, Congress will do it.

We are elected. We are accountable. People can vote what they believe is the right approach by what we do. The FCC is not accountable to the people of our country. Yes, they are accountable to the President and the votes for today's order were from Presidential appointees of this administration. It is another big government intervention where we do not need to suppress innovation.

What we need is to embrace innovation so we can create jobs in this country with the freedom that has marked the economic vitality of America for over 200 years.

We will have a resolution of disapproval at the appropriate time in the next session of Congress. I look forward to working with other Members of Congress to take the reins on this issue. It is a congressional responsibility.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, I understand Senator SESSIONS is on the floor and wishes to speak. I ask unanimous consent that the Chair recognize Senator SESSIONS, and after Senator SESSIONS, recognize myself and then Senator SHAHEEN, so we stay in order, if that is agreeable.

Mr. SESSIONS. It is agreeable to me.

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

The Senator from Alabama.

Mr. SESSIONS. Madam President, I wish to take a brief moment to express my pleasure in the fact that the continuing resolution that passed and will now be going to the House had within it a provision to allow the Navy to award the littoral combat ship competition to two of the bidders. It took a bit of a modification of the procedure to allow them to do that. It is a product of good news.

At one point in the late nineties, I chaired the Seapower Subcommittee of the Armed Services Committee. I have been a member of it. I have seen the development of the littoral combat ship concept. ADM Vern Clark determined it was the future of the Navy. We expect to have 55 of them in the fleet. They would be manned by only 40 sailors. They would be high speed, able to travel in shallow waters, and be effective for pirates or be effective for mine sweeping and other activities of that nature.

The House put in this language. We had a hearing in the committee a few days ago with Admiral Roughead and Navy officials, Secretary of the Navy Mabus, and representatives from the CRS, GAO and CBO—those ABC agencies that evaluate these kinds of proposals—and it has moved forward.

I thank Senator LEVIN for his leadership. I thank Senator INOUYE and Senator COCHRAN on our side and the House leaders also who saw fit to support the Navy's idea. It is not a plan I suggested, but it is one I believe is good.

The good news is this was enabled by the fact that as a surprise, the bids on the ships were very much below what was anticipated. The legislation required that the bids come in under $480 million per ship, and it looks as if these bids are going to be at $450 million. By having both shipyards go forward, the Navy gets a fixed price today. In other words, if aluminum goes up or electricity goes up, the shipyards are going to eat it. We will bring on both ships at the same time.

Not only that, but we would get 20 ships total in this first tranche of ships rather than 19. In addition to that, the Navy scores that it will save $1 billion, and that $1 billion they hope to apply to other ships the Navy needs in their 313-ship Navy of the future.

Ashton Carter, the DOD's acquisition executive, said:

> The U.S. Navy's recent decision to buy both classes of Littoral Combat Ship due to lower than expected bid prices is an example of what good competition can do.

It was a competitive bid. I think the Navy may have made a mistake in not allowing more benefit to the bidders based on how valuable the ship was, the total value, but they made it a rigorous cost competition and apparently got very good bids. The average bids were, as I said, $450 million.

The Chief of Naval Operations, ADM Gary Roughead, on December 14—a few days ago—testified before the Armed Services Committee. He said:

> I think the two different types [of ships] give us a certain amount of flexibility, versatility that one would not, and as I talked earlier about this ability to mix the capabilities of a force that we put in there.

This may have been when I asked a question about it at that same hearing. He said:

> I . . . believe that the designs of the ships and the flexibility of the ships . . . and also the cost of these ships open up potential of foreign military sales that would otherwise not be there.

In other words, not only could we create jobs, perhaps 3,000 to 4,000 jobs immediately, but many of our allies, with the approval of the Defense Department, might want to buy these ships for their fleets, and we would have the ability to export these products abroad.

Having been involved in seeing the vision of the Navy over a decade plus and to see that finally come to fruition is good. One Navy official was quoted in one of the major publications as saying the nature of these competitions is such there be a 100-percent chance of a protest, whichever one won the bid, and one reason is because the bid was so close. We will avoid a protest and will be able to move forward, get the ships faster, lock in the lowest possible cost, clearly lower than what would be otherwise, and maybe even be able to save enough money to build an even larger ship with it.

I thank my colleagues who worked on this issue. I believe it will be a good thing. One of the ships will be built in my hometown of Mobile, AL. I know how excited the workers at the shipyards will be to hear they will have jobs in the future producing one of the finest, most modern warships in the history of the Navy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, we are now only hours away from when we will have a chance to vote on the ratification of the New START treaty. The Senate has invoked cloture, so we are in that 30-hour postcloture period. We are now in a period where we need to consider some additional amendments, and then we will be able to vote on the ratification. I think that is good news for the United States, for national security.

I think each Member of the Senate wants to do what is right for our national security. And I wish to emphasize the point that whenever I look at a national security issue, I want to get the best advice I can from the experts—from our military experts, from our experts who are charged with making sure we have the best intelligence to protect the security of America, from our diplomatic experts, who understand the ramifications of what we do here and around the world in other areas of concern for national security. I would say it is unanimous that the experts are telling us it is in the security interests of the United States to ratify the New START treaty.

Mr. SESSIONS. Madam President, would the Senator yield for a moment?

Mr. CARDIN. I will be glad to yield.

Mr. SESSIONS. Madam President, I want to make a 1-minute comment about a Navy fellow who has been in my office. I am reluctant to interrupt, but the Senator is so eloquent, I know he can handle the interruption almost better than anybody else.

CDR Brent Breining has been assigned to my office for the year by the Navy. I hope it has been beneficial to him. I think it has been. It has certainly been beneficial to us on a host of matters. He is a man of ability, of integrity and hard work, and he symbolizes the kind of bright young men and women we have so many of in our military. I wanted to take this moment to express my appreciation for his fabulous service.

I thank the Chair, I yield the floor, and I thank my colleague for letting me interrupt him.

Mr. CARDIN. I am glad I yielded to Senator SESSIONS for that point because I do believe the fellows from the military assigned to our offices are extremely valuable in our work. I was fortunate to have CDR Andre Coleman in my office from the Navy, and I can tell you that what I learned from his presence in my office was important to me, and I think it really made me much more informed when it came to decisions I have had to make in the Senate. So this program is a very valuable program.

I was pleased to yield to the Senator so he could recognize the person in his office. He is from the Navy? He is a Navy officer?

Mr. SESSIONS. A Navy officer, yes.

Mr. CARDIN. Navy officers are always the best, and coming from Maryland, where we have the Naval Academy, we were pleased to provide some help to the Senator from Alabama.

If I can continue on the New START treaty, the real test here is the national security of our Nation. When you listen to the advice given to us by our military experts, they tell us the ratification of New START will enhance our national security. When you

talk to the people who are responsible for collecting intelligence information and analyzing that information, they tell us it is in our national security interest to ratify the New START treaty. When you talk to the political experts, those who are charged with managing our foreign policy considerations around the world, they tell us the ratification of New START will help protect our national security interest.

The reason is that when you look at this treaty and find out what is in this treaty that restricts what the United States can do and you look at the number of deployed warheads and the number of delivery vehicles we are permitted to have, our experts say those numbers are clearly achievable for us without compromising whatsoever all of our national security interests. That is what they tell us. And these numbers were not developed by the political system; they were developed by the military experts as to what is reasonable as far as limitations on deployed warheads.

When you look at the other restrictions—and we have heard a lot of debate that we are restricted on other defense issues. There is nothing in this agreement that limits missile defense issues. That is going to be a matter for our national debate. It will be a matter, in working with our allies, of analyzing where our current risks come from. But we can make independent judgments, and we are not restricted at all by the New START treaty as to how we make those judgments.

What is in this treaty is our ability to verify what the Russians are doing with their nuclear stockpile and what they are doing with their warheads and with their delivery systems. It allows us to have inspectors on the ground. Since the end of last year, we have not had inspectors on the ground. That is intelligence information that is extremely valuable for us to have. You can't substitute for that. Yes, we can get certain intelligence information from the assets we have, but having boots on the ground is critically important to our national security. So without the ratification of New START, we do not have the inspectors on the ground telling us, in fact, what Russia is doing, inspecting the warheads, and inspecting their delivery systems.

There is a third reason in addition to it being important from the point of view of what our experts are saying and in addition to the fact that it gives us verification. It also is a very important part of our national security system in working with other countries. We want to make sure we know what Russia is doing, yes. We understand Russia is a country of interest to the United States. But when you look at countries that are developing nuclear weapons, we need Russia's help and the international community working with us to make sure we prevent countries such as Iran from becoming nuclear weapon states. The ratification of this treaty will help us in those political efforts.

When you put all this together, it gives us what we need for verification. The restrictions in this treaty were worked out by our military as being what they believed was right, and it gives us the ability to continue to lead internationally not just on strategic arms reduction but on nonproliferation issues. So for all those reasons, I would urge my colleagues to vote for ratification.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Massachusetts.

Mr. KERRY. I wish to thank the Senator from Maryland for being a terrific member of the Foreign Relations Committee, and I thank both him and the Senator from New Hampshire for their help here on the floor this afternoon as we try to proceed on amendments as rapidly as possible for our colleagues and also try to negotiate a few of these amendments at the same time as the Senator from Arizona.

Having discussed with the Senator from Arizona the path forward, I assure colleagues that both of us hear the pleas of our colleagues, and we are anxious to try to move as rapidly as possible. But in fairness to my colleague from Arizona, I also want to make certain that he has an opportunity to have his amendments and that the other amendments are properly heard.

To that end, I ask unanimous consent that the following amendments be deemed as pending from those amendments filed at the desk. These would be the amendments eligible for consideration. I am not calling them up yet; I just want this to be a narrow list.

I apologize, Mr. President. I ask unanimous consent that these amendments be in order: Kyl No. 4864; Kyl No. 4892, as modified; Risch No. 4878; Risch No. 4879; Ensign re rail-mobile; Wicker No. 4895; Kyl No. 4860, as modified; Kyl No. 4893; and McCain No. 4900.

The PRESIDING OFFICER. Is there objection?

Hearing no objection, it is so ordered.

The Senator from Arizona.

Mr. KYL. Mr. President, I wish to make a comment. For the benefit of Members, what we are trying to do is to identify those matters we need to try to deal with in the 30 hours postcloture on the START treaty. If Members have amendments they need to deal with, I would appreciate it if they would either communicate with me or with Senator LUGAR's staff or Senator KERRY's staff so that we can determine whether to get them on the list and where to plug them in. I would also suggest to Members that there isn't a lot of time left, and if they have comments they would like to make, now is the time to come to the Senate floor. There shouldn't be a minute of quorum call time here. There is a lot to do and not a lot of time to do it. So if Members have something, bring it to us. If they want to speak, they should come to the floor now or as soon as they can get here.

My goal is to get as many of the amendments as possible dealt with, if not with a vote then worked out by unanimous consent. What I have tried to do is to take a universe of about 70 amendments and to consolidate them into a much smaller group. So there are some specific subject areas that are not specifically dealt with. In some cases, the consolidations may not be technically related. For example, Senator LEMIEUX would like to add to one of the amendments his language dealing with tactical weapons taken from his treaty amendment but to conform it to a resolution of ratification amendment. So we may be even combining some subjects that don't necessarily relate.

The object here is to cover as much ground as possible within a limited period of time, and in order to do that we will need everybody's cooperation. Senator KERRY and I will then—and Senator LUGAR, of course—primarily try to make sure everybody gets heard who wants to be heard.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I am very grateful to the Senator from Arizona for his willingness to try to do exactly what we have just done, and I pledge to him that I will work as hard as possible on our side to rapidly move on these amendments and to give them time.

I would ask for the cooperation of colleagues who want to speak on the treaty as a whole, that they not do so at the expense of being able to move an amendment. So if colleagues would cooperate with us, we will certainly, in between any activity on amendments, try to accommodate anyone who wants to talk on the treaty.

We are currently working staff to staff and negotiating out these amendments, and on some it may be possible to accept them. We will certainly try to avoid any rollcall votes, if possible. I know a number of colleagues have asked for some rollcalls on some amendments which may not be acceptable. So with that understanding—

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. If I can add, I understand Senator SHAHEEN is in order to speak next, and then Senator RISCH is available to begin; am I not correct?

Mr. KERRY. No, Senator SHAHEEN is here managing together with the Senator from Maryland while we are negotiating. So Senator RISCH would be in order to move on an amendment immediately.

Mr. KYL. OK. His numbers are 4878 and 4879, so we can begin with one of those, if it is agreeable.

Mr. KERRY. That is correct.

Mr. President, we would welcome that, and I yield the floor.

Mr. KYL. So, Mr. President, it would be in order to call up for consideration—I believe the first is amendment No. 4878, Risch amendment No. 4878.

Well, Mr. President, I said there shouldn't be any quorum call, but we are going to be a couple of minutes here. So I suggest the absence of a quorum until we are ready to go.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CARPER. Mr. President, about an hour or so ago, our colleagues voted on whether we should proceed to final debate and eventually to an up-or-down vote on whether to ratify the New START treaty. I think it is safe to say most Democrats, most Republicans—even those two Independents who hang out with us—have pretty much decided on what they want to do on that final vote. I think there is a handful of Senators, maybe a half dozen or so, who are still undecided and trying to make up their minds. I just want to say I respect that. It is a serious matter, very serious matter, and there are strong arguments to be made on either side of this issue.

For those who have already made up their minds, they are probably not all that interested in what I have to say. But for the handful of our colleagues who have not decided how they believe we should proceed, how they ultimately want to vote, I want to take a few minutes and talk to them.

I want to boil this down into four questions that I have focused on as I have looked at this issue, looked at the treaty, looked at its ramifications. I want to start out by mentioning what I think the four maybe critical questions are that we should be asking ourselves.

The first question is, does this treaty make us safer? I believe it does. I think absolutely it makes us safer.

The second question is, can we afford not to ratify this treaty? I believe the answer is no; we cannot afford not to ratify this treaty. We need to.

The third question is, Can we go on to build a robust missile defense system, should we need to, if we ratify this treaty? I believe the answer is yes; we can do that if we need to.

The fourth and final question I want us to ponder is, Is ratification of the New START treaty the last word on this issue? Quite frankly, the answer is no, not at all. In fact, ratification of this treaty would just be another step, an important step, in what has been a decades-long journey. What I would like to do, if I could, is to take these questions just one question at a time.

The first question is, Does this treaty make us safer?

One of the greatest threats, and some would say the greatest threat, to our country and to its people today is the chance that terrorists might somehow acquire a nuclear weapon and detonate it inside this country. I ask my colleagues, are we doing all that we need to do to stop this from happening?

Sure, we can try to hunt down all the terrorists before they strike. In fact, we are doing that now. But we will never know where every terrorist is hiding, and I doubt we will ever have the manpower necessary to hunt them down if we did know where they were and try to stop them.

Here is what we do know, however. We know where most of the nuclear weapons on this planet are today. The majority of them are either in Russia or they are in the United States. I would like to think we do a good job of securing our nuclear weapons facilities in the United States. But Russia, as most of us know, is another story. There is a reason terrorists target Russian nuclear facilities.

While Russian security has improved recently, there are still holes, some would say gaping holes, in the physical facilities of some Russian facilities, holes that leave openings for terrorists to gain access to these weapons. That is one of the reasons we need to ratify this treaty. It limits the number of warheads that Russia can hold. Fewer Russian warheads translate into fewer chances that those weapons, those warheads, will fall into the wrong hands.

Here is another reason to ratify this treaty: Since the original START treaty expired at the end of 2009, the United States has been denied the ability to track and to verify the status of Russian nuclear weapons. The U.S. and Russian cooperation on verifying and monitoring warheads under the original START treaty helped lay the groundwork under the Nunn-Lugar cooperative threat reduction program in the 1990s. This program worked and still works to secure and dismantle Russian nuclear weapons, to keep them from falling into the hands of terrorists or rogue regimes.

New START will restore our verification and tracking capabilities that we lost last year with the expiration of the original START treaty. This, in turn, will encourage Russia to continue and to participate in the Nunn-Lugar program. In short, Americans will be safer if the treaty before us is ratified.

That leads me to the second question, Can we afford not to ratify this treaty? I believe the answer is no; no, we cannot. Let me say why.

My colleagues opposing this treaty have pointed out what they believe to be flaws in it. Some of them say the United States should have held out for a better deal. Others say the United States should have increased the number of allowed inspections or increased the number of delivery systems allowed under the treaty. They say the job of the Senate is not to simply ratify treaties but to debate and to amend them.

Let me just say, if this were a seriously flawed treaty, I would agree or if this were a flawed treaty I would agree. But it is not. The fact that so far all the amendments offered to this treaty have failed, mostly by large majorities, bears witness to that fact. Sure, we could amend the treaty language to maximize the U.S. position. We could send our diplomats back to the negotiating table with the Russians with a whole new set of terms the Russians will find unacceptable and ultimately nonnegotiable. When the Russians then walk away from the talks and the prospects of securing a new treaty die, we will ask ourselves, was it worth it to oppose ratification? Was it worth it?

When a Russian nuclear weapon goes missing and we are left in the dark because U.S.-Russian cooperation on tracking and dismantling warheads died with the treaty, we will ask ourselves, was it worth it to oppose ratification?

I believe the answer is no. Every living former Secretary of State from Kissinger to Baker to Rice shares that opinion.

Several former Secretaries of Defense, including Secretaries Schlesinger, Carlucci, Perry, and Cohen, all believe we ought to ratify this treaty in order to make our country—our country—safer. I might add, our top intelligence people agree with them.

This unlikely bipartisan coalition has come to this conclusion because they are certain that failure to ratify New START leaves our country less safe and more at risk to terror. We ignore the collective wisdom and advice of these leaders, past and present, at our peril. They have no axe to grind. They are calling it like they see it. I hope we will search our hearts—every one of us—and our minds this week and come to the same conclusion they have.

Question No. 3 was: Can we build a robust missile defense system if we ratify this treaty? That is an important question. The answer is too. And the answer is, yes, we absolutely can. There is simply nothing in this treaty that limits the United States from building the kind of missile defense system we might want and that we might need.

You do not have to take my word for it. Last month the Chairman of the Joint Chiefs of Staff, ADM Mike Mullen, bluntly stated, ''There is nothing in the treaty that prohibits us from developing any kind of missile defense.''

Let me say his words again. ''There is nothing in the treaty that prohibits us from developing any kind of missile defense.'' Those are not my words. Those are his words. Nothing, nothing in the treaty prohibits us from doing that.

Just last week Secretary Gates said that the treaty ''in no way limits anything we want or have in mind on missile defense.'' Let me repeat that as well. He said, ''The treaty in no way limits anything we want or have in mind on missile defense.'' In no way.

Simply put, this treaty gives us both what we want and what we need. It reduces the number of nuclear warheads Russia can possess, and it does so without constraining U.S. missile defense and deployment.

Some of our colleagues on the other side of the aisle, who have made up their minds that they will oppose ratification, dispute the statements of

both Secretary Gates and Admiral Mullen. Clearly, that is their right to do so. These opponents to the treaty argue that this treaty would, in fact, create limitations on our ability to build and deploy a missile defense system. With all due respect to them, I do not believe that is true. And, more importantly, neither do our top military and intelligence leaders, upon whom our Nation depends. They do not believe it is true either. In supporting this argument, some of the treaty's critics point to a provision which states we cannot convert nuclear missile launchers into missile defense launchers. We have all heard Senators KERRY and LUGAR respond to this assertion. We do not want to make these conversions. We do not want to make these conversions. Why? Because it is not cost effective. It is cheaper to build new silos rather than convert the old launchers. This is not a limitation on missile defense. It is common sense. It is cost effective. And it is certainly not a reason to vote against this important treaty.

Question No. 4 again. Question No. 4 was: Is ratification of New START the last word on this issue? And the answer is, not at all. This is not the last word. In fact, ratification is another step, albeit an important one, in a decades-long journey. Ratification reflects a vision shared by Presidents Nixon, Carter, Reagan, Clinton, George Herbert Walker Bush, and George W. Bush, as well as the people of our country, and the people of the Russian Federation.

Realizing that vision is vitally important both to Russians and to Americans, our two nations must join to lead the global community on the issue of nuclear disarmament. If we do not, no one else will.

The next step in realizing that vision requires us to ratify this New START treaty that is before us this week. Once we have done so, we should turn to redoubling our efforts to work with Russia, with China, and our allies to pressure Iran and North Korea to give up not their nuclear energy programs but their nuclear weapons programs. And as we do that, we should continue working toward future agreements with the Russian Federation on reducing tactical nuclear weapons.

Fortunately, in the resolution of ratification that contains the New START treaty language, there are instructions added by the Senate Foreign Relations Committee that order—that order—the Obama administration to pursue agreements on the limits of tactical nuclear weapons with Russia as well. Two weeks ago, Secretaries Clinton and Gates said they would pursue such an agreement with the Russian Federation in the coming years. However, we cannot continue down that path without first ratifying New START. And we must.

Let me conclude today by asking my undecided colleagues, however many there are out there, one final question. Here it is: How often do we see in this body nearly every major national security official from just about every Presidential administration of the last four decades come together to support one initiative like this? How often? The answer is, not very often, at least not on my watch.

As a captain in the Navy, as my State's Congressman, and Senator, as Governor of Delaware, and commander in chief for a while of our State's National Guard, I learned a long time ago that the best way to make tough decisions, to make the right decision, is to gather together the best and brightest minds that we can, people with different perspectives, urge them to try to find common ground, and then provide their recommendations to me.

In the case of this treaty, many of the best and brightest national security minds our Nation has ever seen, names such as Kissinger, Powell, Schlesinger, Baker, Hadley, Scowcraft, Shultz, Rice, Nunn, Warner, LUGAR, KERRY, Clinton, Bush, and Gates, agree that we should ratify New START and ratify it now.

I urge my colleagues who are still undecided on this critical issue to join me, to join us, in moving our Nation forward by voting to ratify this treaty.

Before I yield the floor, I want to take a moment to salute Senator LUGAR. I thank you and thank your staff for the terrific leadership you have provided for years on these issues, along with Sam Nunn, all of those years ago, and with JOHN KERRY and others today.

I am going to thank Senator KERRY for the terrific leadership and the great support he has gotten from his committee, from the staff, to get us to this point today.

I am encouraged that we may have the votes to finish our business and to conclude by ratifying this treaty tomorrow. I hope that handful of our colleagues who are out there who are still trying to figure out what is the right thing to do will maybe find some words in the wisdom I share today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 4855

Mr. ENSIGN. Mr. President, I ask unanimous consent that we set aside the pending amendment and call up amendment No. 4855.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 4855.

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

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

The amendment is as follows:

AMENDMENT NO. 4855

(Purpose: To amend the Treaty to provide for a clear definition of rail-mobile missiles)

In Part One of the Protocol to the New START Treaty, in paragraph 45. (35.), strike ''and the self-propelled device on which it is mounted'' and insert ''and the self-propelled device or railcar or flatcar on which it is mounted''.

Mr. ENSIGN. Mr. President, I rise today to speak on behalf of this amendment, which would clear up any ambiguity by adding the rail mobile definition of START I to the New START treaty.

Specifically, my amendment would amend the protocol annex, part one, in terms and definitions protocol. Specifically under START I the definition of rail mobile launchers of ICBMs means an erector launching mechanism for launching ICBMs, and the rail car or flat car on which it is mounted.

Unfortunately, there is no such definition in New START. According to Konstantin Kosachev, the head of the Duma International Affairs Committee, Senator KERRY's counterpart in the Duma, the understanding on rail mobile ICBMs presumes that: ''The Americans are trying to apply the New START treaty to rail mobile ICBMs in case they are built.''

So their definition, their understanding, the Russians' understanding, is that rail mobile is not included in this treaty. That is according to Mr. Kosachev's statement in the Duma. By making this statement, we can infer that it is absolutely Russia's position that rail mobile ICBMs are not captured by this treaty or subject to the treaty's limitations. So this is an issue we must address and we must clarify.

The administration, in a State Department fact sheet, asserts that rail mobiles are covered under the 700 ceiling of deployed delivery vehicles in article II. However, Mr. Kosachev's statements imply to the contrary. Further, if rail mobiles were to fall under that cap, it would be in the definitions. There is zero mention of rail mobiles in New START.

My amendment simply clarifies this ambiguity. In the absence of New START limitations on rail mobile ICBMs and launchers, an unlimited number of these could be deployed. It may even be possible to take a road mobile SS–27 ICBM, including multiple warhead versions, and put it on a railcar. This would not in any way violate the conditions of the New START limits, because the earlier START I limits on rail mobile launchers and nondeployed mobile ICBMs do not appear in this New START.

Another way to clarify that ambiguity would be if the administration gave us full access to the negotiating records. Since they have not, however, we must amend the treaty to amend the definition back to as it was in START I.

What happens if the Russian Duma, in its ratification process, adds language in its version of their ORR, that excludes rail mobile launchers? What do we do at that time? If they do this, I would think we would have no choice but to simply take it.

Mitt Romney highlighted eloquently in an op-ed that:

The absence of any mention of rail based launchers should be remedied. U.S. advocates of the treaty say that if Russia again inaugurates a rail program, as some articles in the Russian press have suggested it might, rail mobile ICBMs would count toward the treaty limits. Opponents say that no treaty language supports such an interpretation. Russian commentators have said that rail-based systems would be discussed by the Bilateral Consultative Commission. Such ambiguity should be resolved before the treaty is approved, not after.

I will yield to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, the amendment speaks to concerns about rail mobile missiles. First, I would emphasize it is important to note that neither side currently deploys rail mobile systems.

The Nunn-Lugar program destroyed the last SS–24 rail mobile system in 2008. They are all gone. Destroyed. The New START treaty is specifically drafted so that if Russia were to revive its rail mobile program, it would count under New START's central limits. This is underscored in our resolution of ratification through an understanding that if such systems are ever deployed by Russia, they will count as deployed ICBMs under New START, and that such railcars on BMs.

I submit that the amendment is unneeded. But more seriously, if in fact it were to be adopted, it would require renegotiation of the treaty. For that reason, as well as others I have stated as succinctly as possible, I oppose the amendment.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Nevada.

Mr. ENSIGN. Just to address the one point on the clarification in the resolution of ratification, it has been said that our resolution of ratification clarifies and we should not need this language in the definition. Here is the problem I have.

Several years ago when we were debating the Chemical Weapons Convention and riot control agents, there it is right there in the resolution of ratification that these riot control agents can be used in operations to protect civilian life. Yet to this day, our State Department lawyers continue to argue they cannot, even though in the resolution of ratification we clearly stated that these riot control agents, tear gas basically, could be used to protect civilian life. Yet our State Department continues to argue against that. That is why putting it in the definitions within the treaty, we believe, is important to clarify the difference we seem to have with the Russians based on statements they have made to the press.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, this won't take too long. Let me say, first of all, I thank the Senator for bringing this up. Let me underscore: This is one of the sort of let's see if we can find a problem, and if we can find a problem, make it into a bigger problem, and then amend the treaty because amending the treaty itself—this amendment seeks to amend the treaty, so here we go right back down the road of the old ''let's open up the negotiations again'' argument. We have been through it so many times here. It has appropriately been rejected by colleagues.

I think the last vote was something like 66 to 30 on whether we will amend the treaty. That doesn't mean he doesn't have a right to raise it, but let me speak to the substance.

Going back in history on the START treaty, which is why this is a complete red herring—if you go back in the history of the START treaty, you will recall that the Soviet Union deployed 10 warheads, 10 MIRV warheads on an SS–24 intercontinental ballistic missile, and Russia deployed some 36 of those SS–24 rail-based launchers the Senator is referring to at the height of their deployment. But to comply with START I and with START II, which interestingly, we worked together on in terms of START II even though the Russians never ratified it—and the reason they didn't ratify it is because we took unilateral action and withdrew from the ABM treaty, and they were mad about it. That is why what we do matters in this relationship. We ratified the START II treaty; they didn't. So the things we choose to do have an effect.

The fact is, thanks to our colleague to my right, the distinguished Senator from Indiana, Mr. LUGAR, and Senator Nunn, who had the vision to put together the threat reduction program, that program set out to destroy Russia's SS–24 ICBMs and rail-based launchers.

This is important for all those people who have come to the floor and argued repeatedly that Russia has acted in bad faith in all of these efforts. Take note that Russia continued those cooperative efforts and continued to destroy those rail-based launchers even though they had not signed on to START II. Guess what. The last Russian SS–24 launcher was eliminated in 2007.

Now START I had a specific sublimit on mobile missiles and on rail mobile missiles. So the START treaty's definition, as a result of those two sublimits, the START treaty's definition needed to cover both the rail mobile and the road mobile launchers that were deployed at the time of the treaty. They were both put under the same roof, and that roof was the START treaty's definition. Just like the Moscow Treaty, the New START treaty contains just a plane limit, an overall limit on ICBMs and ICBM launchers, SLBMs and SLBM launchers. We have the two categories and heavy bombers with no sublimits.

That means the characteristics of strategic offensive arms limited by the treaty, in particular the deployed and the nondeployed launchers of ICBMs and the deployed ICBMs and their warheads, those characteristics do not hinge on the treaty's definition of mobile launchers of ICBMs. We don't want them to because we want this big umbrella that covers all of it, which we have the ability to verify.

If we look at exactly what the treaty says, it says the following—and I don't know which lawyers are arguing about this, but the lawyers involved between the Russians and the United States and the lawyers involved on the negotiating team and the lawyers at the State Department are not arguing about this. They understand exactly what the treaty says.

Here is what it says. Article II, 1(a) of the treaty sets the limit of 700 deployed ICBMs, deployed submarine-launched ballistic missiles and deployed heavy bombers. That is really simple. It is very straightforward—700 ICBMs, SLBMs, bombers. We have the flexibility to decide how many of each of those we want to have. We had a debate previously with our colleagues about how many we would have. But that is pretty straightforward. There is no ambiguity in that. Where is the ambiguity—700, all three, and we believe we can count all three. Paragraph 12 of part 1 of the protocol defines deployed ICBM as an ICBM that is contained in or on a deployed launcher of ICBMs. That is pretty obvious. A launcher is a launcher is a launcher.

Paragraph 13 of part 1 of the protocol defines deployed launcher of ICBMs as an ICBM launcher that contains an ICBM and is not an ICBM test launcher, an ICBM training launcher or an ICBM launcher located at a space launch facility. Those are the only three exceptions. That is it. There is no ambiguity.

It seems to me pretty darn straightforward that a rail mobile ICBM, if either side decided to deploy it, obviously falls under the 700. It is so obvious that we should not have to risk renegotiating the entire treaty over something as obvious as that.

I might add, a nondeployed launcher of a rail mobile would fall under the 700 limit in terms of the launchers. I just ask my colleagues to look carefully at this. It would be highly improbable.

The Senator from Tennessee earlier today gave a terrific speech, Mr. ALEXANDER. He said: What is all this fuss about? In the end, we are going to have thousands of these things that can destroy the whole planet anyway.

That came from a person who is pretty thoughtful on these issues, who understands that you have to put this in a context. We are not talking about the Cold War right now. We are not talking about the Soviet Union right now. We are talking about a country with which we have a very different relationship and where we have a whole set of combined interests, and you have to put this treaty into that context. It is highly unlikely that during the duration of this treaty with the Russian Federation, after years of working with the United States to destroy the weapons and work cooperatively under Senator LUGAR and Senator Nunn's program, it is unbelievably hard to believe

they are going to divert what we know to be their very limited resources and infrastructure from their planned deployment in order to do new mobile—we have a planned deployment of new mobile-based ICBM forces, and suddenly to have them go out and build and deploy rail mobile launchers, which we would observe unbelievably quickly under our national technical means.

The simple answer is that we know what they are going to do. We have a strong capacity to track what they are doing. We have every reason to believe the Russians agree with what I just said about the allocation of resources. The fact is, the resolution the Senate will vote on, in order to guarantee that we are certain about this, requires the President to communicate to the Russians in the formal instrument that ratifies the agreement, when we ratify it, assuming we do it, will ratify the understanding of the United States that the treaty would cover rail mobile launched ICBMs and their launchers, if Russia or the United States were crazy enough to try to build them. So for the life of me, I don't know what you can do more than that. But we certainly are not going to reopen the treaty for the basis of a nonambiguity like that.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I wish to add parenthetically a footnote to the chairman's presentation.

As has been mentioned frequently during this debate, for a variety of reasons, the Russians reduced the number of ICBMs below the totals that were required by the former treaty. Some Senators, in fact, have said the New START treaty, by imposing these limits of 1,550 warheads and 700 launchers, inhibits only the United States because, according to those who have argued this, Russia has already fallen below these limits.

Let me add, as a point of personal recollection, one of the reasons the Russians are below some of the standards that have been suggested is, as they thought more and more about the rail mobile situation, they decided this was either useless, expensive, or so vulnerable to potential attack that it was not worth maintaining.

As a result, as has been suggested, as it turned out, using the Cooperative Threat Reduction Program, the United States and Russia, quite outside of the last treaty, decided we would proceed under the Cooperative Threat Reduction Program to simply destroy all the rest of the rail, which we did.

Just for the sake of exhibit, I have a piece of one of the last rails to be destroyed. It was presented to us by the Russians with a proper inscription on the back of it, recognizing their appreciation to the United States for this destruction. Therefore, logically, to argue that we are back into a predicament of the Russians wanting to build rails again and launch missiles and what have you from them negates the history of cooperation, conversations that may have occurred well beyond the treaty but that have come from the fact that there were Americans working with Russians who were not involved necessarily in specifics of the treaty but, in fact, were able to effect results that were well beyond what the treaty mandated.

I mention this, again, to indicate that I believe the amendment is unnecessary. But worse still, adoption of it would, in fact, eliminate our consideration today. We would go home. It is finished.

I certainly encourage Senators, recognizing that the Russians don't want the rails, have actually worked in the Cooperative Threat Reduction Program with Americans to get rid of all of it, plus everything associated with them, that as a commonsense situation that seems to be fairly well under control. Even then, the statements we have adopted as a part of the treaty take care at least of the counting situation if, for any reason, such an emergence should occur again on the rails.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, in response to the last argument that the Russians don't have any incentive to and we don't believe they are going to build the rail mobile system again, I ask, then: What is the big deal about ensuring in the treaty that if they do, they would be counted under the 700? What is the problem? The problem appears to be that the Russians don't have the same view of this as do my colleagues or the United States Government.

My colleague from Nevada quoted earlier from the Interfax report of October 29, 2010, where the chairman of the Russian Duma—parliament—committee responsible for treaties, Konstantin Kosachyov, stated—in response to the argument we have just made, that the Senator from Nevada just made, that the treaty should include rail-mobile as part of the 700 limit—he stated, in response to that claim, and in response to the resolution of ratification of the Foreign Relations Committee, that U.S. claim compelled the Duma to stop action on the treaty. He said—and I am quoting:

> The Americans are trying to apply the New START Treaty to rail-mobile ICBMs in case they are built.

That, obviously, means if he is saying: We would have to stop the Duma action on this if that is what the U.S. Government is going to claim, they are pushing back on this pretty hard. The question is, why? I do not know whether they intend to build the rail-mobile system. I do not much care whether they build it. All we care about is, if they do, it has to be included within the 700 limit.

Now, the report language of the Senate Foreign Relations Committee confirms the fact that they are not included. Here is what the report language says—and this is in direct contradiction to what was said just a moment ago—this is from page 17 of the report—

> Nevertheless, while a new rail-mobile system would clearly be captured under the Article II limits despite the exclusion of rail-mobile launchers from the definition of mobile launchers of ICBMs, those provisions that actually use the defined term ''mobile launcher of ICBMs'' would not cover rail-mobile systems if Russia were to reintroduce them.

''Would not cover.''

It goes on to say:

> ''Appropriate detailed arrangements for incorporating rail-mobile ICBM launchers and their ICBMs into the treaty's verification and monitoring regime would be worked out in the Bilateral Consultative Commission.'' Under Article XV . . . the Parties may make changes to the Protocol or Annexes. . . .

We have discussed this in the past. If there is a dispute about what the treaty means, then you go to this dispute resolution group of Russians and Americans, and they try to talk it out and work it out. But there is nothing to say they will, and if the Russian chairman of the committee is already saying we are trying to insert something into the agreement that isn't there, I wonder how successful we would be in working it out.

The report concludes:

> If Russia were again to produce rail-mobile ICBM launchers, the Parties would work within the BCC to find a way to ensure that the treaty's notification, inspection, and monitoring regime would adequately cover them.

So it is clear that it does not. It is clear from the report that the language would not cover rail-mobile systems if Russia were to reintroduce them. It is clear we would have to rely upon the Russians' good offices, good intentions, to reach some kind of an agreement with us in the Bilateral Consultative Commission. There are no assurances that will be done.

Why are we willing to proceed with an agreement that has such built in ambiguity? Why say: Well, we will let that be worked out by the BCC when we could work it out right now? It is the same answer we get with respect to every one of these proposals: Well, the Russians would then demand to renegotiate the treaty.

I ask again: Is the Senate just to be a rubber stamp? We cannot do anything to change the treaty or the protocol, or just the resolution of ratification, which is what we are trying to do because the Russians would say no, and, therefore, we cannot do it?

I thought we were the Senate. We are one-half of the U.S. Government that deals with it. The other is the Executive. The Executive negotiated the treaty. Now, why didn't they include this language? We do not know because we do not have the record of the negotiations. What I am told is that it is because the Russians said they would not include it because the rail-mobile system would be unique to Russia, and we do not have such a thing. Therefore, there would be a lack of parity. You could not have such a unilateral provision. So if that is the case, either the

Russians do intend to develop these systems, and they do not want them counted, or there should be no problem with the Ensign amendment, which would ensure that they would be counted.

So you cannot read the report language and agree with what has been said—that the treaty covers these weapons—you cannot read it and believe they would clearly be covered by the inspection and notification and monitoring regime. In fact, it clearly shows that is not the case. What you have to believe is that this built-in dispute in the treaty may well arise if the Russians decide to proceed to develop such a system, and we would then—or would arise if they decide to do that, and we would be required to go to the BCC to try to work it out with them. That, obviously, builds in a conflict that is not good.

As I said before, when you have a contract between two parties, the first thing the lawyers try to do is ensure there are no ambiguities that could cause one side or the other to later come forward and say: I did not mean that. Then you have a legal dispute. But it is one thing to have a legal dispute about buying a car or a house. It is quite another to have a dispute like this between two sovereign nations.

I would note when the United States had a system we might develop, such as the rail-mobile—but we have not made a decision to do it; we certainly do not have it—the Russians knew we wanted to at least study the possibility of developing a conventional Prompt Global Strike capability—that is to say, an ICBM that could carry a conventional warhead rather than a nuclear warhead—and they specifically insisted that we include that in the treaty.

Now, you might say: Well, wait a minute. The Russians apparently argued that they did not want to include anything on rail-mobile because the United States did not have anything on rail-mobile, and that would be a lack of parity—it would be a unilateral restriction—but the same thing is true with conventional Prompt Global Strike. The Russians have no intension of doing that, apparently. We might, just like for the rail-mobile, the Russians might. Yet they insisted a limitation be put on our conventional Prompt Global Strike—by what?—by counting them against the 700 launcher limit—exactly the same thing that should be done with regard to rail-mobile.

So, apparently, if we might do something in the future the Russians do not like, we have to count it. But if the Russians might do something in the future we do not like, we cannot count it. Our only relief then is to go to this BCC and hope the Russians would agree to something in the future that they have not been willing to agree to today.

So all the Ensign amendment does is to clear up an ambiguity and avoid a future dispute between the parties. It is clear from the report that it is not covered now. Again, the language, ''those provisions that actually use the defined term 'mobile launchers of ICBMs' would not cover rail-mobile systems if Russia were to re-introduce them.''

The report acknowledges that, therefore, in order to apply the inspection and notification and monitoring regimes, you would have to get the Russians to agree in the BCC. Why not solve that problem right now?

Again, we meet with the same argument we are always met with: Well, we do not dare change anything in here because the Russians would disagree.

I just ask my colleagues, again, is there any purpose for us being here? If every argument is, well, we do not dare change it because the Russians would disagree, so we would have to renegotiate it, maybe that suggests that there was not such a hot job of negotiating this treaty in the first place. If the Senate cannot find errors or mistakes or shortcomings and try to correct them without violating some superprinciple that is above the U.S. Constitution, which says that the Senate has that right, then, again, I do not know what we are doing here.

So I urge my colleagues to support the Ensign amendment, as with some other things we have raised, to try to avoid a conflict. Resolve the situation now while we still have time to do it rather than after the treaty is ratified when it is too late.

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

Mr. CARDIN. Madam President, I appreciate the concerns my colleague from Arizona is raising in regards to mobile launchers, particularly as it relates to rail-mobile launchers. But I am reading the same language the Senator has put on the floor, and it says very clearly that it is subject to the 700 limit. I think what my colleague is referring to is the fact that Russia today does not have rail-mobile launchers. So, therefore, there are other protocols in the treaty in regard to inspection, et cetera, that are not provided for in this treaty because it is not relevant since Russia today does not have rail-mobile launchers. But if they were to develop rail-mobile launchers, they would be subject to the 700 limitation of launchers, if it was being deployed. The consultation process will work out the procedures for adequate inspection.

So I think it is already covered under the treaty. In the language of the treaty Senator KERRY mentioned it is clear to me it is covered. But in the report language I think it is stating the obvious.

One last point, and that is, again, you do not dispute the fact that if we were to adopt this amendment, it would be the effect of denying the ratification of the treaty until it was modified in Russia, which is the same as saying we are not going to get a ratified treaty on this issue.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, might I pose a question to my colleague because I understand exactly the point he makes. He makes it accurately. I quoted the language that says that it would clearly be captured under article II limits. That is the committee's understanding, which is the point my colleague is making. But I go on to note that the exclusion of rail-mobile launchers from the definition means that it would not cover rail-mobile systems if Russia were to reintroduce them and, therefore, there would have to be work by the BCC to figure out how to deal with those under the inspection, monitoring, and notification regimes.

I understand that our committee says they believe they are captured. I see that in the report. What I am saying is, there is a dispute because the Russians do not appear to agree with that. I would just ask my colleague, how do you square, then, the Russian response? The chairman of their committee—you have dueling committees—in the Duma said:

> The Americans are trying to apply the New START Treaty to rail-mobile ICBMs in case they are built.

It appears to me what he is saying is, but they should not be doing that. In fact, his recommendation, I believe, was the Duma not take action on the treaty if that was our intent.

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

Mr. KYL. Yes, of course.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. To me, it is the language of the treaty itself. The language of the treaty itself is pretty clear as to what the definition of a launcher is, with three exclusions. Just look at the language of the treaty that any type of launcher would be covered.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, if I could just close, and I actually had, I think, yielded the floor. So I appreciate the chance to make this final point.

All the Ensign amendment tries to do is clear up the ambiguity. My colleague says it is absolutely clear to him that they are included. I know the committee says they think it is clear. I do not think the Russians think it is clear, and I think there is a basis for an argument that it is not clear. Why not clear it up?

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, the answer to the question—why not clear it up—is because if you clear it up the way the Senator is trying to, you kill the treaty. Pretty simple.

The Senator keeps asking the question, Why can't we do this? We can't do it because it kills the treaty. It is pretty simple. And the Senator knows it kills the treaty.

Now, going beyond that, come back again just for an instant to the substance. First of all, the Russian general

staff—I have been known, as chairman of the Foreign Relations Committee, to make some comments which occasionally the Joint Chiefs of Staff do not agree with. My comments are not going to drive them to do what they do not agree with. Likewise, the chairman of their foreign relations committee whom he quotes was tweaking us in his comment. But the fact is, the general staff of Russia has made it abundantly clear they do not want to build these rail-based mobile. They have no intention of doing this. They have just been destroying them. They have been taking them down and destroying them in a completely verifiable manner, and the Senator from Arizona cannot contest that. He knows that is absolutely true.

So this is a completely artificial moment designed, as others have been, to try to derail—no pun intended—the treaty.

That said, let me also point out that if you want to try to rein in this issue of rail-based, this amendment is not the way to do it because there are a whole series of protocols set up in the treaty for how you deal with road-based launchers, and you would need to begin to put in place a whole different set of protocols in order to deal with rail-based. So if, indeed, the Russians are, as I said, crazy enough, as they think it would be crazy—that is the way they define it now and we do too—to go back to something we have spent the last 15 years destroying, if that happens, we will know it. Moreover, if it happens, it is counted, as the Senator has agreed, under the article II limits for launchers. So this is a nonissue, with all due respect.

I know the Senator from Nevada wants to take 2 minutes to make a comment, and then I wish to make a unanimous consent request, if I could, after that.

Mr. ENSIGN. Madam President, I think the Senator from Arizona wishes to make a statement.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Before my colleague from Nevada closes, I know this whole argument is based on the proposition that the Russians wouldn't be crazy enough to think about doing a rail system again so we don't need to worry about it. What is all the fuss, is what my colleague said.

Well, here is a December 10—how many days ago is that now? I have forgotten. We are about to Christmas, but I have forgotten the date of today. It is from Moscow ITAR-TASS, English version. Headline: ''Russia Completes Design Work For Use Of RS–24 Missiles On Rail-based Systems.''

I want my colleague from Massachusetts to hear this. The Russians aren't crazy enough to think they could do a rail system. Here is the headline, December 10: ''Russia Completes Design Work For Use of RS–24 Missiles On Rail-based Systems.''

Just to quote a couple lines from the story:

Russia has completed design work for the use of RS–24 missiles railway-based combat systems, but implementation of the project has been considered inexpedient, Moscow Heat Engineering Institute Director Yuri Solomonov said. His institute is the main designer of these missiles. Asked whether the RS–24 missiles could be used in railway-based systems, he said, ''This is possible. The relevant design work was done . . . '' and so on.

I ask unanimous consent that this article be printed in the RECORD.

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

RUSSIA COMPLETES DESIGN WORK FOR USE OF RS–24 MISSILES ON RAIL-BASED SYSTEMS

MOSCOW, December 20 (Itar-Tass)—Russia has completed design work for the use of RS–24 missiles railway-based combat systems, but implementation of this project has been considered inexpedient, Moscow Heat Engineering Institute Director Yuri Solomonov said.

His institute is the main designer of these missiles.

Asked whether the RS–24 missiles could be used on railway-based systems, Solomonov said, ''This is possible. The relevant design work was done, but their development was deemed inexpedient. I agree with this because the survivability of this system is not better than that of the ground-based one, but it costs more.''

The RS–24 Yars missile system was put on combat duty in Russia this summer.

Earlier, the chief designer of the Moscow Heat Engineering Institute, which created the system, said that one of the RS–24 systems had already been delivered to the Strategic Rocket Forces at the end of last year.

Solomonov said, ''All journalists are writing about Bulava, but are saying little about the new mobile missile system RS–24 Yars with multiple warheads that we created at the same time.''

The Strategic Rocket Forces intended to deploy the missile system RS–24 with multiple warheads in December 2009, Commander of the Strategic Rocket Forces Lieutenant-General Andrei Shvaichenko said in October 2009.

''The intercontinental ballistic missile RS–24 put into service will reinforce combat capabilities of the attack group of the Strategic Rocket Forces. Along with the single-warhead silo-based and mobile missile RS–12M2 Topol–M already made operational the mobile missile system RS–24 will make up the backbone of the attack group of the Strategic Rocket Forces,'' the general said.

Silo-based and mobile missile systems Topol–M, as well as RS–24 mobile missile systems were designed by the Moscow Heat Engineering Institute.

The warheads of Russia's newest Topol–M and RS–24 intercontinental ballistic missiles can pierce any of the existing of future missile defences, Strategic Rocket Forces Commander, Lieutenant-General Sergei Karakayev said earlier.

''The combat capability of silo-based and mobile Topol–M ICBMs is several times higher than that of Topol missiles. They can pierce any of the existing and future missile defence systems. RS–24 missiles have even better performance,'' Karakayev said.

The Strategic Rocket Forces have six regiments armed with silo-based Topol–M missiles and two regiments armed with mobile Topol–M missiles. Each missile carries a single warhead. This year, Russia began deploying RS–24 ICBMs with MIRVs. There is currently one regiment armed with RS–24 missiles.

Speaking of other ICBMs, Karakayev said that RS–20V Voyevoda (Satan by Western classification) would remain in service until 2026. ''Their service life has been extended to 33 years,'' he said.

On July 30, 1988, the first regiment armed with RS–20B Voyevoda missiles was placed on combat duty in the Dombarovka missile formation in the Orenburg region.

''This is the most powerful intercontinental ballistic missile in the world at the moment,'' the press service of the Strategic Rocket Forces told Itar-Tass.

With a takeoff weight of over 210 tonnes, the missile's maximum range is 11,000 kilometres and can carry a payload of 8,800 kilograms. The 8.8–tonne warhead includes ten independently targetable re-entry vehicles whose total power is equal to 1,200 Hiroshima nuclear bombs. A single missile can totally eliminate 500 square kilometres of enemy defences.

By 1990, Voyevoda missiles had been placed on combat duty in divisions stationed outside of Uzhur, Krasnoyarsk Territory, and Derzhavinsk, Kazakhstan. Eighty-eight Voyevoda launch sites had been deployed by 1992.

Mr. KYL. Madam President, I am not arguing that this issue has been resolved within Russia as to whether to go forward. I am not arguing whether it is a good thing or a bad thing. I simply submit it in response to the argument that the Russians would be crazy to think about doing this. Either they are crazy or—well, in any event, I would never attribute that motivation to anybody, even somebody from another country. The fact is, they have begun design work on exactly such a project.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. It is my understanding that the Russian referred to in that article is saying how difficult it is to do the rail-based. But here is the simple reality. If they build it, it will count, end of issue. That is why this is unnecessary.

I yield to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, to wrap up this debate, let me address, first of all, the whole idea that changing this treaty in any way kills the treaty. Under the Constitution, certainly it is the President's role, the administration's role, to negotiate the treaties. We all recognize that. But under the Constitution, the Senate is tasked with advice and consent. That means we are to look at the treaties, and if we think they should be changed—and we have changed treaties over the years—then we are free to change the treaties. That is why there is a process set up, such as this amendment process, to change the treaties. So if we have fundamental objections to the treaty, I think we can have a debate on whether we should, on a particular amendment, change the treaty on the merits of the amendment, but we shouldn't just say we can't change any part of a treaty because it kills the treaty, because we have a constitutional role in advice and consent on whether we approve treaties.

Just a couple points to make.

First of all, this is from the State Department's Bureau of Verification, Compliance, and Implementation. I ask unanimous consent that it be printed in the RECORD.

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

[From the Bureau of Verification, Compliance, and Implementation, Aug. 2, 2010]

RAIL-MOBILE LAUNCHERS OF ICBMS AND THEIR MISSILES

Key Point: Neither the United States nor Russia currently deploys rail-mobile ICBM launchers. If a Party develops and deploys rail-mobile ICBMs, such missiles, their warheads, and their launchers would be subject to the Treaty.

Definitions: The New START Treaty defines an ICBM launcher as a ''device intended or used to contain, prepare for launch, and launch an ICBM.'' This is a broad definition intended to cover all ICBM launchers, including rail-mobile launchers if they were to be deployed again in the future. There is no specific mention of rail-mobile launchers of ICBMs in the New START Treaty because neither Party currently deploys ICBMs in that mode. Russia eliminated its rail-mobile SS–24 ICBM system under the START Treaty. Nevertheless, the New START Treaty's terms and definitions cover all ICBMs and ICBM launchers, including a rail-mobile system should either Party decide to develop and deploy such a system.

A rail-mobile launcher of ICBMs would meet the Treaty's definition for an ICBM launcher. Such a rail-mobile launcher would therefore be accountable under the Treaty's limits.

Because neither Party has rail-mobile ICBM launchers, the previous definition of a rail-mobile launcher of ICBMs in the START Treaty (''an erector-launcher mechanism for launching ICBMs and the railcar or flatcar on which it is mounted'') was not carried forward into the New START Treaty.

If Russia chose to develop and deploy rail-mobile ICBMs, such missiles and their launchers would be subject to the Treaty and its limitations. Specific details about the application of verification provisions would be worked out in the Bilateral Consultative Commission. Necessary adjustments to the definition of ''mobile launchers of ICBMs''—to address the use of the term ''self-propelled chassis on which it is mounted'' in that definition—would also be worked out in the BCC.

Accountability: A rail-mobile launcher containing an ICBM would meet the definition of a ''deployed launcher of ICBMs,'' which is ''an ICBM launcher that contains an ICBM.''

Deployed and non-deployed (i.e., both those containing and not containing an ICBM) rail-mobile launchers of ICBMs would fall within the limit of 800 for deployed and non-deployed launchers of ICBMs and SLBMs and deployed and non-deployed heavy bombers.

The ICBMs contained in rail-mobile launchers would count as deployed and therefore would fall within the 700 ceiling for deployed ICBMs, SLBMs, and heavy bombers.

Warheads on deployed ICBMs contained in rail-mobile launchers therefore would fall within the limit of 1,550 accountable deployed warheads.

Applicable Provisions: Separate from the status of the rail-mobile ICBM launcher, all ICBMs associated with the rail-mobile system would be Treaty-accountable, whether they were existing or new types of ICBMs, and therefore would, as appropriate, be subject to initial technical characteristics exhibitions, data exchanges, notifications, Type One and Type Two inspections, and the application of unique identifiers on such ICBMs and, if applicable, on their launch canisters.

Mr. ENSIGN. Madam President, let me just read one paragraph from this:

If Russia chose to develop and deploy rail-mobile ICBMs, such missiles and their launchers would be subject to the Treaty and its limitations.

That is according to our State Department.

Specific details about the application of verification provisions would be worked out in the Bilateral Consultative Commission.

So, in other words, if Russia decides to build these things, then the verification has to be worked out by the Bilateral Consultative Commission. It isn't that it is set in there exactly what would happen, but the verification certainly would have to be worked out.

The bottom line is, we believe there is ambiguity because of the statements made by the Russians themselves. That is the problem. If the Russians, in their statements in the Duma, if they have been saying: Yes, we agree with exactly the interpretation the Americans have been making, it would be a different story and we probably wouldn't need this amendment. But because their statements—Senator KERRY's counterpart in the Russian Duma has said the Americans are trying to bring into this New START treaty mobile launchers, and the Russians don't think they should be in there. So we think we should clarify that language in a very unambiguous way, based on my amendment, to make sure there is no question on each side.

I appreciate what the Senator from Massachusetts is saying, that they have destroyed their—it would be crazy for them to build them again. But as the Senator from Arizona just talked about, they are at least designing. Maybe they have a better system to use for rail-mobile launchers. We don't know that. But what we do know is, they don't think this language applies, the language in the treaty applies to the mobile launchers. So they could get around this treaty and the number of warheads they could have, based on the language that is currently in the treaty.

I just ask our colleagues to seriously consider removing the ambiguity and voting for the Ensign amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I don't think we need to repeat. I appreciate the Senator from Nevada and I understand what he is saying. I completely agree with him about the advice and consent role of the Senate, but part of that role is to make a judgment about whether the consequences of some particular concern merit taking down the whole treaty and putting it back in the renegotiation process. It is not that we can't or shouldn't under the right circumstances; it is a question of balancing what are the right circumstances. We are arguing, I think appropriately, because the report of our committee says clearly that rail-mobile will be covered under article II and this is unnecessary. So weighing it that way, it doesn't make sense to do it.

Let me say to my colleagues that I think we want to move to the Risch amendment, and I think it is the hope of the majority leader to try to have two votes around the hour of 6 o'clock, if that is possible, and then to proceed to the Wicker amendment.

I yield the floor to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 4878

Mr. RISCH. Madam President, I wish to call up amendment No. 4878.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment?

Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Idaho [Mr. RISCH] proposes an amendment numbered 4878.

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

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

The amendment is as follows:

(Purpose: To provide a condition regarding the return of stolen United States military equipment)

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) RETURN OF STOLEN UNITED STATES MILITARY EQUIPMENT.—Prior to the entry into force of the New START Treaty, the President shall certify to the Committees on Armed Services and Foreign Relations of the Senate that the Russian Federation has returned to the United States all military equipment owned by the United States that was confiscated during the Russian invasion of the Republic of Georgia in August 2008.

Mr. RISCH. Madam President and fellow Senators, I bring you what I believe to be the first amendment to the resolution of ratification. We have had a number of amendments that have been to the actual treaty itself. We have listened to objection after objection that: Oh, my gosh, we can't possibly amend the treaty because if we do, we are going to have to sit down and talk to the Russians again.

We don't have to worry about that with this amendment. This is an amendment to the resolution of ratification. It will not require that we sit down with the Russians and negotiate. Frankly, I don't know what is wrong with that. Frankly, I think it is a good idea after all the problems that have been raised with the treaty. But, nonetheless, if that is an overriding concern, you can set that aside and listen to the merits of the amendment.

I have to tell my colleagues that part of this I bring as a matter of frustration. I have been involved with this for months, and I am so tired of hearing about accommodation after accommodation after accommodation to the Russians. It appears, before we even

started with this, the Russians said: Well, we are going to have to have in the preamble language that says missile defense is related to this, and we said no. We have to have the ability to protect our country and build missile defense. The Russians said it has to be in there. It is in there. The next thing we said: You know, for 40 years we have been doing this, and you guys have a 10-to-1 advantage over us on tactical weapons; that is, short-range weapons. We ought to talk about that because you want to talk about parity on strategic weapons. No, it can't be in there. We accommodated the Russians again. Every time we turn around and put out a problem here—just as we heard on this rail thing—every time we turn around and put out a problem that ought to be addressed, the people who are promoting this stand and apologize, they accommodate, they say it is OK, they overlook it, and we go on and on and on.

I am sitting here listening to this on the rails, and the one side says: Well, don't worry about it; they are never going to build this anyway. We pull up an article that says they are in the process of doing this. Well, yes, but don't worry about it because it is going to be counted anyway.

So I have something here that, hopefully, we are not going to apologize to the Russians for. We are not going to accommodate them. We are going to tell them that if you want a relationship with us, you have to be honest with us.

We all know, and it has been widely reported, that they cheat. They are serial cheaters. They cheated in virtually every agreement we have had with them. If we are going to have a relationship with them and press the restart button—and I think we should. We should press the reset button. We should have a decent relationship with them. But let's wipe the slate clean and let's start with the military equipment they have stolen from us. That is all this is about.

On August 8 of 2008, as we all know, the Russians invaded Georgia, and when they invaded Georgia, it was pretty much of a mismatch. They ran over the top of them, did a lot of bad things, and eventually there was a peace accord that was brokered by President Sarkozy, and the next amendment I have deals more in-depth with that.

But when they ran over the Georgians, the American military had just been there doing exercises with the Georgians because the Georgians were kind enough to engage with us and help us in Afghanistan. They were preparing to send troops to Afghanistan to help us. So we Americans went over there and we said: OK. We need to do some military exercises, engage in some joint training, so we can get you ready to go into Afghanistan. We are now preparing to leave. We have completed the exercises. We are preparing to leave. We obviously took a lot of our equipment over there, not the least of which were four American humvees. The four American humvees were shipped to a port in Georgia and were in the process of being shipped back to the United States. There is no argument that the title to these four humvees is with the people of the United States of America. They belong to me. They belong to you. They belong to the U.S. military. They belong to all of us.

The Russians, when they overran the Georgians and got to the seaport, found our humvees, and what did they do? Did they say: Well, yes, they belong to the Americans; we will put them on the boat that is supposed to go back to the United States? No. They said: We are going to take them, and they stole them. Today, they still have them.

The United States has asked for the four humvees back. But let me tell my colleagues where the four humvees are. If you want to see a picture of them, you can go to msn.com and search Georgia and humvees and you can see a picture of our humvees. Where are they? They are in the Russian Central Armed Forces Museum in Moscow, Russia. That is where our four humvees are. What are they doing there? They are on display as a war trophy, taken by the Russians as a war trophy. Well, we weren't engaged in that war.

So if we are going to have a good relationship with them, is it too much to ask to give us back the property they stole from us a little over 24 months ago?

So this is an easy one to vote for. I have had discussions with my good friend from Massachusetts. He said this isn't related. This is absolutely related. We are entering into a marriage on a very important issue.

Shouldn't we ask that they give us our stolen property back? And shouldn't they say: Yes, we want to set the reset button too. We want to hold hands and sing ''Kumbaya.'' We want to be friends.

Well, that is fine, but give us back our stolen military equipment.

That is all this asks for. It doesn't jeopardize the treaty; it just says it goes into force as soon as they give us our four humvees back.

I yield the floor.

Mr. CARDIN. Madam President, let me first tell my colleague that I support the treaty because it is in the best interest of the United States. It is in our national security interest. It is not an accommodation to Russia. This treaty helps us on national security. That is what our military experts tell us. That is what our intelligence experts tell us. That is what our diplomats tell us. On all fronts, the ratification of this treaty makes us a safer nation. So it is not an accommodation to Russia.

On the issue the Senator is concerned about, both the Obama administration and this body have repeatedly reaffirmed our commitment to Georgia's territorial sovereignty and integrity. We very much want Russia to withdraw. We are very sympathetic to the issue the Senator brings to our attention. We have taken action in this body to support Georgia's territorial integrity. The START treaty and its ratification is important in reestablishing confidence on verification as it relates to our relationship with Russia on strategic arms, but it is also important for the engagement of Russia on other issues. We can do more than one thing at a time.

President Saakashvili of the Republic of Georgia said:

> We all want—I personally want—Russia as a partner and not as an enemy. Nobody has a greater stake than us in seeing Russia turn into a country that truly operates within the concert of nations, respects international law, and—this is often connected—upholds basic human rights. This is why I wholeheartedly support the efforts of European and American leaders to strengthen their relationship with Russia.

The leader of Georgia understands that a better relationship between Russia and the United States will help Georgia and its territorial integrity. This treaty and its ratification will help not only build confidence between Russia and the United States but will help the other countries of Europe, particularly a country such as Georgia.

So the chairman of the committee is absolutely correct—and I think we can verify that with the Parliamentarian—that this is not relevant on the issue we have before us. It is not part of the treaty we have negotiated. It is not part of the ratification process. It is not the appropriate forum for this type of amendment to be considered. It should be rejected on that basis.

The important thing in moving forward with U.S. influence on Russia as it relates to its neighbors, such as Georgia, is to move forward with ratification of this treaty.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I will be very quick. I don't think we need to spend a lot of time on this. First of all, we agree with the Senator from Idaho that under normal circumstances the equipment they have would be best returned to the United States, and there are many good-faith ways in which they might do that. But the fact is that the way this is phrased, it has just two enormous problems. First, it says prior to the entry into force of the treaty. So we are linking this ancillary issue to this entire treaty, which bears on a whole set of other national security considerations.

I want the four humvees back, and whatever the small arms are, which raises another issue, but I am not willing to see this entire treaty get caught up in that particular fracas. We have an unbelievable number of diplomatic channels and other ways of prosecuting that concept, and I pledge to the Senator that I am prepared, in the Foreign Relations Committee, to make certain we attempt to do that, as well as deal

with the question of Russia's compliance with the peace agreement with respect to the cease-fire in Georgia and so forth. These are essential ingredients, and we will talk about that in a moment.

It also says they have to return all military equipment. It doesn't specify. This could become one of those things where we are saying, you have this, and they say, no, we don't. Are we talking about small arms? What about expended ammunition? Who knows what the circumstances are?

This is not the place or the time for us to get caught up in linking this treaty to this particular outcome. I really think that stands on its own.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Madam President, obviously one of the purposes of these two amendments is to respond to one of the arguments that has been raised in support of this treaty. We have this wonderful new reset relationship with Russia, and were we to not ratify the treaty, that relationship would be frayed, and who knows how much Russia might react to it? It would be harder to get their cooperation on things. Those are all arguments that have been made.

I think one of the points of these two amendments is to show that the reset relationship between Russia and the United States has not produced all that much good behavior or cooperation on the part of the Russians. I earlier detailed all of the ways—at least a few—in which Russia had been very unhelpful to the United States with regard to Iran. I noted I think 2 days ago or maybe yesterday that in the U.N., they were trying to water down a resolution dealing with North Korea that we are working hard to try to obtain. They have been very difficult to deal with with regard to North Korea and Iran. At the end of the day, I think they only do what is in their best interest, in any event—not basing their decisions of what is in their best interests on some concept of a new friendliness with the United States.

I think part of the reason my colleague from Idaho offered these two amendments is to simply demonstrate that this new relationship isn't all that its cracked up to be if they won't even give us some equipment they confiscated when they invaded Georgia. That is not a major point in international diplomacy, and it certainly isn't a major point with respect to U.S. military capability. It is illustrative of something.

The point of the amendment is to say that you have quite a bit of time before this treaty enters into force. A lot has to happen. It is sent to Russia, the Duma has to deal with it, and so on.

Just return the stuff. Maybe that little gesture of good will would help to reestablish this so-called reset relationship in ways they have not been able to accomplish by getting Russian support with the U.N. resolutions and other actions with regard to sanctions on Iran and diplomacy with North Korea.

One can say it is not a big deal, this military equipment, but on the other hand, they say it will destroy the treaty if we have this particular amendment. The reality is that we are simply trying to make a point that the Russians have not acted well in a variety of situations. I cannot think of a better example than the invasion of Georgia, the continued violation of the cease-fire agreement they signed there, and the violation of the U.N. resolution.

I would reiterate, at the summit declaration—this is where the NATO members, meeting in Lisbon last month, joined together to call for a resolution to the problem, saying, ''We reiterate our continued support for the territorial integrity and sovereignty of Georgia within its internationally recognized borders.'' And then they urge all to play a constructive role and to work with the U.N. to pursue a peaceful resolution of the internationally recognized territory of Georgia. And then the final sentence:

> We continue to call on Russia to reverse its recognition of the South Ossetia and Abkhazia regions of Georgia as independent States.

That is the kind of cooperation we are getting from the Russian Federation these days. I appreciate the amendments brought forth by my colleague to highlight that fact.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I agree with Senator KYL and support the Risch amendment. I remember at a NATO conference not too many years ago President Bush was advocating for Georgia being a member of NATO, to show you how serious these matters are. So had we voted to bring Georgia into NATO—and they were on the short list—we would be in a situation in which the Russians would be invading a NATO country. The act of Russia invading Georgia was a dramatic event.

The proponents of the treaty portrayed this matter as advancing our relationship with Russia. I think Senator KERRY has been not so aggressive—that hasn't been one of his themes. But a lot of people have, and I think he was wise not to go down that road.

A lot of people have tried to say we are going to get along with Russia better by signing this treaty with them. That is not a sound basis to sign a treaty. We all need a better relationship with Russia. That I certainly acknowledge. Georgia would certainly benefit from it, and hopefully the world will have a better relationship with Russia.

But I am unable to fathom a lot of the Russian activities, frankly. It is just difficult for me. Why have they negotiated so hardheadedly on this treaty to actually reduce the number of inspections over what we had in the previous treaty? Why? I thought Russia was about wanting to move forward into the world and be a good citizen in the world community. I haven't seen it. I am worried about it.

So the question is, if we abandon or concede too much, are we helping develop a positive relationship? I think Senator RISCH is saying: Look, we have a serious problem. They are holding our military equipment. Are we not even going to discuss that?

How do we get to a more positive relationship with our Russian friends? I think the people of Russia are our friends. How do we get there? Is it through strength, constancy, consistency, principle, and position, or is it through weakness, placating, concession, and appeasing? Is that the way to gain respect and move us into a healthier relationship? I don't think so.

I think we have only one charge, and that is to defend our legitimate interests. I believe this administration has been too fixed on a treaty, and, as one observer and former treaty negotiator has said: If you want it bad, you will get it bad. In other words, if you want the treaty too badly, you won't be an effective negotiator. I remember during this process, on more than one occasion, warning and expressing concern to our negotiators that we appeared to be too anxious to obtain this treaty and, if so, the Russians would play us like a fiddle. I am afraid that is what has happened.

I think this Congress would do the President, the world, Russia, and our country a service if we said what Senator RISCH says: OK, guys, how about letting our equipment be sent back. If you are not willing to do that, then we have a serious problem.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. RISCH. Madam President, first of all, to my good friend from Maryland, I agree with much of what he said about our relationship and the relationship between Georgia and Russia. I will speak about that in the next amendment I am going to offer, which is No. 4879, right after this one. I know the Senator didn't talk about our stolen military equipment by the Russians.

To my friend from Massachusetts, who responded to what I said, I say: Here we go again. This is exactly why I brought this amendment. We are again accommodating the Russians. Why can't we just once ask them to behave themselves and say: Look, this is not a big matter, but you are acting like a thief.

Do you want to see what they did? I made reference for you to go on the Internet to see the pictures, but here they are. If you are a good American, you can go there and you can watch your property right here being towed away by the Russians, back to Moscow, to put on display as a trophy. Here is another picture of it right here. This is even better. This is one of our humvees being towed by the Russians. This humvee is headed back to Moscow, where it is now displayed as a trophy.

Is it too much to ask, where we are going to enter into this agreement and supposedly befriend and supposedly reset the button on our relationship, is it too much to say: Look, you stole from us. You are acting like a thief. Give us back the property we own.

Is that asking too much of the Russians? Can we not just once, instead of accommodating them, instead of apologizing for them, instead of saying we should not tie this to that or we will not get it, can we not just once say: Give us our stolen property back.

That is all we are asking here. It is not a big thing, but it does give us a clear indication of what they are thinking, of what their relationship is with us, of what they want their relationship to be with us.

This is not asking too much. This does not blow up the treaty. It simply says they pack up the four humvees and, and as soon as they do, the treaty goes into effect. That is not too much to ask.

I yield to my good friend from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, this has been cleared on both sides.

I ask unanimous consent that at 6 p.m., the Senate proceed to votes in relation to the following amendments to the START treaty and the resolution of ratification: Ensign amendment No. 4855 and Risch amendment No. 4878; further, that prior to the votes, there be no second-degree amendments in order to the amendment, and that the time before the votes be divided equally between the sponsors and myself or their designees.

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

The Senator from Alabama.

Mr. SESSIONS. Madam President, I will share one thought I remember so vividly before Russia invaded Georgia. We were at a NATO conference. There was a discussion outside the normal meeting. One weak-kneed, I suppose, European explained to the Georgians why it was difficult for the other nations to support Georgia in their idea to be in NATO and suggested it was difficult because Russia was a big and powerful country.

The Georgian replied—and I have never forgotten it—saying: Well, sir, we think it is a question of values. Mr. Putin said last year the greatest disaster of the 20th century was the collapse of the Soviet Union. We in Georgia believe it was the best thing that happened in the 20th century. It is a question of values. We share your values. We want to be with you.

I have to say it is deeply troubling to me that our Russian friends are being so recalcitrant and so aggressive and so hostile to sovereign states such as Georgia, the Ukraine, the Baltics, and Poland. They used to be a part of the Soviet empire. They are now sovereign nations, independent in every way.

Conceding, as part of these negotiations, the deployment of a ground-based interceptor missile defense system in Poland to comply with Russian demands during this treaty process was a terrible thing, especially when we did not even tell our friends in the sovereign nation of Poland we intended to do it before we announced it with the Russians.

The Senator is just raising a reality. I say to Senator RISCH, we have some problems here, and we might as well put it out on the table, be realistic about it, and take off the rose-colored glasses. This amendment is one way to say let's get serious and talk with our Russian friends about some serious difficulties we have.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Madam President, I call up Risch amendment No. 4879.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Madam President, at this time there is, until we have an opportunity—we were going to work this out with Senator KYL after the vote. So I object to it at this moment.

The PRESIDING OFFICER. Objection is heard.

Mr. KERRY. I believe Senator KYL had two amendments he wanted to get up at this point in time.

Mr. KYL. What was the unanimous consent request?

Mr. KERRY. The Senator from Idaho requested to go to his next amendment, which is No. 4879. That was the one the Senator from Arizona and I were talking about with respect to an issue we wanted to work out with the Parliamentarian before we go to it. I think the Senator and I had agreed he would like to go to two other amendments next in line. We will come back to this issue.

Mr. KYL. Madam President, that understanding is fine. There are two Members who I think will be ready to go forward with their amendments immediately following the two votes at 6 o'clock.

Again, for benefit of the Members, it is my hope that we can continue to work through as many amendments as possible this evening, maybe have debate a couple at a time and vote, whatever the body desires. But perhaps we could continue at least to work through a few more amendments yet this evening.

Mr. KERRY. I agree with that completely. We have a fairly limited list, and I think it is possible to move through them rapidly. I appreciate the efforts of the Senator from Arizona to do so.

Madam President, how much time do we have on our side?

The PRESIDING OFFICER. Six minutes.

Mr. KERRY. I yield 4 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Madam President, I thank my colleague from Massachusetts, Senator KERRY. I wish to respond to Senator RISCH's amendment because I am very sympathetic to the concerns he is raising.

All who watched Russia's invasion of Georgia had to be outraged about what happened. In fact, I have a resolution I have submitted with Senators GRAHAM and LIEBERMAN. I hope, perhaps, the Senator from Idaho might be willing to take a look at this resolution and work with us on it next year because one of the things it does is it calls upon the Government of Russia to take steps to fulfill all the terms and conditions of the 2008 cease-fire agreement, including returning military forces to prewar positions and ensuring access to international humanitarian aid to all those affected by the conflict.

It also deals with a number of other provisions in that resolution with respect to Georgia.

I also point out, as I am sure my friend from Idaho knows, that Georgia has recognized it is in their interest to have relations with Russia that can address their border concerns in a way that is positive, to have Russia working with the international community as opposed to working as a pariah. They may represent what we have heard from all our NATO allies with respect to the START treaty; that it is in the best interest of our NATO allies. We have heard from those countries that border Russia—Latvia, Poland, and a number of other countries—that they would like to see the United States ratify the New START treaty.

I am in agreement with the concerns Senator RISCH raised. I have questions about whether this is the best way to do it, given the confines of the New START treaty and our efforts to get this into effect as soon as possible so we do not continue to have a situation where we do not have inspectors on the ground in Russia who can help gather intelligence, who can see what is going on with their nuclear arms in a way that would also benefit Georgia.

I understand the concerns. I agree with those. But I cannot support this amendment because of the negative impact it might have on ratifying the treaty.

Mr. RISCH. Madam President, may I respond.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Madam President, somehow the debate about the relationship between Russia and Georgia and our relationship as far as Georgia is concerned has crept into this debate. This amendment has nothing to do with Georgia, other than the fact that is where the theft took place. The international criminal offense of theft of our military property took place in Georgia. That is the only thing Georgia has to do with this. This has nothing to do with the relationship. Amendment No. 4879 has a lot to do with it. When we get there, we will talk about that.

I regret my good friend from New Hampshire cannot support this amendment, because although I suspect I will

support the resolution, we do a lot of these resolutions. We do the resolution and send it off to the Russians. They are going to be laughing up their sleeve at us, whilst they are fondling our equipment that they have possession of.

There are no teeth in these resolutions. We actually have the opportunity to do something to get our military equipment back. If they are acting in good faith, if they are people of good will, if they want a relationship with us, then they are going to have to make a choice: Do we keep four humvees or do we give them back so this treaty can go into effect? That is the choice they are going to have to make.

That is not too tough a choice to put on them. Do you want to continue to be thieves or do you want to be honest about this and deliver the goods you have stolen? There is nothing wrong about that. This gives us the opportunity, I say to the good Senator, to do what you exactly do on the resolution, but it is going to give it some teeth.

I yield the floor.

Mr. KERRY. Madam President, how much time remains?

The PRESIDING OFFICER. Three minutes.

Mr. KERRY. On both sides? How much remains on the proponents' side?

The PRESIDING OFFICER. The minority has 19 seconds; the majority has 3 minutes.

Mr. KERRY. I suggest the absence of a quorum. I withhold that request.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, I, first, thank the Senator from Idaho for bringing up this issue. I might tell him, I have a laundry list of issues with which I would like to deal with Russia.

I have the honor of chairing the Helsinki Commission. We have a lot of human rights issues with Russia, and we raise them all the time as aggressively as we can. I am proud the Obama administration has raised these issues at the highest level with the Russian Federation. We are very sympathetic to the issue the Senator has brought up. It is the wrong vehicle to deal with this issue. It is the wrong vehicle. This treaty is important for U.S. national security. That is why I support the ratification. That is why I urge my colleagues to support the ratification.

Yes, it is appropriate in our advise-and-consent role for us to take up issues that are relevant to the subject matter of the treaty. The problem is, the issues the Senator from Idaho is bringing up are not relevant to the subject matter of the treaty. Therefore, it is the wrong vehicle to take up this issue.

I do not want the Senator from Idaho to interpret my opposition to his amendment as opposing what he is trying to do. I agree with what he is trying to do. It is the wrong vehicle on which to put it. I urge the Senator to work with Senator SHAHEEN, work with the Helsinki Commission on other issues.

The issue the Senator is bringing up about the return of property is very important to America. We believe in many cases the Russian Federation is not living up to their international commitments under international agreements. We will bring those up, and we will fight in those forums. But this treaty is in our interest. This treaty and our actions should deal with the four corners of the agreement.

In that respect, I very much oppose the Senator's amendment.

Mr. RISCH. Madam President, may I claim my 19 seconds.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Madam President, with all due respect to my good friend from Maryland, this is exactly the right vehicle to bring this up. This is a vehicle of trust, and it is a vehicle that puts some teeth in an otherwise toothless thing.

As far as human rights versus this stolen property, this is very objective, it is hard, you can see it. The human rights violations I think are entirely different. They certainly are important. They certainly rise to as high a level, but this is objective.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KERRY. Madam President, I believe all time has expired; is that correct?

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. KERRY. I yield back my time.

The PRESIDING OFFICER. Time is yielded back. All time is expired.

VOTE ON AMENDMENT NO. 4855

The question is on agreeing to the Ensign amendment No. 4855.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), and the Senator from New Hampshire (Mr. GREGG).

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

The result was announced—yeas 32, nays 63, as follows:

[Rollcall Vote No. 293 Ex.]

YEAS—32

Barrasso	Crapo	Inhofe
Brown (MA)	DeMint	Isakson
Bunning	Ensign	Johanns
Burr	Enzi	Kirk
Chambliss	Graham	Kyl
Coburn	Grassley	LeMieux
Cochran	Hatch	McCain
Cornyn	Hutchison	McConnell
Risch	Shelby	Vitter
Roberts	Snowe	Wicker
Sessions	Thune	

NAYS—63

Akaka	Feinstein	Mikulski
Alexander	Franken	Murkowski
Baucus	Gillibrand	Murray
Begich	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bennett	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kerry	Reid
Brown (OH)	Klobuchar	Rockefeller
Cantwell	Kohl	Sanders
Cardin	Landrieu	Schumer
Carper	Lautenberg	Shaheen
Casey	Leahy	Specter
Collins	Levin	Stabenow
Conrad	Lieberman	Tester
Coons	Lincoln	Udall (CO)
Corker	Lugar	Udall (NM)
Dodd	Manchin	Voinovich
Dorgan	McCaskill	Warner
Durbin	Menendez	Webb
Feingold	Merkley	Whitehouse

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The amendment (No. 4855) was rejected.

VOTE ON AMENDMENT NO. 4878

The PRESIDING OFFICER (Mr. UDALL of Colorado). Under the previous order, the question is on agreeing to the Risch amendment No. 4878.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I move to table the Risch amendment. I ask for the yeas and nays, and I ask unanimous consent this be a 10-minute vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from New York (Mrs. GILLIBRAND), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mrs. GILLIBRAND) would vote ''yea.''

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Oklahoma (Mr. COBURN).

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

The result was announced—yeas 61, nays 32, as follows:

[Rollcall Vote No. 294 Ex.]

YEAS—61

Akaka	Cardin	Feingold
Alexander	Carper	Feinstein
Baucus	Casey	Franken
Begich	Collins	Hagan
Bennet	Conrad	Harkin
Bennett	Coons	Inouye
Bingaman	Corker	Johnson
Boxer	Dodd	Kerry
Brown (OH)	Dorgan	Kirk
Cantwell	Durbin	Klobuchar

Kohl	Mikulski	Shaheen
Landrieu	Murkowski	Specter
Lautenberg	Murray	Stabenow
Leahy	Nelson (NE)	Tester
Levin	Nelson (FL)	Udall (CO)
Lincoln	Pryor	Udall (NM)
Lugar	Reed	Warner
Manchin	Reid	Webb
McCaskill	Rockefeller	Whitehouse
Menendez	Sanders	
Merkley	Schumer	

NAYS—32

Barrasso	Graham	McConnell
Brown (MA)	Grassley	Risch
Bunning	Hatch	Roberts
Burr	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Cochran	Isakson	Snowe
Cornyn	Johanns	Thune
Crapo	Kyl	Vitter
DeMint	LeMieux	Voinovich
Ensign	Lieberman	Wicker
Enzi	McCain	

NOT VOTING—7

Bayh	Coburn	Wyden
Bond	Gillibrand	
Brownback	Gregg	

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, we are in a position now—we don't have the consent agreement completely fixed, but we know what we are going to do. We are going to have three votes, three different amendments. There would be a half hour debate on each amendment. So we likely will have a series of votes at 8:15 or thereabouts tonight. Senator KERRY will offer a consent agreement to this effect very shortly. In the meantime, we can start debating one of the amendments.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I understand there will be three amendments we will proceed with. Two will be offered by Senator KYL and one by Senator WICKER. Senator WICKER is prepared to call up his amendment.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

AMENDMENT NO. 4895

Mr. WICKER. I ask unanimous consent to call up amendment No. 4895 by Wicker and Kyl.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. WICKER], for himself and Mr. KYL, proposes an amendment numbered 4895.

Mr. WICKER. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide an understanding that provisions adopted in the Bilateral Consultative Commission that affect substantive rights or obligations under the Treaty are those that create new rights or obligations for the United States and must therefore be submitted to the Senate for its advice and consent)

At the end of subsection (b) of the Resolution of Ratification, add the following:

(4) BILATERAL CONSULTATIVE COMMISSION.—It is the understanding of the United States that provisions adopted in the Bilateral Consultative Commission that affect substantive rights or obligations under the Treaty are those that create new rights or obligations for the United States and must therefore be submitted to the Senate for its advice and consent.

Mr. WICKER. Mr. President, I rise this evening to offer another amendment to the resolution of ratification. This amendment rises out of concerns over the Bilateral Consultative Commission known as the BCC. The BCC has been referred to numerous times in debate today. Article XII of the treaty establishes the BCC as a forum for the parties to resolve issues concerning implementation of the treaty. Part six of the protocol says the BCC has the authority to resolve questions relating to compliance, agree to additional measures to improve the viability and effectiveness of the treaty, and discuss other issues raised by either party. This clearly is very broad authority given to the BCC. In effect, the subject matter jurisdiction of the BCC seems limitless, based on the clear language of article XII.

Former National Security Adviser under President George W. Bush, Stephen Hadley, appeared before the Foreign Relations Committee and expressed concerns over this treaty. He stated, with regard to the Bilateral Consultative Commission:

The Bilateral Consultative Commission seems to have been given authority to adopt, without Senate review, measures to improve the viability and effectiveness of the treaty which could include restrictions on missile defense.

It is that element of Senate review that this amendment would inject back into the process.

Others have voiced concern that the mandate of the BCC is overly broad. This should trouble Senators. It is why I offer this amendment to place proper limits on the power of the BCC.

I hold in my hand a fax sheet written by the Department of State Bureau of Verification, Compliance, and Implementation, dated August 11, 2010. I ask unanimous consent that it be printed in the RECORD.

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

[FROM THE BUREAU OF VERIFICATION, COMPLIANCE, AND IMPLEMENTATION, AUG. 11, 2010]

BILATERAL CONSULTATIVE COMMISSION (BCC)

Key Point: The New START Treaty establishes the BCC to work questions related to Treaty implementation. The use of treaty-based commissions to agree on limited technical changes to improve or clarify implementation of treaty provisions is a well-established practice in arms control treaties.

Background: The New START Treaty authorizes the Parties to use the Bilateral Consultative Commission (BCC) to reach agreement on changes in the Protocol to the Treaty, including its Annexes, that do not affect substantive rights or obligations. The START Treaty's Joint Compliance and Inspection Commission and the Intermediate and Shorter Range Nuclear Forces Treaty's Special Verification Commission were assigned similar responsibilities by those treaties.

The Chemical Weapons Convention, the Open Skies Treaty, and the Conventional Forces in Europe Treaty provide similar authority to effect technical changes that are deemed necessary by the Parties during the implementation of the respective treaty.

Authority of the BCC: In addition to making technical changes to the Protocol, including its Annexes, that do not affect substantive rights or obligations, the BCC may: resolve questions relating to compliance with the obligations assumed by the Parties; agree upon such additional measures as may be necessary to improve the viability and effectiveness of the Treaty; discuss the unique features of missiles and their launchers, other than ICBMs and ICBM launchers, or SLBMs and SLBM launchers, referred to in paragraph 3 of Article V of the Treaty, that distinguish such missiles and their launchers from ICBMs and ICBM launchers, or SLBMs and SLBM launchers; discuss on an annual basis the exchange of telemetric information under the Treaty; resolve questions related to the applicability of provisions of the Treaty to a new kind of strategic offensive arm; and discuss other issues raised by either Party.

If amendments to the Treaty are necessary, the Parties may use the BCC as a framework within which to negotiate such amendments. However, once negotiated, such amendments may enter into force only in accordance with procedures governing entry into force of the Treaty. This means that they would be subject to the advice and consent of the United States Senate.

This provision ensures that the Senate's Constitutional role in providing advice and consent to the ratification of treaties is not undermined.

RULES GOVERNING THE WORK OF THE BCC

The BCC is required to meet at least twice each year in Geneva, Switzerland, unless the Parties agree otherwise.

The work of the BCC is confidential, except if the Parties agree in the BCC to release the details of the work.

BCC agreements reached or results of its work recorded in writing are not confidential, except as otherwise agreed by the BCC.

Mr. WICKER. The fax sheet mentions on more than one occasion that changes adopted by the BCC cannot affect substantive rights or obligations. It says under background: ''The New START treaty authorizes the parties to use the Bilateral Consultative Commission, BCC, to reach agreement on changes in the protocol to the treaty, including its annexes, that do not affect substantive rights or obligations.''

Further down under authority of the BCC, the State Department fax sheet says: ''In addition to making technical changes to the protocol, including its annexes that do not affect substantive rights or obligations, the BCC may,'' and then it lists the six bullets. First, resolve questions relating to compliance with the obligations assumed by the parties. Secondly, agree upon such

additional measures as may be necessary to improve the viability and effectiveness of the treaty. Next, discuss the unique features of missiles and their launchers other than ICBM and ICBM launchers or SLBM and SLBM launchers referred to in paragraph 3 of article V of the treaty that distinguish such missiles and their launchers from ICBM and ICBM launchers and SLBM and SLBM launchers. Next, discuss on an annual basis the exchange of telemetric information under the treaty. Fifth, resolve questions related to the applicability of provisions of the treaty to a new kind of strategic offensive arm. And finally, discuss other issues raised by either party. But the changes may not affect substantive rights or obligations of the parties.

''Rules governing the work of the BCC: The BCC is required to meet at least twice a year in Geneva unless the parties agree otherwise. The work of the BCC is confidential, except if the parties agree in the BCC to release details of the work,'' and ''BCC agreements reached or result of its work recorded in writing are not confidential . . . '' The BCC can agree to amendments in the treaty, but they must be submitted back to the Senate for advice and consent. It is a very powerful commission, no doubt. And it is reassuring to have this fax sheet saying that substantive changes cannot be made by the BCC.

It would be more reassuring if we put this in writing, and that is what the Wicker-Kyl amendment 4895 does. It is very simple and it uses the State Department language, stating that provisions adopted by the BCC that affect substantive rights—and these are the words used by the State Department in the fax sheet—are those that create new rights or obligations for the United States and must therefore be submitted to the Senate for its advice and consent.

The bottom line is this: If it is determined that a substantive change has been made by a decision of the BCC, then that change should be subject to the advice and consent of the Senate.

I urge a ''yes'' vote to this very simple but straightforward amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the amendment offered by Senator WICKER is an amendment that is looking for an issue. There is no issue that is joined here with respect to the bilateral commission or what it might do with respect to the creation of rights. But if this amendment were to pass, there would be an issue, not only an issue with respect to Russian participation but actually an issue that could be harmful to the United States. This is a little bit technical and it is a tricky thing to follow in some ways, but let me lay this out.

Under the START treaty, the prior treaty under which we have lived since 1992, and now under the proposed New START treaty, the consultative commission that we create in the treaty will get together in order to work out the problems that may or may not arise and is allowed to agree upon ''such additional measures as may be necessary to improve the viability and the effectiveness of the treaty.'' If those additional measures they might approve at some point in time are changes to the protocol or to its annexes and if the changes don't affect substantive rights or obligations under the treaty, then it is entirely allowable for those changes to be adopted without referring them back to the Senate for any advice or ratification. The Senators' proposed amendment would make it U.S. policy all of a sudden that the phrase ''do not affect substantive rights or obligations'' means ''doesn't create new rights or obligations.'' So there is a distinction between affecting substantive rights and then having the operative language that kicks it into gear become the creation of rights or obligations. This proposal is unnecessary.

Why? We have operated without it for 15 years under the START treaty without a single problem. The New START treaty uses the exact same approach that has worked for 15 years. We have a lot of experience in determining what constitutes substantive rights or obligations.

More importantly, I mentioned a moment ago that this could be harmful to American interests. Here is how. It would actually require that agreements we want to move on and that act in our national security interest would be delayed and referred to the Senate, and we all know how long that could take, even if the new rights or obligations that they created were absolutely technical in nature. No matter how technical or trivial, they have to come to the Senate to become hostage to one Senator or another Senator's other agenda in terms of our ability to move, at least as structured here.

Under START, the compliance commission adopted provisions on how inspectors would use radiation detection equipment to determine that the objects on a missile that Russia declared not to be warheads were, in fact, nonnuclear and, therefore, not warheads. There was absolutely no need for the Senate to hold hearings, write reports, or have a floor debate on that provision, even though it created a new right for the inspecting side and a new obligation for the hosting side in an inspection. We don't want to take away our ability to be able to do that. This amendment would do that.

Similarly, the commission under START reached agreement from time to time on changes in the types of inspection and equipment that a country could use. Equipment changes over time, as we know. Technology advances, so the equipment changes. Giving U.S. inspectors the new right to use that equipment or the new obligation to let Russian inspectors use it hardly warrants referral to the Senate for its advice and consent.

In summary, this amendment is unneeded. We have done well without it. Not well—we have done spectacularly without it for 15 years. No problems whatsoever. On the other side, it is a dangerous amendment because it forces us to delay for months the implementation of technical agreements that our inspectors ought to be allowed to implement without delay.

I reserve the remainder of my time and ask unanimous consent that upon the use or yielding back of time specified below, the Senate proceed to votes in relation to the following amendments to the resolution of ratification: Wicker 4895, Kyl 4860, and Kyl 4893; further, that prior to the votes there be no second-degree amendment in order to any of the amendments and that there be 30 minutes of debate on each amendment equally divided between the sponsors of the amendment and myself and/or my designee or the designee of the sponsors; further, I ask unanimous consent that the time already consumed by Senator WICKER and myself be counted toward this agreement.

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

Mr. KERRY. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 9 minutes remaining on the Wicker amendment.

Mr. KERRY. I yield 3 minutes to the Senator from Maryland.

Mr. CARDIN. Let me thank Senator WICKER for bringing forward this amendment. I know it is an amendment he feels very strongly about. I compliment him because I believe a good part of what he was concerned about is already in the resolution of advice and consent on ratification.

As the Senator pointed out, there is a consultation process before the Bilateral Consultative Commission to meet on any changes that would modify the treaty itself. There has to be consultation with Congress on those issues, as the Senator pointed out in his comments. So I think we have already taken care of the major concern the Senator has that it would be a substantive decision made by the Bilateral Consultative Commission.

Secondly, let me point out that whatever the Bilateral Consultative Commission does, it is limited by the treaty itself, which, hopefully, will have been ratified by both the United States and Russia. So there will be a limit on the ratification already in the process.

As Senator KERRY pointed out, we certainly do not want to hold up Senate ratification for minor administrative issues, knowing how long Senate ratification of anything related to a treaty could take.

The last point I want to bring out is, the Senator mentioned missile defense, and I know this has been brought up over and over and over. But in our advice and consent to the ratification of the treaty, we have already put in that:

. . . the New START Treaty does not impose any limitations on the deployment of

missile defenses other than the requirements of paragraph 3 of Article V of the New START Treaty, which states, ''Each Party shall not convert and shall not use ICBM launchers or SLBM launchers for placement of missile defense interceptors therein.''

So we already put in the resolution the concern that the Senator has voiced as the major reason he wanted to expand the consultative process, which is also already included in the resolution.

I think the point Senator KERRY has raised is that this would make it technically unworkable for the Bilateral Consultative Commission to do its work if we required Senate consultation or ratification every time the Commission wanted to meet.

For all those reasons, I urge my colleagues to reject the amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from Mississippi.

Mr. WICKER. Mr. President, if no one else seeks time on this amendment, I would be prepared to close.

It may be that my friend from Maryland is satisfied that there are no restrictions on missile defense in this aspect of the treaty. But it did not satisfy Stephen Hadley, the National Security Adviser to former President George W. Bush, who came before our committee with concerns.

It seems to me we have a very simple way to address those concerns. Let me reiterate to my colleagues the quote of Mr. Hadley:

The Bilateral Consultative Commission seems to have been given authority to adopt without Senate review measures to improve the viability and effectiveness of the Treaty which could include restrictions on missile defense.

I would also agree with my colleague from Maryland that, indeed, the BCC has the authority to negotiate amendments to the treaty. That is acknowledged in the factsheet by the State Department.

The simple step beyond that I am trying to do with my amendment is to make it clear, using the terms supplied to us by the State Department that say: The BCC cannot make changes that affect the substantive rights or obligations of the United States. I am trying to make that part of the resolution of ratification, and that is all it does. It says if the BCC adopts provisions that affect substantive rights or obligations under the treaty that create new rights or obligations, that those changes must come back to the Senate. It is in addition to the requirement that amendments to the treaty come back to the Senate for ratification, and it is a protection of the rights of this body to continue to have a role in substantive modifications that might come out of the BCC.

I urge the adoption of this amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from Maryland.

Mr. CARDIN. Mr. President, I will say, I think we just have a disagreement. I think where Senate confirmation would be at issue is where there is an amendment to the treaty, and that is exactly what is included in our resolution.

I think it is unworkable to try to get the Senate involved in all the changes in trying to say what is substantive and what is not. I think you would be interfering with the administration of the verification systems, et cetera. So I would just urge our colleagues to reject the amendment.

I say to Senator WICKER, I think on our side we are prepared to yield back. So if the Senator would like to——

Mr. WICKER. Mr. President, I yield back.

Mr. CARDIN. Mr. President, we yield back the time on this amendment.

As I understand the unanimous consent agreement, it is 30 minutes per amendment. Then I think we are prepared to go to Senator KYL for his amendment.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, a point of inquiry before I begin. Is there a reason I should speak to either amendment No. 4860 or amendment No. 4893 first?

The PRESIDING OFFICER. The Senator can speak in whatever order he wishes, but neither amendment has been offered.

Mr. KYL. Thank you, Mr. President.

AMENDMENT NO. 4860

Then, Mr. President, with that, I would like to offer amendment No. 4860, SLCM side agreement, which I believe is pending at the desk. I would ask for its consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, the clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 4860.

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

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

The amendment is as follows:

(Purpose: To require a certification that the President has negotiated a legally binding side agreement with the Russian Federation that the Russian Federation will not deploy a significant number of nuclear-armed sea-launched cruise missiles during the duration of the New START Treaty)

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) LIMITATION ON NUCLEAR-ARMED SEA-LAUNCHED CRUISE MISSILES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President has negotiated a legally binding side agreement with the Russian Federation that the Russian Federation will not deploy a significant number of nuclear-armed sea-launched cruise missiles during the duration of the New START Treaty.

Mr. KYL. Mr. President, this is actually a very straightforward amendment. It simply seeks to repeat in this New START treaty the same thing the then-Soviet Union and United States did in the previous START I treaty with respect to a particular kind of weapon—a Russian weapon called the SLCM or sea-launched cruise missile.

As part of START I, we reached a binding side agreement—a side agreement—because the Senate had said we needed to include these weapons in the treaty. So a side agreement was reached that they would limit a deployment of sea-launched cruise missiles or the SLCMs due to their impact on strategic stability, the point being that whether these sea-launched cruise missiles are deemed tactical or strategic, they actually have a strategic component, especially if they are sitting right off your coast and they are launched and they can hit your country. So that agreement was put into a side agreement between the then-Soviet Union and the United States.

But when this New START treaty was negotiated, there was no similar side agreement. So there were no restrictions on SLCM deployments. The side agreement in the START treaty limited both nations to fewer than 800 SLCMs with a range greater than 600 kilometers. In the 2010 Nuclear Posture Review, the administration committed to unilaterally eliminating our SLCM capability.

The United States will retire the nuclear-equipped sea-launched cruise missile (TLAM-N).

Under Secretary Miller said:

The timeline for its retirement will be over the next two or three years.

Now Russia is developing a new version of its SLCM, with a range of up to, approximately, 5,000 kilometers, which is a longer range than some of the ballistic missiles that are covered by the New START treaty.

So that is why we believe there should be a side agreement, just like there was in START I, that deals with these SLCMs. We are not going to have them, Russia is. Yet there is nothing in the treaty that would count their SLCMs against the total limit of warheads or delivery vehicles that are allowed under the treaty or in any other way deal with them.

The administration assures us we should not be concerned about a lack of a formal agreement. Secretary Clinton noted that the START I treaty did have a limitation on sea-launched cruise missiles and said that both parties ''voluntarily agreed to cease deploying any nuclear SLCMs on surface ships or multipurpose submarines.''

But today it is obvious, with the information about Russian plans, that there is going to be a great disparity between the United States and Russia. As I said, it is not obvious that saying one is tactical, as opposed to the strategic weapons that are otherwise limited by this treaty, is a very important distinction. I think it is really a distinction without a difference.

Steve Hadley, the former head of the NSC, said:

And if you're living in eastern or central Europe, a so-called tactical nuclear weapon,

if you're within range, looks pretty strategic to you. So what are we going to do about those?

As I said, he was the National Security Adviser.

Ambassador Bob Joseph, in testimony before the Foreign Relations Committee, said:

> Every time I hear the term ''nonstrategic nuclear weapons,'' I recall that no nuclear weapon is nonstrategic.

If you stop and think about it, that is certainly true.

So these weapons, which are very powerful, and can have a range of up to 5,000 kilometers, clearly need to be dealt with.

Now, we did not want to insist that they go back and renegotiate the treaty because we heard that argument before, so what we are suggesting by this amendment is simply to do the same thing we did in START I—just have it be a side agreement where the two parties would agree to limit the number. Our administration would limit the Russians so they would not have a significant number of these particular weapons.

Just a point, by the way: In the event there are folks who do not believe the Russians intend to rely on their weapons such as the SLCMs, Under Secretary of Defense Flournoy said: The Russians are ''actually increasing their reliance on nuclear weapons and the role of nuclear weapons in their strategy.''

Secretary Gates has made the same point. He said:

> Ironically, that is the case with Russia today, which has neither the money nor the population to sustain its Cold War conventional force levels. Instead, we have seen an increased reliance on its nuclear force with new ICBM and sea-based missiles, as well as a fully functional infrastructure that can manufacture a significant number of warheads each year.

And the Strategic Posture Commission noted:

> This imbalance in non-strategic nuclear weapons, which greatly favors Russia, is of rising concern and an illustration of the new challenges of strategic stability as reductions in strategic weapons proceed.

The point has been made by many others as well.

So I think this is fairly straightforward. It would require the United States to negotiate a side agreement with Russia, very similar to the side agreement we had under START I, to deal with a weapon that we are no longer going to have, but the Russians are apparently developing a new version of, that has a pretty substantial range—5,000 kilometers. Clearly, it is very difficult to distinguish the difference between a weapon like that and the strategic offensive weapons that are otherwise dealt with in the treaty.

I hope my colleagues will recognize this is not a treaty killer, and it is something that needs t be addressed.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. Mr. President, I yield 5 minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. First, let me thank Senator KYL for bringing this issue to our attention. I think this is a very important issue. We have a lot of security issues as they relate to Russia, as they relate to Europe, and as they relate to the sea-launch cruise missiles. I couldn't agree with the Senator more. But this falls under the same category of the discussion we had earlier about a side agreement on tactical weapons.

These are all beneficial issues, but it is not the key issue that is before us today. If we were to adopt this amendment, I think we all would agree it would cause a considerable delay in the implementation of the START treaty.

Let me remind my colleagues that the START treaty, according to our military experts, is needed now. We have been a year without having inspection regimes in Russia so we can get the intelligence information we need by people on the ground. That expired in December of last year. So we have already been delayed through this year, and the longer we delay, the less reliable the information we have for our own national security.

Although it would be nice to have all of these side agreements with Russia on a lot of other issues, every time we ask our negotiators to do that, it takes time. It takes a lot of time to negotiate. It is not all one-sided when you negotiate. My colleagues know that. We know that here as we negotiate issues.

This is an important issue, but it shouldn't delay the ratification and implementation of the New START treaty so that we can get our inspectors on the ground, giving us the information we need for our own national security as it relates to the strategic capacity of Russia.

For all of those reasons, I urge my colleagues to reject the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the Senator from Maryland is absolutely correct, and I appreciate him pointing that out. I think I have said many times in the course of this debate that it is imperative for us to deal with the issue of tactical nuclear weapons. In fact, the resolution of ratification has a section in it which specifically addresses this and urges the President to move to that.

I might add that the Senator from Florida, Mr. LEMIEUX—we are just finishing up an agreement on an amendment which will, in fact, add an additional component. It is an amendment we intend to accept, and it will add an additional emphasis on this question of tactical weapons.

But not only is there no benefit to delaying this treaty from going into effect—I mean, that is what the amendment of the Senator from Arizona will do. Until this new verification and limitation mechanism is put into effect—the fact is that most of our experts, from Secretary Gates through Admiral Mullen and others, have all said to us: If we don't get this treaty, we are not going to get to the tactical nuclear discussion with the Russians.

If we were the Russians and the U.S. Senate said: We are not going to do this until this, we would be looking at a long road where we have reopened all of the different relationships and we have discarded this one component of our nuclear deterrent that we find so critical, which is the submarine-launched missiles, the intercontinental ballistic missiles, and the heavy bombers. That is the heart of our nuclear deterrence. We want to know what they are doing and they want to know what we are doing, and that is how you provide the greatest stability.

In addition to that, Secretary Gates and Secretary Clinton have both reinforced that many times, but here is the important thing to think about as we think about what the impact on this treaty would be. Nuclear-armed sea-launched cruise missiles—or SLCMs, as we call them in the crazy vernacular of this place—these are tactical weapons, and although this amendment seems to suggest that Russian SLCMs could upset the strategic balance between the United States and Russia, the truth is, they cannot. They don't do what this amendment seems to suggest.

For many years, going back at least to the Reagan administration, we have considered these kinds of weapons to be nonstrategic weapons, tactical weapons. Even if they are long range, we consider them that. Secretary Gates and Admiral Mullen explained why in their answer to a specific question from the Senate. They said:

> Russian nuclear-armed sea-launched cruise missiles . . . could not threaten deployed submarine-launched ballistic missiles (which will comprise a significant fraction of U.S. strategic force under New START), and would pose a very limited threat to the hundreds of silo-based ICBMs that the United States will retain under New START.

In other words, Russian nuclear SLCMs can't take out our nuclear deterrent in a first strike. That means if Russia were to use nuclear SLCMs against us, we could still use most of our strategic nuclear weapons and deliver an absolutely devastating blow in return. No logic in the sort of give-and-take of war planning, as horrible and as incomprehensible as it is to most people with respect to nuclear weapons, but it has all been done, appropriately, because they do exist, and it is important to our security. But no warfighting under those situations is going to reduce our ability to not just defend ourselves but to annihilate anyone who would propose or think about doing that.

Ironically, it was the Soviets who once wanted to do what Senator KYL is actually seeking to do. They wanted to categorize SLCMs as strategic weapons because we used to deploy a nuclear version of the Tomahawk on our attack submarines, and the Soviets

worked very hard to get the original START treaty to cover SLCMs. Guess what. We didn't bite. We didn't do that. The first Bush administration explicitly rejected those Soviet efforts to add legally binding limits on sea-launched cruise missiles. They considered SLCMs tactical weapons, and they also thought that limits on nuclear sea-launched cruise missiles are inherently unverifiable. That is, in part, because we didn't want to give the Soviets that much access to our submarines in return for access to theirs, and we don't want to do it now with the Russians. Now, maybe people were wrong about that, but I just don't see the wisdom in putting the treaty we have agreed on on the shelf while we go out and try to experiment with a new approach that nobody has argued is imperative for the security of our country.

Back then, we did agree in politically binding declarations to a limit of 880 deployed long-range nuclear SLCMs and to declare at the beginning of the year how many SLCMs we intended to deploy for that year. Those political declarations stayed operative for many years, and, in fact, Secretary Gates stated for the record that as recently as December of 2008, Russia has declared that it planned to deploy zero nuclear SLCMs.

Shortly after START was signed in 1991, the United States and Russia each pledged as part of the Presidential nuclear initiative to cease deploying any nuclear SLCMs on surface ships or attack submarines. So while we have four former ballistic missile submarines converted to cruise missile submarines, we are no longer deploying our nuclear Tomahawk missiles on any U.S. submarines. The Presidential nuclear initiatives are still operative for us and for the Russians, and we think we are more secure that way.

So I see nothing to be gained from negotiating a new binding agreement in the context of holding up this treaty, of putting it on the shelf, and of going back in an effort to do that.

This amendment would delay the New START for months or years, throw an entire curveball back into what I talked about yesterday, which is that theory of negotiation that nothing is agreed upon until everything is agreed upon. And in this case, if we say: Oh, no, ain't agreed upon, sorry, we are coming back to say you have to agree with us on tacticals before any of this becomes law, we have opened the entire negotiation again. How reliable and what kind of partnership is that? I don't think that makes sense. I fail to see any point in going down that road.

I urge my colleagues to defeat this amendment, and I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Arizona has just under 8 minutes.

Mr. KYL. Mr. President, I am a little bit flummoxed here because I thought in a conversation I had a couple of days ago with Senator KERRY that side agreements might be all right; that we didn't want to amend the preamble or didn't want to amend the treaty but that we could perhaps do some side agreements. So we structured this as a side agreement just exactly as was done in START I.

Mr. KERRY. Will the Senator yield?

Mr. KYL. On the Senator's time, I would be happy to.

Mr. KERRY. I would be happy to urge, if he wants to change the amendment or if he wants to submit—it is too late now, but we could perhaps do a modification by unanimous consent to urge the President to enter into an agreement but not shelve the whole treaty until that happens. That is the difference. So I am not going back on the notion. It would be great to get a side agreement, but don't hold this agreement up in the effort to do it.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, there was no delay in the implementation of the START I agreement because of a requirement that a side agreement be entered into between the then-Soviet Union and the United States on SLCMs. So I don't buy the notion that this necessarily would delay anything.

Secondly, we are not talking about tactical missile limitations generally. All we are doing is talking about the same kinds of missiles that were the subject of the side agreement under START I. I suspect that part of the reason was because it is pretty difficult to distinguish as to whether these weapons are being used for a strategic or a tactical purpose. Senator KERRY has said they cannot upset the strategic balance. I simply totally disagree with that proposition. They absolutely can upset the strategic balance, depending upon where they are located or how they intend to be used. That is one of the reasons I suspect they were limited under the START I treaty.

My colleague said they can't threaten our submarine fleet at sea and they pose only a limited threat to ICBM sites. Well, that may be the opinion of our experts. They could sure threaten our submarine bases in Washington State at King's Bay. They could take out bases or other assets we have.

In fact, let me quote from a Russian article, the RIA Novosti Report of April 14, 2010, on the Graney class nuclear submarines:

> Graney class nuclear submarines are designed to launch a variety of long-range cruise missiles up to 3,100 miles or 500 kilometers with nuclear warheads and effectively engage submarines, surface warships, and land-based targets.

Obviously, at 5,000 kilometers, as I said, that is a range longer than some of the ballistic missiles that are covered by the New START treaty. So these weapons—it is a little hard to characterize them as either tactical or strategic. I think it depends upon how they are used.

But the point is, if my colleague believes they can't threaten anything, then what is the problem with trying to set a limit on them? Well, obviously—or at least I assume obviously—the Russians don't want to do that. I assume we raised this, though we don't have the negotiation record, so I don't know whether it was raised. If it wasn't, why wasn't it? And if it was because we didn't think there was any threat to the United States, then I think it would be very important to ask some of our military folks why they think that is the case given the kinds of targets that could be held at risk here and given the fact that we apparently reached a different conclusion during the START I treaty implementation phase when the side agreement was negotiated with the then-Soviet Union.

So I don't think it would delay anything. We do posit it as a side agreement rather than an amendment. We just say that the administration should negotiate so that there wouldn't be a significant number of SLCM deployments by the Russians given the fact that we are not doing any.

I do have to say that I fundamentally disagree with the assertion of my colleague that this kind of weapon can't upset the strategic balance. If you have a weapon that can fly over 3,000 miles with a nuclear warhead, which could be just as big of a nuclear warhead as on a bomber or an intercontinental ballistic missile, with all of the targets on our eastern seaboard or western seaboard that would be held at risk for such a weapon—in fact, 3,000 miles—you won't have to be far off either of our two U.S. coasts to hit most targets within the continental United States.

This is a weapon that it seems to me we should be concerned about. Therefore, I urge my colleagues to support calling for a side agreement that would deal with the SLCMs just as we did under the START I treaty.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, I say to Senator KYL, these missiles are not strategic. Do they affect our strategic balance? I say that everything in our defense toolbox can affect our strategic balance. That was taken into consideration in the negotiations. I thank him for bringing this issue to our attention, but for the reasons we have stated, we urge our colleagues to reject the amendment.

We are prepared to go to the Senator's next amendment if he is prepared to go forward.

Mr. KYL. Mr. President, I will respond with about 30 seconds. Then I will be prepared to go to my next amendment. Perhaps I can reserve whatever time I have left on there to make a closing argument.

I really do sincerely appreciate the characterization of these issues we have raised as serious and important. I do appreciate that. I do think, though,

that it would be appropriate to have a better response than just that this will upset the Russians, they won't want to do it, so we will have to renegotiate the treaty, and that it will delay things and that will create problems.

The purpose is not to delay, as I said. I don't think the START I treaty was delayed when we reached a side agreement.

I think, in any event, the question is this: Should the United States delay, if that is what is called for, in order to improve the treaty in important respects? If it is conceded that this is an important aspect, then it seems to me that it is worth taking time to do it right.

Most of the arguments that have been made in response to the amendments we have raised boil down to: The Russians won't want to do what you say, and therefore we need to reject your amendment because it would require some renegotiation. I get back to the point I have made over and over: Then what is the Senate doing here? Why would the Founders have suggested we should have a role in relation to treaties if every time we try to change something, the argument is that you cannot change a comma because the other side wouldn't like that and that would require renegotiation?

There is nothing that serious about this treaty that it has to go into effect tomorrow. The Washington Post had an editorial, and they said that no great calamity will befall the United States if this treaty is not concluded before the end of the year. I think that is almost a direct quotation. There is no immediate national security reason to do so. I know the administration would like to get on with it, but no great harm will befall us if we take time to do it right. If we are not willing to do that, the Senate might as well rubberstamp what the President sends up because the argument will be that if we try to suggest changes, the other side will reject them and we could not possibly abide that.

I will reserve the remainder of time on this amendment.

AMENDMENT NO. 4893

Mr. President, I call up amendment No. 4893, which I believe is at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 4893.

Mr. KYL. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide that the advice and consent of the Senate to ratification of the New START Treaty is subject to an understanding regarding the non-use of covers by the Russian Federation that tend to interfere with Type One inspections and accurate warhead counting, is subject to the United States and the Russian Federation reaching an agreement regarding access and monitoring, and is subject to a certification that the Russian Federation has agreed that it will not deny telemetric exchanges on new ballistic missile systems it deploys during the duration of the Treaty)

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) COVERS.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the President has reached an agreement with the Government of the Russian Federation on the non-use of covers by the Russian Federation that tend to interfere with Type One inspections and accurate warhead counting.

(12) TELEMETRY.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the United States has reached a legally-binding agreement with the Russian Federation that each party to the Treaty is obliged to provide the other full and unimpeded access to its telemetry from all flight-test of strategic missiles limited by the Treaty.

(13) TELEMETRIC EXCHANGES ON BALLISTIC MISSILES DEPLOYED BY THE RUSSIAN FEDERATION.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the Russian Federation has agreed that it will not deny telemetric exchanges on new ballistic missile systems it deploys during the duration of the Treaty.

At the end of subsection (b), add the following:

(4) TYPE ONE INSPECTIONS.—The United States would consider as a violation of the deployed warhead limit in section 1(b) of Article II of the Treaty and as a material breach of the Treaty either of the following actions:

(A) Any Type One inspection that revealed the Russian Federation had deployed a number of warheads on any one missile in excess of the number they declared for that missile.

(B) Any action by the Russian Federation that impedes the ability of the United States to determine the number of warheads deployed on any one missile prior to or during a Type One inspection.

Mr. KYL. Mr. President, I would have preferred to deal with each of the subjects in this amendment individually because each one is very important. To accommodate the other side's desire to try to get as much done as quickly as possible, we consolidated some amendments, and there is a lot in this. I regret that we don't have time to get into detail about each one of them.

This amendment amounts to an effort to try to improve the verification of the treaty to deal with a variety of issues which have been raised in the past and which we believe are inadequately dealt with by the treaty. One of them involves covers, the kinds of things the then-Soviet Union and now Russians consistently put over the warheads so that it is impossible for our inspectors to see what is under them, to see how many warheads are under them. That has been a problem in the past.

On telemetry, we say the President should certify to the Senate that he has reached a legally binding agreement with the Russian Federation so that each party is obliged to provide full and unimpeded access to its telemetry from all flight tests of strategic missiles limited by the treaty. That is important because while we are not developing a new generation of missiles, the Russians are. We will be denied the telemetry of those missile tests if the Russians decide to deny it. Our intelligence community has told us that this is of great value to us in assessing the capabilities of Russian missiles. Under the treaty, they don't have to provide anything. They could provide telemetry on old missiles they are testing, and they don't have to provide any on any of the new missiles they are testing. We believe that should be done. The same thing with respect to any ballistic missiles deployed during the duration of the treaty.

Then we turn to the subject of inspections. There are different kinds of inspections, but we are talking here about type one inspections in which we say that the United States would consider it a violation of the deployed warhead limit and a material breach of the treaty if the Russians do one of two things: No. 1, any type one inspection that revealed that the Russian Federation had deployed a number of warheads on any one missile in excess of the number they declared for that missile; No. 2, any action by the Russian Federation that impedes the ability of the United States to determine the number of warheads deployed on any one missile prior to or during a type one inspection.

That gets to the issue of covers again. Why is this important? Because we are supposedly counting weapons in this treaty, warheads. There is a limit of 1,550 warheads. How can we possibly verify compliance if, when we seek to count the number of warheads on top of missiles we have designated and have a right to inspect, we can't count the warheads? You tell me how we are supposed to assume how many warheads there are on the top of that particular missile or why we should not deem it a material breach if they declared a certain number of warheads and it turns out there are more.

I think these are commonsense changes that would strengthen the verification provisions of the treaty.

It is too bad Senator BOND is not here tonight. He is the ranking Republican member of the Intelligence Committee. In the classified session we had yesterday, he talked about the deficiencies in verification under this treaty. This subject doesn't permit us to get into a lot of detail in open session.

We have heard a lot about past cheating by the Russians and the kinds of things that were done. What we are trying to do with these basic components is to make it less likely that the Russians would cheat, and if they do, it would less likely have an impact on the

key element of the treaty, which is the limitation on warheads of 1,550.

I will note a couple of things here that put this into context.

There have been allegations that there is better verification than ever before under this treaty. That is just not true. The verification provisions of this treaty are not as strong as under the START I treaty. There is an argument that they don't need to be for various reasons or the Russians weren't willing to allow them to be for various reasons. I don't think you can say the verification is better.

Former Secretary of State James Baker, who testified, said:

> The verification mechanism in the New START Treaty does not appear as rigorous or extensive as the one that verified the numerous and diverse treaty obligations and prohibitions under START I. This complex part of the treaty is even more crucial when fewer deployed nuclear warheads are allowed than were allowed in the past.

That is obvious. The more you get down to a smaller number, the more important cheating is, the more dramatic the effect can be, and the better verification you need.

Senator MCCAIN said this:

> The New START Treaty's permissive approach to verification will result in less transparency and create additional challenges for our ability to monitor Russia's current and future capabilities.

Former CIA Director James Woolsey said:

> New START's verification provisions will provide little or no help in detecting illegal activity at locations the Russians fail to declare, are off-limits to U.S. inspectors, or are underground or otherwise hidden from our satellites.

Senator BOND made a comment that I have quoted before, which is this:

> New START suffers from fundamental verification flaws that no amount of tinkering around the edges can fix. . . . The Select Committee on Intelligence has been looking at this issue closely over the past several months. . . . There is no doubt in my mind that the United States cannot reliably verify the treaty's 1,550 limit on deployed warheads.

To conclude, the amendment would require the President to certify that he has reached an agreement with Russia on the nonuse of covers that interfere with type one inspections and accurate warhead counting during those inspections. It doesn't solve the problem of determining the total number of warheads Russia deploys, but it would reduce a method of deception Russia has used in the past.

On telemetry, the amendment would require the President to certify that he has reached a legally binding agreement with Russia that each party is obliged to provide the other full and unimpeded access to its telemetry from all flight tests of strategic missiles, including on new ballistic missile systems deployed by the Russians. They are free now to encrypt those tests. That makes it much harder to get information we have found to be very valuable.

Finally, with regard to the material breach, the amendment contains an understanding that the United States would consider a violation of the deployed warhead limits to be a material breach of the treaty. This would include any type one inspection that revealed the Russians had deployed a number of warheads on any one missile in excess of the number they declared for that missile or that they continued to use covers that deny us the ability to see exactly how many warheads they have on their missiles.

Mr. President, I hope my colleagues would recognize that verification is a problem under the treaty. This is a modest way to try to deal with specific aspects of that verification. I hope my colleagues would be willing to support the amendment.

I reserve the remainder of my time.

Mr. KERRY. Mr. President, I ask unanimous consent that when the Senate votes on the three amendments, as provided under the previous order, those votes occur in the order listed in that agreement.

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

Mr. KYL. Might we also add that the second two votes would be 10-minute votes?

Mr. KERRY. That is a good suggestion. I ask unanimous consent that the second two votes be 10 minutes in length.

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

Mr. KERRY. Mr. President, let me first compliment my colleague from Arizona, who has been dogged, if nothing else, in his advocacy with respect to his points of view regarding this treaty. And while I and other Senators may disagree with a specific amendment he proposes because of its impact as well as, in some cases, because of something else, that doesn't mean the Senator isn't raising valid questions for future discussions and things on which we ought to be focused. I know he spends a lot of time with this. I think all of us have a lot of respect for the ways in which he has already impacted this treaty. I give him credit for that.

This particular amendment is a combination of about four different amendments that have come together. I understand why that happened. I am not complaining about that at all. It is just that there is a lot in it, and therefore there are different reasons one ought to oppose this amendment.

Let me say that, first of all, the New START, I think in most people's judgment, addresses the concerns that have been raised by the Senator from Arizona.

The purpose of warhead inspections is to count the number of warheads on the missile. Neither side is comfortable with the other actually seeing the warheads, looking into it and seeing it. We are not comfortable with them doing that to us, and they are not comfortable with us doing that to them. That is not so much about the counting of the warhead as it is often the issue of failsafe devices or counter-shoot-down devices and other kinds of things that might be in there that we don't necessarily have a right to see and they don't want us to see. So neither side is sort of looking at the actual warhead. The START treaty—the original START treaty, therefore, to deal with that issue, lets the inspected party cover the warheads on the front of the inspected missile, but it allows us to inspect any cover before it is used so that we know what it can and can't conceal. We know what that cover is permitting us to see.

What is more, paragraph 11 of section (2) in the treaty's annex on inspections says explicitly—this is in New START:

> The covers shall not hamper inspectors.

We did not have that previously. That is new to this treaty.

As a result of what we have learned in START, we have learned how to look and how to ask for things more appropriately, and our negotiators worked that into this treaty so as to protect our interests.

In fact, the covers are not allowed to hamper the inspectors in ascertaining that the front section contains a number of reentry vehicles equal to the number of reentry vehicles that were declared for that deployed ICBM or deployed SLBM.

The virtue of the New START treaty is that these declarations and the specific alphanumeric numbers that are going to be attached to the launchers and these warheads allow us enormous certainty in the randomness of our choices of where we go. If the Russians are cheating or somebody is over for one reason or another, we have great capacity to decide where that might be, where we think the best target of opportunity is, and to lock that place down and go in and check it. There are enormous risks of being discovered as a consequence of the way we have set that up.

The treaty already forbids Russia from using covers that interfere with warhead counting. It would create a very dangerous precedent, in my judgment, to require that we negotiate now, before we put the treaty into effect, a side agreement on the very same thing. That might suggest that other New START provisions do not need to be obeyed because there is no side deal reinforcing them. What is the impact of the side deal? Does the side agreement, incidentally, have to be ratified by the Senate before it goes into effect? There are a lot of imponderables here.

With respect to the agreement on telemetry, the requirement for a legally binding agreement with Russia that both parties have to provide telemetry on all flight tests of ICBMs and SLBMs, which is what the Senator is seeking, would also delay the START treaty into force by the same months or years about which we talked.

That argument has been hammered around here the last 7 days adequately.

This delays the treaty. It does not act to increase the security of our country, and it already is in the resolution of ratification in the treaty.

Given what we already understand, we know that the Russians do not like trading in telemetry. I find it hard to believe, therefore, that if we make this treaty condition precedent on the agreement of a side agreement, which we know the Russians hate to do, that is a way of buying into gridlock, deadlock, nothing.

I do not think anybody would suggest—we have already been through this a little bit, incidentally. I and others strongly urged the President and his negotiators to seek as significant telemetry as possible. For a lot of reasons, it did not turn out that it was achievable from their side, but it also did not turn out it was desirable on our side altogether.

Russia is testing new systems such as the Belava SLBM, and the United States may test only existing types of missiles during the next decade. That is a reason why the Russians obviously resist this very significantly.

A lot of people have suggested that our military does not want to share the telemetry on all our flight tests of ICBMs and SLBMs. They are pretty happy the way the treaty is structured now, including the provisions for telemetry which allow us five telemetry exchanges. We have to agree on them, but they are allowed under the treaty. If that were not true, there is no way the Chairman of the Joint Chiefs of Staff Admiral Mullen would have sent the letter he sent to the entire Senate where he stated he wants this treaty ratified now, he wants it implemented now, and he believes, consistent with everything people said within our national security network, that this treaty is both verifiable and enhances our capacity to be able to count and know what the Russians are doing.

The requirement for Russian agreement not to deny telemetry on the new ballistic missile systems it develops during the duration of the treaty is redundant with the previous part about which we just talked.

Again, the amendment requires a side agreement with the Russians. It is the absolute equivalent of amending the treaty itself and, therefore, I would oppose that.

The New START's telemetry exchange regime involves negotiating the beginning of next year, assuming this goes into effect, which missile tests from the past year we are willing to share.

May I ask how much time I have?

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes.

Mr. KERRY. Mr. President, I want to reserve time for the Senator from New Hampshire.

The New START regime requires us to negotiate at the beginning of next year what we are going to share. If we do not offer anything interesting, Russia is not going to offer anything. That is the nature of a negotiation. You have to give to get. This amendment would change that basic principle from a negotiated exchange to a literally ''give me something for next to nothing.'' It does not work. The Russians would have to give us the good stuff while we would give them telemetry from launches that were no different from 30 other tests over the last 20 years.

I have to tell you, that sort of agreement is not going to happen. It is in a fantasy land, and the President would never get that side deal with Russia. The New START treaty would never come into force.

I yield the remainder of my time to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I will speak only for about 1 minute and then give the rest of my time to Senator FEINSTEIN who wishes to speak to the question of the covers.

I do not want to speak to the technicalities that have been raised, but I want to make two points in response to Senator KYL's concern about verification.

We should all be concerned about the fact that right now we have no inspectors on the ground. We have no way to verify what is going on in Russia. Anything that delays our ability to get that intelligence back on the ground in Russia adds to the urgency of the situation. That is a very important point.

The other issue he raised was relative to why do we need to do this now. The fact is, as Senator KERRY pointed out, we received a letter from ADM Mike Mullen, the Chairman of the Joint Chiefs, yesterday that said the sooner we ratify the treaty, the better. James Clapper, Director of National Intelligence, said about New START the earlier, the sooner, the better we get this done. There is a lot of reason to believe we need to act on this treaty and need to do it now.

I yield to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from New Hampshire.

Senator KYL is a very smart man. This is a major amendment. In my view, it is a deal breaker. It is a poison pill for the entire treaty. It essentially provides real changes in the treaty.

It says the President, prior to the treaty going into effect, must certify that he has achieved certain side agreements, and those side agreements strike directly at some of the heart of the treaty. Therefore, it will effectively, in my view, be unacceptable to the Russians and will destroy the treaty.

The treaty now says you cannot block an inspector's ability to ascertain warheads on a reentry vehicle. That covers the cover issue. This again says that telemetry by a prior agreement—that there be a side agreement on full access to telemetry for all missiles, and then on new missiles, is one-sided. Clearly, this is not going to be acceptable. Then it goes into the type one inspections.

If you are for the treaty, there is only one vote, and it is to vote no. I very much regret this because I respect the Senator. As I see it—and there are things I cannot go into here that I tried to go into yesterday—this is a poison pill amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from Arizona.

Mr. KYL. Might I inquire how much time remains on this side?

The PRESIDING OFFICER. There is 7 minutes remaining.

Mr. KYL. Mr. President, let me take 3, 4, 5 of those minutes. I appreciate my colleagues' compliments about important issues being brought up, and I also appreciate their concern that amendments of this significance would cause heartburn for the Russians and might well require them to want to renegotiate aspects of the treaty. I am trying to address that through the mechanism of the side agreement rather than amendment to the treaty or some kind of other more restrictive method. I thought that would be the preferable way to do it.

It is not my intention, as with the previous amendment, to delay things. I do not think it necessarily would. But I do appreciate that on a couple of these items the Russians would not likely want to renegotiate.

I am not so sure that would be the case with regard to the covers, this question of the kind of shroud or cover you put over the missile bus, the top of the missile that has the warheads since the treaty does deal with it, as my colleagues have pointed out, but I do not think it does so in a conclusive way.

The 2005 compliance report issued by the State Department to discuss compliance of the Russian Government with respect to the START I treaty had a couple of longstanding issues. The issue of shrouds was one that they characterized as of long standing. They had a very hard time getting that resolved with the Russians. In the end, there was a particular accommodation reached, but it took forever. And during that time, we did not have the kind of satisfaction we wanted.

We asked how disputes would be dealt with, and we get the same basic answer. That would go to the Bilateral Consultative Commission, the group of Russian and U.S. negotiators who are supposed to work these things out.

What I can see is a kind of repeat of what we had before. They like to cover these things up and that does not seem to me the way to enter into a treaty where we are supposed to be in agreement with our counterparts and yet we have unresolved issues we have to leave to another day to be resolved through a long and probably difficult negotiation process.

Also, my colleague from Massachusetts—these were his words; he was not quoting anyone—thought we had enormous certainty about this. I suggest I do not think the intelligence community would use a phrase such as ''enormous certainty.'' We cannot get into here the degree of percentage they attach to being able to know certain things under this treaty.

Suffice it to say that we are not absolutely sure we can do what needs to be done here, and I do not think characterizing it as ''enormous certainty'' would be an accurate way to do it.

Let me mention with regard to telemetry—first of all, let me correct one thing that is a little bit of misdirection and then agree with my colleagues on something else.

There is a suggestion that we can get telemetry on five missiles, and that is true if the Russians agree. In other words, they have to volunteer to do it. The five missiles they tell us about can be old missiles. They do not have to be new missiles. It is a fact there is nothing in this treaty that requires the Russians or the United States to exchange telemetry on new missile tests; that is to say, tests of missiles currently being developed. There are at least two the Russians are developing right now.

That leads to the second point. I think it is probably true the reason they did not want to agree to this is it would require them to give us very valuable information. Right now, they would not be getting any information from the United States because we are not testing missiles. But I ask, is that an asymmetry that is justified or that justifies a provision that says if you are not modernizing your forces and we are modernizing our forces, it is not fair to have us tell you what our missiles are like?

Under the previous treaty, both sides had to do that, and it gave both sides more confidence. The Russians are developing new missiles. Should we not have some understanding of the capability of those missiles? We are not developing any. It is almost as if the United States would have to be modernizing its forces too in order to be able to justify a provision that said we had to exchange telemetry.

Maybe the United States ought to get on with the modernization of our missile force so we can then go back to the Russians and say: You are modernizing, we are modernizing, now how about the exchange. To me that is not an argument to require the Russians not to provide us information. And in fact, when the shoe is on the other foot, that argument falls by the wayside, and we end up putting limitations in the treaty.

Here is an example. The Russians are not developing and do not seem to have any intention of developing something called conventional Prompt Global Strike, which is a fancy way of saying: Put a conventional warhead on top of an ICBM so you do not have to send a nuclear warhead halfway around the world to destroy a target.

We can see in today's conflict that we are not going to be engaging in a multiple nuclear exchange with another country but might well have a need based upon intelligence that does not have a very long shelf life that we want to send a conventional warhead to a specific target and that is something we would like to develop but the Russians are not interested in doing that. So did we say to the Russians: So because you are not doing it and we are, therefore, we are not going to have any limitation on this? No. We agreed, in fact, to a very important limitation. Any missiles we use in that regard have to be counted as if there were a nuclear warhead on top of it. So there is a 700-vehicle limit. That is all the number of missiles we can have. And yet any missiles that we put a conventional warhead on that have this ICBM range have to be counted against that limit.

Well, the Russians aren't doing it, so why did we have to agree to something they are not doing? That is asymmetrical. That is not parity.

So it is okay for the Russians to say: Hey, if we are doing something you are not doing, we are not going to be bound by anything in the treaty on it. But by the way, if you are doing something we are not doing, we are going to hold you accountable and bind you with a very important limitation in the treaty.

You see, the argument doesn't hold water. Russia and the United States are not acting exactly the same with regard to our weapons. So to argue that anything we are doing differently from the other shouldn't count in the treaty is suspicious. And, in any event, it turns out we don't make that argument.

The PRESIDING OFFICER. The Senator's time on this amendment has expired. The Senator has time remaining on the previous amendment.

Mr. KYL. Let me finish my sentence on this.

In any event, what is good for the goose is good for the gander. If we put a limitation on the United States on something they are not developing, then it is only fair to put a limitation on them with regard to something we are not developing.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, do we have any time remaining?

The PRESIDING OFFICER. There is 1 minute 40 seconds remaining.

Mr. KERRY. I yield all that time to the Senator from Michigan, the chairman of the Armed Services Committee.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my good friend from Massachusetts.

There has been reference made to a side agreement which was entered into at the time of START I. There is a major difference between what happened then and what is being proposed by Senator KYL now.

That side agreement, first of all, was in front of the Senate but there was no effort at that time to do what Senator KYL's amendment does, which is to say prior to the entry into force of that treaty the President shall certify to the Senate that there was a legally binding side agreement. That was not part of START I, and it would seem to me would absolutely derail this New START agreement.

Second, that was a political agreement, that side agreement that was entered into, which would last as long as the Presidents of both countries were in office but would not necessarily last beyond that because it was not a legally binding agreement in that sense.

So there are two major differences between what happened at the time of START I and what is being proposed here by Senator KYL. I hope we could defeat the Kyl amendment No. 4860.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, if any time remains, we yield it back.

The PRESIDING OFFICER. Time is yielded back.

Mr. KERRY. What is the parliamentary situation, Mr. President?

The PRESIDING OFFICER. There is still time remaining on the Wicker amendment, and Kyl 4860.

Mr. KYL. Mr. President, I wish to speak briefly to that now, in direct response to my colleague from Michigan.

Mr. KERRY. Mr. President, before he does that, do we have time remaining on either of those amendments?

The PRESIDING OFFICER. The Senator from Massachusetts has time remaining on both amendments.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, let me quote from the START I treaty, Text of Resolution of Advice and Consent to Ratification as Approved by the Senate:

> The Senate's advice and consent to the ratification of the START Treaty is subject to the following conditions, which shall be binding upon the President: Legal and Political Obligations of U.S.S.R.: That the legal and political obligations of the Union of Soviet Socialist Republics reflected in the four related separate agreements, seven legally binding letters, four areas of correspondence, two politically binding declarations, thirteen joint statements . . .

And so on. The two politically binding declarations are precisely the reference to the limitation of the SLCM numbers for both countries. I mean there is a dispute about whether it is legally binding in the same sense that the treaty itself is, but the heading of this is Legal and Political Obligations of the U.S.S.R., and it goes on to talk about . . .

> The United States shall regard actions inconsistent with these legal obligations as equivalent under international law to actions inconsistent with the START Treaty.

And so on and so on. We believe these were binding and should be. It is no argument, however, to say that if somebody else didn't see it that way, therefore, what we are asking for here is not

a binding agreement. Whether you call it binding legally or binding politically, in any event, I wish to see it done, because there is no limitation on the SLCMs the Russians are planning to develop, and the submarine that is under development to carry them, and they could have a strategic value as well as a tactical value. They were a subject of the previous START I agreement and I think they should be a subject of this agreement as well.

Let me summarize. The first amendment our colleagues will be voting on is, I believe, the Wicker amendment, and then the second amendment is the amendment which would provide a side agreement for a limitation on the number of Russian SLCMs—the submarine launch cruise missiles—and the third vote will be on the Kyl amendment relative to verification relating to covers on the ICBMs and telemetry on ICBM tests.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Massachusetts.

Mr. KERRY. How much times remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 3 minutes on the Kyl amendment and 5 minutes on the Wicker amendment.

Mr. KERRY. Mr. President, is Senator WICKER here?

I wonder, Senator KYL, if we can yield back time. I know colleagues are waiting to vote.

Mr. President, by unanimous consent we yield back all time on both sides and go to regular order.

The PRESIDING OFFICER. If all time is yielded back, under the previous order, the question is on agreeing to amendment No. 4895 offered by the Senator from Mississippi, Mr. WICKER.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. BEGICH), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Alabama (Mr. SHELBY).

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

The result was announced—yeas 34, nays 59, as follows:

[Rollcall Vote No. 295 Ex.]

YEAS—34

Alexander	Chambliss	Crapo
Barrasso	Coburn	DeMint
Brown (MA)	Cochran	Ensign
Bunning	Collins	Enzi
Burr	Cornyn	Graham
Grassley	Kyl	Sessions
Hatch	LeMieux	Snowe
Hutchison	McCain	Thune
Inhofe	McConnell	Vitter
Isakson	Murkowski	Wicker
Johanns	Risch	
Kirk	Roberts	

NAYS—59

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bennett	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kerry	Reid
Brown (OH)	Klobuchar	Rockefeller
Cantwell	Kohl	Sanders
Cardin	Landrieu	Schumer
Carper	Lautenberg	Shaheen
Casey	Leahy	Specter
Conrad	Levin	Stabenow
Coons	Lieberman	Tester
Corker	Lincoln	Udall (CO)
Dodd	Lugar	Udall (NM)
Dorgan	Manchin	Voinovich
Durbin	McCaskill	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	

NOT VOTING—7

Bayh	Brownback	Wyden
Begich	Gregg	
Bond	Shelby	

The amendment (No. 4895) was rejected.

VOTE ON AMENDMENT NO. 4860

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 4860 offered by the Senator from Arizona.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. BEGICH), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Alabama (Mr. SHELBY).

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

The result was announced—yeas 31, nays 62, as follows:

[Rollcall Vote No. 296 Ex.]

YEAS—31

Barrasso	Ensign	McCain
Brown (MA)	Enzi	McConnell
Bunning	Graham	Risch
Burr	Grassley	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Snowe
Cochran	Inhofe	Thune
Collins	Johanns	Vitter
Cornyn	Kirk	Wicker
Crapo	Kyl	
DeMint	LeMieux	

NAYS—62

Akaka	Brown (OH)	Corker
Alexander	Cantwell	Dodd
Baucus	Cardin	Dorgan
Bennet	Carper	Durbin
Bennett	Casey	Feingold
Bingaman	Conrad	Feinstein
Boxer	Coons	Franken
Gillibrand	Lincoln	Rockefeller
Hagan	Lugar	Sanders
Harkin	Manchin	Schumer
Inouye	McCaskill	Shaheen
Isakson	Menendez	Specter
Johnson	Merkley	Stabenow
Kerry	Mikulski	Tester
Klobuchar	Murkowski	Udall (CO)
Kohl	Murray	Udall (NM)
Landrieu	Nelson (NE)	Voinovich
Lautenberg	Nelson (FL)	Warner
Leahy	Pryor	Webb
Levin	Reed	Whitehouse
Lieberman	Reid	

NOT VOTING—7

Bayh	Brownback	Wyden
Begich	Gregg	
Bond	Shelby	

The amendment (No. 4860) was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, we are going to have one more vote tonight. Senators KERRY, LUGAR, KYL, and others are working on how we are going to work tomorrow morning. They will work this evening. Hopefully, we can come in at 9 in the morning with, hopefully, an hour of debate on an amendment, and then we will find out where we are after that. The reason I asked for the attention of the Senate was to announce that.

However, I ask unanimous consent that Senator LEVIN, chairman of the Armed Services Committee, and the ranking member, Senator MCCAIN, each be recognized for 2 minutes to explain something they are working on on the Defense authorization bill.

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

The Senator from Michigan.

Mr. LEVIN. Mr. President, I think all of us have an interest in the Defense authorization bill. Senator MCCAIN and I have been working on this bill with members of the committee for about a year. This is a bill that has a lot of provisions critically important to our troops.

To give a few examples, it authorizes health care coverage for military children, impact aid to local civilian schools, so-called CERP authority, which is the commander's emergency response program, and transfer of defense articles to the Afghan Army. It is about 800 pages. We have removed from this bill what we thought were the controversial items so that we could get it passed. We don't have the time to go through them, but that was our intent. We missed one controversial item which came over from the House having to do with Guam funding. We have now reached an agreement that we would remove that provision from the bill. That is a removal. But we can't add any controversial items to this bill; it will be objected to.

The only way we can do this for the troops, as we have done for 45 years, is if we proceed with a unanimous consent agreement tonight. We haven't

yet gotten there. I plead with our colleagues to let us get to this unanimous consent agreement tonight. It is the only time we can do it. The House will be in tomorrow. They could take it up tomorrow, if we pass it tonight. That is the status.

Senator MCCAIN, I know, will speak on his support. But this is a plea from the two of us who have worked so hard with Members and our staffs on a critically important bill.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. The only thing I would add to the comments of Senator LEVIN is that there are policy provisions regarding training and equipment and readiness that cannot be just done by money. These are important policy decisions, important authorizations, including a pay raise—not for us. I urge my colleagues not to object to this Defense Authorization Act. I argue it is critical to sustaining this Nation's security.

Mr. LEVIN. Mr. President, we will offer this later tonight. We are not offering it at this time.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 4893 offered by the Senator from Arizona, Mr. KYL.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. BEGICH), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri, (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Alabama (Mr. SHELBY).

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

The result was announced—yeas 30, nays 63, as follows:

[Rollcall Vote No. 297 Ex.]

YEAS—30

Barrasso	Ensign	LeMieux
Brown (MA)	Enzi	McCain
Bunning	Graham	McConnell
Burr	Grassley	Risch
Chambliss	Hatch	Roberts
Coburn	Hutchison	Sessions
Cochran	Inhofe	Snowe
Cornyn	Johanns	Thune
Crapo	Kirk	Vitter
DeMint	Kyl	Wicker

NAYS—63

Akaka	Cantwell	Dodd
Alexander	Cardin	Dorgan
Baucus	Carper	Durbin
Bennet	Casey	Feingold
Bennett	Collins	Feinstein
Bingaman	Conrad	Franken
Boxer	Coons	Gillibrand
Brown (OH)	Corker	Hagan
Harkin	Lugar	Rockefeller
Inouye	Manchin	Sanders
Isakson	McCaskill	Schumer
Johnson	Menendez	Shaheen
Kerry	Merkley	Specter
Klobuchar	Mikulski	Stabenow
Kohl	Murkowski	Tester
Landrieu	Murray	Udall (CO)
Lautenberg	Nelson (NE)	Udall (NM)
Leahy	Nelson (FL)	Voinovich
Levin	Pryor	Warner
Lieberman	Reed	Webb
Lincoln	Reid	Whitehouse

NOT VOTING—7

Bayh	Brownback	Wyden
Begich	Gregg	
Bond	Shelby	

The amendment (No. 4893) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, let me say to colleagues how we are going to proceed. With the consent of the Senator from Arizona and Senator LUGAR, we are going to accept two amendments, I believe. One of them we are checking with the White House and making certain we are all in sync on it. But assuming we are, we will be able to have Senator LEMIEUX of Florida speak for a few minutes on his amendment. In addition, there is Senator KYL's amendment, which we will accept.

Subsequent to that, I believe Senator THUNE wants to raise an issue regarding an amendment. We will do that. Then I think we will probably be at a point where we will have an opportunity if people want to talk on the treaty, or conceivably even on something else, I imagine there may be a moment there, but I do not want to speak for the leadership on that yet until we have cleared it.

Mr. President, I ask unanimous consent—the Senator from Ohio has been trying to get the floor for most of the day, and because he wanted to give us the opportunity to move on the amendments, he has been very patient. I ask unanimous consent that he be granted 5 minutes to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. I ask the Senator, will you go ahead and handle the unanimous consent agreement on the two amendments. I do not have to be here for that.

Mr. KERRY. Mr. President, I will do that and guarantee the Senator that his amendment will be adopted. And I thank him. I want to thank Senator KYL. He has actually—I know we have all been struggling here, but the Senator has been extremely helpful in processing a lot of amendments this evening, and I want to thank him for his good-faith efforts in doing that.

Mr. President, I yield to the Senator from Ohio.

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

The Senator from Ohio.

Mr. BROWN of Ohio. Thank you, Mr. President.

I appreciate the generosity of the senior Senator from Massachusetts and especially his leadership on one of the most important debates in the 4 years I have been in the Senate. I thank Senator KERRY for that.

OMNIBUS TRADE ACT/TAA AND HCTC

Mr. President, I hold in my hand 500 pieces of paper, 500 testimonials from retirees who lost their pensions and health care during the GM bankruptcy. These are some of the 50,000 Americans who will be hurt if we do not pass an extension of the health coverage tax credit this week before the year is out.

This stack of paper here does not represent Delta retirees and it does not represent other retirees—thousands of others—who are in the same boat as the Delphi/GM retirees.

Their pensions have been cut. Their employee-sponsored health care has been eliminated. If we do not pass the omnibus trade bill—which includes GSP, trade adjustment, the Andean trade agreement, and the health care tax credit, and some miscellaneous tariffs—if we do not pass this, H.R. 6517, they will take in another economic blow. The blood from this one will be on our hands.

We must pass the omnibus trade bill before this Congress ends. I want to share a handful of letters. I know the Senator from Massachusetts yielded for 5 minutes, so I will do this quickly.

Mary Ann from Warren, OH, writes that she lost 40 percent of her pension, all her health care, and all her life insurance earned from GM/Delphi. Here is what she said:

> My husband is self employed and he is on my healthcare. He suffers terribly with chronic pain due to degenerative disc disease. He forces himself to work at least part time but it's a struggle. . . . I have a cerebral condition recently diagnosed. I spent a week in the hospital early this year and am still paying on that too. A 75 percent hike in our healthcare premiums—

And that is what will happen if we do not renew this, which will help these 500 and another 50,000—

> while we try to pay these medical balances on a reduced pension would force us and many others into a downward spiral of existence. Those who we entrust to represent us must realize that our story could be theirs if life situations were different. When do we start treating others how we ourselves want to be treated?

Here are others.

Dan from Columbus, IN, writes:

> Dear Senator Brown—I am a retired Delta Air Line pilot. During my retirement, Delta took my retirement money that I had spent a career of time accumulating and left me out in the cold. The health care tax credit stepped in and helped by giving our family some insurance premium help. Now this is being destroyed too.

David from Atlanta, GA:

It is very important that the health care tax credit . . . be continued. After losing the pension income and insurance benefits I was promised when I retired from Delta Airlines, I have made significant adjustments to try to compensate for the losses.

Still, after cutting back, the cost of living, skyrocketing insurance premiums, and 2 years of trying to sell my house at a substantial reduction of price while competing with foreclosures, the finances of my friends and me continued to erode.

Gary from Arrowhead, CA: Since Delta Airlines eliminated my pension and health coverage, I looked forward to a Kaiser Permanente HCTC qualified health insurance policy starting January 1. Without this HCTC passage, my premiums will be $2,600 a month.

These go on and on. The omnibus trade bill has received unanimous approval from every Democratic Member of this body. It is supported by the U.S. Chamber of Commerce, the National Retail Federation, the AFL–CIO. It is my understanding most Republicans here support it. There are just a few blocking the passage of it.

On Friday, Senator SESSIONS objected to a request Senator CASEY and I made to pass the trade act. I understand his objection. I believe it can be worked through. Senator SESSIONS said he supports the rest of the package. I hope this obstruction doesn't interfere with the need to move on this omnibus trade package. These 500 letters, if each of my colleagues would read two or three of them, I think they would see how important it is we pass the Omnibus Trade Act. It is about the trade adjustment assistance language. It is about 50,000 people who will not be able to afford their health insurance come January 1. Happy New Year to them. It also will help us with Colombia and other countries around the world in our trade policies. This makes so much sense.

Tomorrow, Senator CASEY and I and perhaps some others will ask for a UC. I hope my colleagues can see fit to move forward on this. It is supported by business groups, by labor groups, by the majority of people in this body. I am hopeful we can bring in the few people who still disagree and make this work for our country.

I yield the floor. I thank Senator KERRY for his indulgence.

The PRESIDING OFFICER. The Senator from Florida.

Mr. LEMIEUX. Mr. President, I have had the opportunity to work out with the Senator from Massachusetts an amendment to the resolution, which I will be offering in a second.

To my colleagues, what this does—we had this discussion the other day on the treaty. This is an amendment to the resolution that would require, within a year's time of ratification, that the President of the United States certify to the Senate that the United States will seek to initiate with the Russian Federation negotiations on the disparity between nonstrategic or tactical nuclear weapons and to make sure we secure those weapons and reduce the number of tactical nuclear weapons in a verifiable manner.

Remember, the Russians have a 10-to-1 ratio of tactical nuclear weapons over us—3,000 to 300—not talked about in this treaty, an important issue. This requires that the President will certify within a year's time that the parties are going to sit down and have a negotiation about the disparity, about verification, and about securing these weapons. It has been agreed to by all parties.

With that, amendment No. 4908 has been cleared on both sides. I now ask that the amendment, as modified by the changes at the desk, be offered and agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Mr. President, reserving the right to object, we just have to jump through a few hoops over here. We will not object ultimately, but if I could ask the Senator if we could just wait a little longer, I would object at this time but not ultimately. We need to get this cleared and put all the next steps together into one effort, if we can. It doesn't mean we can't talk about some of the other issues, if you want to, while we are waiting for that to be ready. It might be better to just wait until we have the agreement.

So, in the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Florida has the floor.

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

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

Mr. KERRY. Mr. President, I know the Senator from Florida wants to speak on this amendment. I ask unanimous consent that the following two amendments be considered and agreed to: Senator KYL No. 4864 and LEMIEUX No. 4908, as modified.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendments (Nos. 4864 and 4908, as modified), were agreed to, as follows:

AMENDMENT NO. 4864

(Purpose: To require a certification that the President intends to modernize the triad of strategic nuclear delivery vehicles)

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) STRATEGIC NUCLEAR DELIVERY VEHICLES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President intends to—

(A) modernize or replace the triad of strategic nuclear delivery systems: a heavy bomber and air-launched cruise missile, an ICBM, and an SSBN and SLBM; and

(B) maintain the United States rocket motor industrial base.

AMENDMENT NO. 4908, AS MODIFIED

(Purpose: To require negotiations to address the disparity between tactical nuclear weapons stockpiles)

At the end of subsection (a) of the resolution of advice and consent to the New START Treaty, add the following:

(11) TACTICAL NUCLEAR WEAPONS.—(A) Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that—

(i) the United States will seek to initiate, following consultation with NATO allies but not later than one year after the entry into force of the New START Treaty, negotiations with the Russian Federation on an agreement to address the disparity between the non-strategic (tactical) nuclear weapons stockpiles of the Russian Federation and of the United States and to secure and reduce tactical nuclear weapons in a verifiable manner; and

(ii) it is the policy of the United States that such negotiations shall not include defensive missile systems.

(B) Not later than one year after the entry into force of the New START Treaty, and annually thereafter for the duration of the New START Treaty or until the conclusion of an agreement pursuant to subparagraph (A), the President shall submit to the Committees on Foreign Relations and Armed Services of the Senate a report—

(i) detailing the steps taken to conclude the agreement cited in subparagraph (A); and

(ii) analyzing the reasons why such an agreement has not yet been concluded.

(C) Recognizing the difficulty the United States has faced in ascertaining with confidence the number of tactical nuclear weapons maintained by the Russian Federation and the security of those weapons, the Senate urges the President to engage the Russian Federation with the objectives of—

(i) establishing cooperative measures to give each Party to the New START Treaty improved confidence regarding the accurate accounting and security of tactical nuclear weapons maintained by the other Party; and

(ii) providing United States or other international assistance to help the Russian Federation ensure the accurate accounting and security of its tactical nuclear weapons.

Strike paragraph (11) of subsection (c) of the resolution of advice and consent to the New START Treaty.

Mr. KERRY. Mr. President, does the Senator wish to speak?

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. LEMIEUX. Mr. President, I thank the Senator from Massachusetts for working on this with us. I think this is an important improvement that will require that the United States seek to initiate negotiations with the Russian Federation within a year's period of time. I thank my colleague from Massachusetts, as well as other colleagues who were willing to make this happen as part of the ratification.

I yield the floor.

Mr. KERRY. Mr. President, I thank the Senator. This is a constructive amendment. We all agree that we need to reduce tactical nuclear weapons. Everybody who testified to us reiterated the importance of that being the next step in terms of our relationship and increased stability. NATO allies also said it was essential to proceed to that. The Senator's amendment helps us to make it clear that is the direction in

which we need to go. I thank him for his efforts.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, I ask unanimous consent that amended No. 4920 be made pending.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Mr. President, I do object. I want to say to the Senator that I am delighted to have a discussion with him about this particular issue. But I think given the efforts we have made thus far to deal with a fixed set of amendments has been affected somewhat by some of those amendments that were filed late, and also not germane, requiring colleagues at the last minute to consider a lot of issues on the floor that are not pertaining directly to the treaty itself.

The subject the Senator wants to bring up and talk about, which is Russian cooperation on Iran, is absolutely essential to us as a matter of foreign policy. I want to join with the Senator in emphasizing that. I look forward to hearing his comments about it. I think we can have an important colloquy that could add to the record of our discussions with respect to this treaty without negatively impacting the direction we are moving in at this point.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, if I might, given that, speak to the amendment. I regret that the amendment can't be voted on. The process has been fairly open. A number of amendments have been considered. This amendment was filed sometime this afternoon. It deals with an important subject, which is germane to the debate that we are having with regard to the New START treaty.

One of the predicates for improving the START treaty is the so-called reset of our relationship with Russia. Of course, the President, as recently as November 18, 2010, made a statement, which is in this amendment:

''The New START Treaty is also a cornerstone of our relations with Russia'' for the reason that ''Russia has been fundamental to our efforts to put strong sanctions in place to put pressure on Iran to deal with its nuclear program.'' Accordingly, the advice and consent of the Senate to ratification of the New START Treaty is conditioned on the expectation that the Russian Federation will cooperate fully with United States and international efforts to prevent the Government of Iran from developing a nuclear weapons capability.

What this amendment does is to provide some assurance that all those intentions and statements actually come to pass. It would require the President to certify to the Senate the following:

Prior to entry into force of the New START Treaty, 1, the President shall certify to the Senate that (i) the Russian Federation is in full compliance with all United Nations Security Council Resolutions relating to Iran; (ii) the Government of the Russian Federation has assured the United States that neither it nor any entity subject to its jurisdiction and control will (I) transfer to Iran the S–300 air defense system or other advanced weapons systems or any parts thereof; or (II) transfer such items to a third party which will in turn transfer such items to Iran; (iii) the Government of the Russian Federation has assured the United States that neither it nor any entity subject to its jurisdiction and control will transfer to Iran goods, services, or technology that contribute to the advancement of the nuclear or missile programs of the Government of Iran; and (iv) the Government of the Russian Federation has assured the United States that it will support efforts at the United Nations Security Council and elsewhere to increase political and economic pressure on the Government of Iran to abandon its nuclear weapons program.

That would be a commitment, a certification, that would be issued prior to the entry in force of the treaty by the President each year, and on December 31 of each subsequent year a similar certification would be issued by the President. In fact, if the President fails to certify, then it would require that he consult with the Senate and submit a report on whether adherence to the New START treaty remains in the U.S. national security interest.

I say this because I think there is a direct connection and correlation between this treaty and the efforts of the Russians that we assume the Russians are going to commit to in terms of putting pressure on Iran regarding its nuclear program and not doing things that would put in jeopardy the security of the region.

I have to say, obviously, this has a big impact on our great ally, Israel, as well as the whole region. It would be very destabilizing if the Iranians have a nuclear weapon. So I think the effort made by the administration to ''reset relations with Russia,'' bears directly on this treaty. As I said, it was stated clearly by the President as recently as November 18, where he recognized that important relationship. I simply say this amendment, I don't think, is anything that anybody would not agree with. All it does is require not just a statement that this is going to be part of our ongoing relationship with Russia, but it provides an assurance, a certification that the administration would make to the Senate before the treaty would enter into force and each year subsequent to that with those basic issues.

The issues are fairly straightforward. It simply requires a condition that the Russian Federation is in full compliance with all U.N. Security Council resolutions relating to Iran and the government of the Russian Federation assures the United States that neither it nor any entity subject to its jurisdiction and control will transfer to Iran the S–300 air defense system or other advanced weapons systems or any parts thereof or transfer such items to a third party, which will in turn transfer such items to Iran.

While the S–300—for the time being, Russia has refrained from doing that. There are concerns and reports that Russia has recently provided Tehran with a new radar system allegedly through third party mediators from Venezuela and Belarus. So the concern about that coming into Iran through some third party is also something that I think is of great concern to America's national security interests as well as those of our allies.

Mr. President, the amendment, again, is very straightforward. It requires a certification before the entry into force of the treaty, and then each year thereafter about those basic conditions that the Russians be in compliance with U.N. Security Council resolutions, that they would not try to get the S–300 to the Iranians, directly or indirectly, and they would continue putting pressure on the Iranians with respect to their nuclear program.

We know too that the nuclear reactor in Bashir is now producing plutonium. Russia has fueled a nuclear reactor there that is now producing plutonium in Iran. That ought to be of great concern to everybody here as we pass judgment on this treaty, which is obviously important to our relationship with Russia, but also bears on the relationship we have with other countries around the world.

I think anybody in the foreign policy community that you talk to today, when you ask what is the most dangerous threats the United States and its allies face around the world today, Iran and nuclear weapons in the hands of Iran top that list.

So the efforts that we make to persuade the Russians to put pressure on the Iranians and make sure there isn't anything going on there that would destabilize or put in peril America's national security interest is certainly an objective we have.

This would require the President certify that those things are taking place rather than relying on the statements and good intentions of the Russians. I wish, again, that I could get this amendment pending and get it voted on. I think it is important to have the Senate on record with regard to this issue. I regret that the amendment has been objected to.

I appreciate the opportunity to at least raise the issue, and I certainly hope it is something that the administration and our leaders in the Senate and the entire military establishment of this country pays close attention to in the days ahead. This issue will not go away. I think it bears definitely on the treaty.

With that, I will conclude my remarks and say I wish we had an opportunity to get a vote on it.

I yield the floor.

Mr. KERRY. Mr. President, in, I think, 7 days, I have not made an objection to an amendment that we tried to take up. I am sensitive to that because we, obviously, want to provide as much opportunity to go into these issues as is possible. I say to my friend from South Dakota that I am happy to stay here with him and do as much as we could do to impress on anybody the importance of the issue he is raising.

But if we stayed here and went through the process of a vote, which would conceivably take us a lot longer in terms of the other amendments we have to finish tomorrow morning, as well as keep the Senate in even later, only the votes—I think we had only one motion to table. Almost every vote has been straight up or down. The votes have been 60 to 30, or 60-something to 28, or something like that. I think the reason is that there is a fundamental flaw in the approach of this particular amendment and the others we have had because they seek to prevent the treaty from going into force.

The language says ''prior to the entry into force of the New START Treaty,'' the President has to do a series of things. Some of those may read in a fairly straightforward and literal way, but they are not necessarily what can be done immediately or are even subject to our control, in which case we wind up with a treaty that we have actually partially ratified because it cannot go into force, and it may never go into force, depending on what happens with some of those things that are out of our control.

There are a lot of reports requested on one thing or another. I think there is a more effective way to go at this, personally, that doesn't wind up with a negative impact on the treaty, where we are veering from our military and national intelligence leaders who would like to see this put into effect as rapidly as possible. The effect of this is not to let that happen as rapidly as possible.

The Senator is 100 percent correct about our concern about Iran. We need Russian cooperation in order to ever have a chance of enforcing the sanctions that have been put in place, as well as finding the other tiers of cooperation that are going to be critical as we go forward, absent Iranian shifts in policy. The fact is, what has happened through Russian cooperation right now is that the most significant sanctions we have been able to put in place to date have been put in place. They were largely achieved because of the relationship President Obama has achieved with President Medvedev and the reset button and the sense that we are coming together, not going apart.

It is easy for us in the Senate to stand here and say we have to require this, we have to require that. A lot of these things I have found increasingly—particularly in this time I have been chairman of this committee—a lot of the things we sometimes do with good intention in the Senate actually very significantly complicate the life and work of our diplomats who spend as much time trying to meet some kind of certification as they do doing the diplomacy they are meant to do.

I am happy to work with the Senator as chairman of this committee. We will have hearings early next year on this topic of Iran and where we stand with respect to that nuclear program. We will look at this issue of Russian cooperation, and we will look at it hopefully within the context of a START treaty that is going to be ratified by the Duma and implemented and that can only strengthen the resolve of both our countries to focus on the challenges of Iran.

I thank my colleague. I have been in that position before when we have not been able to get an amendment in.

I might add, the amendment was filed a day and a half after cloture was filed. I said to JON KYL very clearly that we were going to try to be as flexible as we could. That flexibility needed to be mostly focused on those amendments that directly affect the treaty or are to the treaty in its most direct sense. If we raised a point of order, this would be an amendment that would be found to be not germane because it is outside those direct treaty issues. With that in mind, I have taken the position I have taken. But I look forward to working with my colleague, if we can, as we go forward from here.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I say to my friend from Massachusetts that if he would allow me to vote on the amendment, I would try to break that 35-vote threshold that we have seen, to blow through that cap.

I appreciate the fact that the Senator shares the concerns I have about Iran. All I would say is I think what this provides is an additional safeguard as we move into this process and we have this treaty and a clearly established connection between what is a great threat, a regional threat and, I would argue, a threat beyond the region, certainly to our national security as well, the Iranian threat, and the relationship we have with Russia and this treaty and the good-faith effort that we are making through this treaty with the Russians to reset, that this would provide an additional level of assurance that they are, in fact, cooperating and that they are following through on the commitments they are making to the administration and to us as we debate this treaty.

Again, I will not belabor the point. The point has been made. I do think this is a germane amendment. I take issue with the chairman's contention that it is not. But at this particular late hour and with his objection to this, I know I am probably not going to have an opportunity to have this amendment voted on, but I hope the issue continues to stay front and center, in front of this body and before the Foreign Relations Committee and the Armed Services Committee on which I serve.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I say to the Senator, let's commit to work to make sure that happens. I certainly will do that on my part. I look forward to those hearings next year. Perhaps the Senator would even want to find a way to take part in them.

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

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

Mr. KERRY. Mr. President, Senator REID asked me a few minutes ago if I would communicate where we are with respect to the START treaty, and I will do so.

As it stands now, we have two amendments that remain. One is an amendment by Senator KYL on modernization, which I believe is the intention, though not yet locked in, of the majority leader to try to take up around 9 o'clock in the morning. We expect to spend somewhere in the vicinity of an hour on it, maybe a little bit longer than that, to accommodate the speakers for Senator KYL. Then there will be one other amendment after that on missile defense, I believe an amendment that will be offered by Senator CORKER and Senator LIEBERMAN together. That amendment will be the last barrier remaining before we can get to the final vote on the treaty itself.

It would be my hope, depending on the negotiations going on and discussions with respect to the 9/11 first responders—those are discussions taking place now—depending on that, we will have a better sense of when that final vote will be able to take place. I know a lot of colleagues are trying to figure that out in the context of flights, family, and other things. Our hope is that will become clearer in the next minutes, hours, moments of the Senate.

That is the lay of the land. I know the chairman of the Armed Services Committee and the ranking member have made their request to the Senate regarding the Defense authorization bill.

Our hope is that tomorrow morning we can move rapidly through the remaining two amendments. It may even be possible for us to accept the amendment on the missile defense. We are working on that language now. If that happens, obviously it will clear the possibilities of a final vote to an earlier hour, again dependent on this discussion regarding the 9/11 first responders.

That is the state of play.

Mr. COCHRAN. Mr. President, I am pleased to support the approval by the Senate of the New START treaty.

On December 16, I joined Senators INOUYE, FEINSTEIN and ALEXANDER in a letter to President Obama to express my support for ratification of the treaty and funding for the modernization of our nuclear weapons arsenal. At the time, I was concerned that this might not be taken seriously as a long-term commitment. The President has responded to our request and assured me that nuclear modernization is a priority for his administration and that

he will request funding for these programs and capabilities as long as he is in office. I appreciate his commitment to this long-term investment.

The treaty before us is not perfect. Many of our colleagues have brought forth ideas and offered amendments that will help address concerns about the treaty. I share concerns about missile defense, tactical nuclear weapons, and limits on delivery vehicles, but I cannot deny the potential national security consequences of not ratifying the New START treaty.

After listening carefully to national security experts and the debate on the Senate floor, I have been convinced that failure to ratify this treaty would diminish cooperation between our two countries on several fronts, including nuclear proliferation, and limit our understanding of Russian capabilities. Furthermore, failure to ratify this treaty would cause further delays in getting our inspectors back to Russia after a 1-year absence.

While I am dissatisfied with the way this treaty has been considered by the Senate in a lameduck session, I take our responsibility to provide advice and consent to international treaties very seriously; and I do not think that the politics of the moment should trump our national security priorities. I am cognizant of the fact that the New START treaty has received unanimous endorsement by both our country's diplomatic and military leadership, and it would be an unusual response for the Senate not to respect and consider their views on how best to support our national security interests.

I agree with them on the merits of this treaty, and I will support ratification.

Mr. AKAKA. Mr. President, I rise today and proudly stand among the long, bipartisan list of Senators, statesmen, and military leaders in support of the New Strategic Arms Reduction Treaty. The New START treaty is critical to our Nation's security because it places limits on U.S. and Russian nuclear arsenals, supports an improving bilateral relationship with Russia, and advances international nuclear nonproliferation efforts.

Over the last three decades, both the United States and Russia have benefited greatly from the bilateral reduction of nuclear weapons. Through the efforts of Presidents Ronald Reagan and George H.W. Bush, the two superpowers embarked on gradual nuclear disarmament, agreeing to reduce the number of their strategic warheads and deployed delivery vehicles through the negotiation and signing of the first START treaty. Under President Obama's leadership, we are now considering the New START treaty, which, when ratified, will reduce these numbers even more in both countries.

The ratification of the New START treaty is vital to our national security.

First, this treaty helps to decrease the threat of nuclear destruction and strategic miscalculation by requiring the reduction of strategic offensive arms such as warheads and launchers in Russia and the U.S. Supporting this effort is a strong verification regime that includes on-site inspections. Without this treaty, our inspectors do not have the ability to monitor Russian activities. We have not had access to the Russian nuclear stockpile for over a year. Our ability to ''trust, but verify'' must be restored.

Second, this treaty reinforces our important relationship with Russia. It advances our Nation's capacity to build durable, multilateral cooperation to confront international security risks from countries like Iran and North Korea. In addition, a strong relationship with Russia helps to keep available the supply chains that deliver equipment to the brave Americans serving in Afghanistan.

Finally, this treaty strengthens our nonproliferation efforts around the world. By ratifying the New START treaty and taking the focus off of strategic weapons, the United States and Russia can increase their efforts on tactical nuclear weapons and proliferation. The risks associated with nuclear proliferation are particularly serious and include acts of nuclear terrorism against the United States and its allies and the destabilizing effects of new nuclear arms races.

For many years I have been concerned about these risks. During the 111th Congress, I have introduced bills that would decrease the spread of potentially dangerous nuclear technologies around the world and implement key nuclear nonproliferation recommendations offered by the Commission on the Prevention of the Proliferation of Weapons of Mass Destruction and Terrorism. I have also called for more oversight of the International Atomic Energy Agency's Technical Cooperation Program and its proliferation vulnerabilities. Ratifying the New START treaty will reinforce these and many other nuclear nonproliferation efforts.

I urge my colleagues to strengthen national security by ratifying the New START treaty.

Mr. UDALL of New Mexico. Mr. President, I rise today to echo the call of the Senators and Presidents who have furthered the cause of peace. I rise to continue this body's longstanding work to reduce the threat that nuclear weapons still pose to our Nation and world.

Much has changed since the groundbreaking arms treaties of the 1990s. The cold war has ended, and with its end the balance of power changed greatly. But the threat of nuclear war has not entirely gone away.

Over the last decade, we have seen the U.S. attacked on 9–11. And we learned about al-Qaida's ambition to acquire a weapon of mass destruction.

One mishap or one intentional attack is all that is needed to throw our entire global society into a tailspin.

Thanks to the work done through Nunn-Lugar, the U.S. has been involved in efforts since the end of the cold war to prevent nuclear materials from falling into the wrong hands.

But today, with our resources spread thin due to two wars overseas and the threat from failed states and unstable regimes in possession of nuclear weapons the risk of nuclear proliferation has steadily increased.

That is why the goal articulated by President Kennedy, built upon by President Reagan, and further advanced by President Obama is more important than ever. Moving toward a world with zero nuclear weapons is a move toward a safer and more peaceful future.

Through committed negotiations on the New START treaty, the U.S. and Russia have renewed their commitments to this important goal. Passing New START would be another momentous step toward that more peaceful world.

But, as we have all seen in recent days, and over the course of the year since the U.S. and Russia reached this historic agreement, some in this Chamber are playing partisan politics with an issue that has the potential to impact every person in America and across the world.

This political posturing is shortsighted at best. And it is dangerous at worst. The threat of nuclear weapons is not a partisan issue. It is an American issue. And, more importantly, a human issue.

When START One was ratified in 1991, it was ratified not with just a simple majority but with 93 Members of the Senate voting in favor of the legislation.

Similarly, START Two, ratified in 1993, had the support of 87 Members of the Senate.

The New START treaty deserves similar support from this body. Obstruction of this treaty does not strengthen our country. It reduces our security. And arguments to the contrary go against decades of bipartisan work to reduce the threat of nuclear annihilation.

Those opposed to ratification say this treaty will diminish our national security. They argue that we cannot rely on a smaller nuclear arsenal to effectively deter an opponent.

These concerns have been overhyped and hyperpoliticized. And they fall flat in light of the scientific evidence provided by our scientists and engineers at the National Labs.

Along with Senator BINGAMAN, I helped lead a visit to New Mexico's National Labs while the Senate Foreign Relations Committee was debating ratification. The scientists and engineers at the Labs briefed the delegation, which also included Senators KYL, CORKER, RISCH, and THUNE, on issues pertinent to this debate.

After participating in these briefings, I am confident of two things. One, that the United States can assure our allies

that our nuclear arsenal remains an effective deterrent. And two, that our scientists and engineers will be able to verify that Russia is abiding by its end of the bargain.

New Mexico will be at the forefront of verification measures because the Los Alamos and Sandia National Labs have the requisite professional expertise to aid the monitoring of Russian forces.

I have been continually amazed by the work of our National Labs in New Mexico. The Los Alamos and Sandia National Labs, and the hardworking men and women who serve there, are truly a treasure of the Nation.

Unfortunately, some on the other side of the aisle have derided the labs as ''decrepit and dangerous.'' This poorly imagined and strikingly inaccurate description couldn't be further from the truth.

Los Alamos National Labs Director Michael Anastasio, Sandia National Labs Director Paul Hommert, and Lawrence Livermore Director George Miller, have been unequivocal in their testimony to the Senate Armed Services Committee and the Senate Foreign Relations Committee.

They all agree that our labs are prepared to maintain our nuclear stockpile, and they are ready to lend their scientific expertise to the overall mission of verification and reduction.

To quote Director Anastasio's Senate testimony:

I do not see New START fundamentally changing the role of the Laboratory. What New START does do, however, is emphasize the importance of the Laboratories' mission and the need for a healthy and vibrant science, technology and engineering base to be able to continue to assure the stockpile into the future:

Sandia National Labs also plays a major role in stockpile stewardship, life extension, and stockpile surveillance.

Director Hommert's testimony makes clear that Sandia understands the challenges involved under New START but that it is ready to undertake those challenges. He said:

As a whole package, the documents describing the future of U.S. nuclear policy represent a well founded, achievable path forward.

I believe that it is no small coincidence that the progression toward a world without nuclear weapons will require the continued, diligent work of those who first created and then secured our arsenals.

The safety, security, and reliability of our available nuclear weapons will become increasingly important to our country as we reduce our stockpile.

For New Mexico, President Obama's strategy will mean an expanded role for our National Labs in managing our Nation's nuclear deterrent.

For our country, President Obama's strategy means that we are one step closer to closing the curtain of the cold war's legacy of nuclear arms races.

For the world, it means we will be taking a step forward toward greater cooperation and peace, and one step back from catastrophe.

Fewer weapons mean fewer opportunities for mistakes or losses of warheads. Fewer weapons also mean fewer opportunities for unstable regimes such as North Korea, Iran, or Myanmar, or individuals with malicious intentions to acquire or build a nuclear weapon.

The two nations with the largest stockpile of nuclear weapons have a duty to remain vigilant in protecting the rest of the world from the unthinkable. By ratifying this treaty, the Senate is upholding its duty to protect our Nation and to protect our shared planet.

President Kennedy said the following during his 1962 State of the Union Address:

World order will be secured only when the whole world has laid down these weapons which seem to offer us present security but threaten the future survival of the human race.

By ratifying this treaty, we move a step closer toward realizing this legacy and continuing a longstanding policy goal of our country—the goal of creating a more peaceful and secure world.

Let us continue our work together by ratifying this treaty and sending a message to the world that the United States of America will continue making significant steps towards peace.

● Mr. BOND. Mr. President, New START is a bad deal for the United States. It requires us to reduce our deployed strategic forces while the Russians can add to theirs. This amounts to unilateral reductions.

The treaty gives Russia political leverage, which they will use, to try to prevent us from expanding our missile defenses to protect us against North Korea and Iran. This is unacceptable.

The treaty fails to deal with Russia's reported ten to one advantage in tactical nuclear weapons or their nuclear, sea-launched cruise missiles. However, the Treaty will limit our nonnuclear ballistic missiles.

Compounding these deficiencies, the treaty's verification is weak and the Russians have a poor compliance record.

As vice chairman of the Senate Select Committee on Intelligence, I have reviewed all the relevant classified intelligence concerning this treaty. I come away convinced that the United States has no reliable means to verify the treaty's central 1,550 warhead limit.

It is also inexcusable that the United States has forfeited in this treaty the rights it enjoyed under START to full and open access to Russian telemetry. This amounts to giving up the ''keys to the kingdom,'' as it will harm our ability understand new Russian missile developments.

The administration has attempted to justify giving up Russian telemetry on the basis that it is not needed to verify the New START treaty. This is only true if you believe that the treaty's ten or fewer yearly inspections of Russian missiles will provide adequate verification. They do not. In fact, these inspections have three strikes against them.

Strike One: The 10 annual warhead inspections allowed under New START only permit us to sample 2 to 3 percent of the Russian force.

Strike Two: The inspections cannot provide conclusive evidence of whether Russia is complying with the 1,550 warhead limit. If we found a missile loaded with more warheads than Russia declared, it would be a faulty and suspicious declaration. However, we could not infer that Russia had thereby violated the overall 1,550 limit. The Russians could just make some excuse for the faulty declaration, as they have in the past.

Strike Three: New START relies on a type of on-site inspections that Russia illegally obstructed on certain missile types for almost the entire 15 year history of START. Russia's use of illegal, oversized covers were a clear violation of our on-site inspection rights under that treaty. As the old adage goes, ''fool me once, shame on you, fool me twice, shame on me.''

Common sense tells us that the worse a treaty partner's compliance history, the stronger verification should be. However, according to official State Department reports by this administration and the previous one, Russia has violated, or is still violating, important provisions of most key arms control treaties to which they have been a party. In addition to START, this includes the Chemical Weapons Convention, the Biological Weapons Convention, the Conventional Forces in Europe Treaty, and Open Skies.

We also know that the lower the limits on our weapons, the stronger the verification should be. But with these lower New START limits, our verification of warhead limits is much worse than under the previous START treaty, with its higher limits.

With all these arguments against the treaty, proponents can only point to one tangible benefit—that we will know more about Russian forces with the treaty than without it. This is hardly a ringing endorsement.

Learning more will hardly compensate the United States for the major concessions included in this Treaty. What are these concessions? Unilateral limits, unlimited Russian nuclear systems, limited U.S. nonnuclear systems, unreliable verification, the forfeiture of our telemetry rights, and perhaps most importantly, handing Russia a vote on our missile defense decisions.

In many cases, concerns about particular treaties can be solved during the ratification process. My colleagues have my respect for their attempts to do so. Unfortunately, New START suffers from fundamental flaws that no amount of tinkering around the edges can fix.

For these and other reasons, I cannot in good conscience vote to ratify the New START treaty.●

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

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

INTEREST ON LEGAL TRUST ACCOUNTS

Mr. MERKLEY. Madam President, I rise this evening to talk about a program that is of great importance to our citizens across America who are struggling to access legal services. There is a program that is called the Interest on Lawyer Trust Accounts or IOLTA. This is a very interesting arrangement that I was not familiar with until I came to the Senate.

Essentially, IOLTA is interest on lawyer trust accounts, and it works like this. When lawyers need to put money into a trust account, they are putting it in that account on behalf of a client or on behalf of an estate. It is not allowed under the law for the client to earn interest. However, there is an arrangement that has been made over the years in which banks agree to pay interest on those accounts, since they are accessing those deposits—those funds—but the interest gets donated to legal services for poor Americans across the United States of America. So it is a win-win. The client isn't allowed to get the interest, but the banks pay the interest to benefit low-income Americans across our Nation.

That is the structure of the IOLTA accounts. All 50 States have these programs. Forty-two States require lawyers to deposit client funds that do not earn net interest for the client into these IOLTA accounts so they will earn interest to pay for civil legal services for the poor.

During the financial crisis, the FDIC created a program to guarantee that the business and trust checking accounts that do not pay interest are insured—they are guaranteed—and IOLTA was included in this because they do not pay interest to the client. The Dodd-Frank reform bill we had, which extended these arrangements for 2 years for accounts that do not pay interest to the clients, forgot to include the IOLTA accounts that do not pay interest to the clients but do pay interest that goes to fund civil legal services for poor Americans in all 50 States.

So we are seeking to fix this glitch. I wish to note that hundreds of thousands of Americans who don't otherwise have access to legal services are in a position to benefit when they need such services across our Nation.

In Oregon, we have the Oregon Law Foundation, the nonprofit, nonpartisan organization that administers legal aid for the poor. They benefited to the tune of over $1 million in revenue in 2009. When interest was a little better, they had more revenue in 2008—$2.2 million. That was a decrease from 2007 of $3.6 million. So as interest rates have declined, the amount of funds that have gone to fund legal services for the poor have declined, but still, a few million dollars is better than none in terms of providing assistance.

In a case such as this—the Oregon Law Foundation—IOLTA funding makes up 95 percent of their total revenue. So if the guarantee is not extended for 2 more years, we have a real problem, and it goes like this. A lawyer has a fiduciary responsibility to a client to put the funds into an account that protects the client. They would not be able to put the funds into an IOLTA account if it is not guaranteed, if they have the option of putting it into a noninterest-bearing fund that is guaranteed and, thus, the bank's willingness to pay interest. So the funding that goes for legal services across our Nation will disappear.

I rise to talk about this because the deadline for this is December 31. We have a bill to fix this before the Senate. But for those who are familiar, in the Senate, any Senator has the ability to put a hold on legislation, and we have a situation where a Senator has put a hold on this. I think, in general, this hasn't gotten much attention, the fact that this assistance that goes to low-income Americans across this country will be deeply damaged, even if 99 Senators support this, because we don't have 100 Senators. So I am rising to basically make an appeal to my colleagues to take a look at the legal programs in your States that are funded by this.

There are legal education programs that are funded. I hope my colleagues will recognize that what we have is a lose-lose situation if we don't change this law, and that lose-lose is legal education and legal services. The banks will actually make more money because they will not have to pay interest. So you have a lose-lose and a win—a loss for the poor, a loss for the students wanting legal education, and a win for banks receiving greater profits.

In this situation, the banks have been absolutely stellar citizens of our communities. In Oregon, we have a host of banks that not only pay interest on these lawyer trust funds, but they have agreed to maintain a floor of 1 percent interest. I would like to mention these banks recognized by the Oregon Law Foundation as leadership banks. I believe this list is as of the end of the year 2009. By mentioning these banks, I am basically saying thank you to these banks for being involved in this program. They include: the Albina Community Bank, the Bank of Eastern Oregon, the Bank of the Cascades, the Bank of the West, Capital Pacific Bank, Century Bank, Columbia River Bank, Key Bank, Northwest Bank, Peoples Bank of Commerce, the Pioneer Trust Bank, Premier West Bank, Siuslaw Bank, South Valley Bank and Trust, the Bank of Oswego, the Commerce Bank of Oregon, Umpqua Bank—a bank that originated in southern Oregon, in timber country, Douglas County, where I come from—U.S. Bank, Washington Trust Bank, and Wells Fargo.

So all these banks have been willing to pay interest on these lawyer trust accounts, knowing they are doing good work in the community by assisting legal programs.

I mentioned one of those programs in Oregon. Let me mention a couple more. The Juvenile Rights Project provides legal services to children and families who do not otherwise have the means to retain counsel through individual representation in juvenile court and school proceedings and through classwide advocacy in the courts, the legislature, and public agencies. It has the only help line offering legal advice for children and teenagers in Oregon. So that is the Juvenile Rights Project.

Disability Rights Oregon. The Oregon Advocacy Center provides statewide legal services to Oregonians with disabilities who are victims of abuse or neglect or have problems obtaining health care, special education, housing, employment, public benefits, and access to public and private services. Oregonians with disabilities look to OAC—that is the Oregon Advocacy Center or Disability Rights Oregon—to protect and advocate for their rights in courts, with public agencies and with the State legislature.

The Classroom Law Project promotes understanding of the law and legal process for 15,000 elementary and secondary school students in the State of Oregon by incorporating the lessons and principles of democracy into school curriculum. Their programs include the High School Mock Trial Competition. That is an extraordinary competition. It is wonderful to see how a high school student can blossom when preparing to argue before his or her peers the facts of a case and the legal principles of a case. It is an enormous education.

The Classroom Law Project also includes the Summer Institute training for teachers. This program enables those teachers to better address the issues of law and legal process in their classrooms.

Also included is the We the People program on the Constitution and Bill of Rights. A lot of us often carry the Constitution. We understand it is the foundation for our government of, by, and for the people, and we want our children to get an education in the Constitution. This is funded in this fashion.

We also have help for citizens who are trying to get into a home mortgage modification, such as HAMP—the Housing Affordable Modification Program—and also families who are working through issues of domestic violence.

So here is the situation. Families addressing domestic violence issues, families addressing wrongful home foreclosures, children—juveniles—seeking legal assistance, the disabled seeking resolution of issues regarding access to health care, special education, housing or employment are being helped. The Classroom Law Project is helping educate our children about the Constitution, about the Bill of Rights, funding

mock trial competitions, and funding the Summer Institute training for teachers. These are the types of tremendous programs that are funded through the interest on lawyer trust accounts. That line of funding, due to a technical overrsight, ends on December 31.

So I am rising to ask my colleagues, if you are the Senator who is holding this up, I encourage you to get the facts from your State because all 50 States participate, and then let this funding, provided through a wonderful arrangement between the banks and our lawyers and these trust accounts, go forward. Who knows how many thousands, the multiple of thousands who will be assisted in challenging situations if we fix this before we adjourn.

I yield the floor.

REGISTRATION OF MUNICIPAL ADVISERS

Mr. DODD. Madam President, on the occasion of the Municipal Securities Rulemaking Board's, MSRB, implementation of congressionally mandated registration of municipal advisers, I would like to briefly speak on this important development. Congress in the Dodd-Frank Act of 2010 sought to enhance the regulation of the $3 trillion municipal securities market. The law expanded the authority of the MSRB in recognition of the MSRB's deep and specialized expertise, and the law expanded the mission of the MSRB to protect issuers and other municipal entities. It directed the MSRB to write rules regulating municipal advisers—persons and firms that advise municipalities and public pension funds or solicit their business on behalf of others, which includes ''financial advisers, placement agents, swap advisers'' and others. The law also reaffirmed the MSRB's authority to regulate the conduct of municipal securities dealers. At the same time, Congress required municipal advisers to exercise a higher, fiduciary standard of care to those municipal entities that seek their advice about municipal securities and other related financial matters.

During the Senate-House Conference for the Dodd-Frank Act, the conferees carefully considered and debated alternative approaches for overseeing municipal advisers and strengthening municipal securities market regulation. We recognized that the MSRB has written a comprehensive set of rules on key issues and said that the MSRB is well-equipped and experienced to write rules regulating participants in the municipal markets. Over the past decades, the MSRB has accumulated knowledge and hired specialized expertise to write rules regulating the complex and varied municipal securities market. In addition, the Banking Committee in its report, S. Report No. 111–176 accompanying S. 3217, said that the MSRB is in the best position to assure that rules are consistent with other rules governing the municipal markets.

Under the new law, the MSRB is expected to develop a robust system of regulation for intermediaries, including swap advisers, as it has for dealers. Swap advisers were specifically identified in the statute and made subject to MSRB rulemaking. The financial press has reported about State and local governments that received bad advice from advisers and entered into swaps and other derivatives that they did not fully understand, that are not performing as promised, and that are now costing them tremendous amounts to unwind. Those swaps are often tied to municipal securities issued by those same State and local governments and Congress recognized the experience of the MSRB in the regulation of the municipal markets.

The act, which authorizes MSRB regulation over municipal advisers, has limited exceptions, including an exception for commodity trading advisers registered under the Commodity Exchange Act or their associated persons who provide advice related to swaps. This exception covers swap dealers and major swap participants regulated by the CFTC. It does not extend to independent swap advisers or other types of municipal advisers not explicitly exempted, which are meant to be subject to the MSRB rules. I expect that the regulators of municipal swaps advisers would adopt rules governing advisory practices that are consistent with each other as well as relevant and appropriate for the municipal markets. Thus, municipal swaps advisers would be subject to practice rules embodying common principles, since they have the same types of clients.

NOMINATION OF ROBERT N. CHATIGNY

Mr. DODD. Madam President, I rise today to express my strong support for the nomination of Judge Robert Chatigny to serve on the U.S. Court of Appeals for the Second Circuit. I would like to thank my dear friend and colleague, Chairman LEAHY, for his efforts on this nomination. Chairman LEAHY, and his staff, does an outstanding job in seeking to ensure that the Federal courts function as our Constitution prescribes. I applaud him for his work and his commitment to the rule of law.

Judge Chatigny was first nominated to the Second Circuit last year, but after a sustained and, in my view, totally unwarranted attack on him by some, my colleagues on the other side refused to grant consent to allow his nomination to remain pending in the Senate. As a result, under rule 31, his nomination, along with 12 others, including 4 other judicial nominees, was returned to the President on August 5, prior to the August recess.

While I was extremely disappointed by this development, I am pleased that President Obama decided to renominate Judge Chatigny to this position. Judge Chatigny is an individual of outstanding character, keen intellect, and extensive judicial experience. I can think of few jurists more qualified to serve on the Second Circuit than he, and I congratulate President Obama on making such an excellent selection to fill this vacancy.

For 16 years, Robert Chatigny has been a Federal judge in Connecticut, serving as chief judge of the District of Connecticut from 2003 to 2009. In addition to ruling on a wide variety of cases, Judge Chatigny has earned a reputation for integrity, intelligence, and strict adherence to the rule of law.

I am pleased that Judge Chatigny has received the support of numerous former Federal prosecutors in Connecticut who understand the importance of upholding the rule of law and vouch for his character and his qualifications. Let me quote from a letter to the Judiciary Committee from three former U.S. Attorneys, each appointed by a Republican President:

> We believe that he is a fair minded and impartial judge, who has the appropriate fitness and temperament for the appellate court.

In addition, the Judiciary Committee has also received a letter signed by 17 former assistant U.S. attorneys currently practicing law in Connecticut, in which they express their confidence that he will be ''unbiased, compassionate, and temperate.''

This support demonstrates the high regard in which Judge Chatigny is held by the members of the legal community in Connecticut that know him best. In addition to the praise from the Connecticut Bar, Judge Chatigny has been unanimously rated ''well qualified'' by the American Bar Association.

Judge Chatigny's legal experience prior to his appointment reveals a rich understanding of—and deep commitment to—the American legal system. After graduating from Brown University and the Georgetown University Law Center, he served as a clerk to three Federal judges, including judges Jon Newman and Jose Cabranes. Prior to his service on the court, he built an excellent reputation in private practice, first as an associate here in Washington, before returning to private practice in Hartford for nearly a decade.

In addition, Judge Chatigny has devoted substantial time and effort to improving the legal profession. When the Governor of Connecticut sought experienced and knowledgeable public servants to help make better public policy, Judge Chatigny was an easy choice, serving on both the State Judicial Selection Commission and the State Commission on Prison and Jail Overcrowding. In addition, he has served in various roles with the Connecticut Bar Association, as well as being an advisor to the congressionally created Federal Courts Study Committee.

Unfortunately, Judge Chatigny has become the target of totally unjust attacks that threaten not only to defeat his nomination but also send a chilling

message that will endanger the independence of all Federal judges.

One may wonder why the nomination of a judge so well qualified and so highly regarded as Judge Chatigny has drawn any opposition at all from my colleagues on the other side of the aisle. The answer lies primarily in Judge Chatigny's role in the appeal of the first death penalty case in Connecticut in 40 years. Here are the facts.

Michael Ross raped and murdered eight women. His crimes were heinous and inhuman. He was convicted in the State courts of Connecticut and sentenced to death. His defense of insanity, although seriously contested at trial on the basis of conflicting psychiatric testimony, was rejected.

On January 21, 2005, 5 days before the scheduled execution, a public defender filed a petition for a writ of habeas corpus in the Connecticut Federal district court that came before Judge Chatigny. The petition presented substantial evidence challenging Ross's competency, alleging that under the U.S. Supreme Court's 1996 decision in Rees v. Payton, Ross was not competent to waive legal challenges to his death sentence, and that his execution would violate the 5th, 6th, 8th, and 14th amendments.

Three days later, on January 24, Judge Chatigny conducted a hearing in the habeas case and heard testimony from a psychiatrist supporting the claim of incompetency. The judge issued a stay of execution. The next day, January 25, the Second Circuit Court of Appeals unanimously denied the State's motion to vacate Judge Chatigny's stay and dismissed the State's appeal from the stay order. Two days later, on January 27, the U.S. Supreme Court, by a vote of 5 to 4, vacated the stay of execution.

Later that same day, Judge Chatigny received new evidence bearing on Ross's competency, and, mindful that he had been instructed not to enter any order delaying the execution, nevertheless felt it his duty to alert all counsel to the new evidence. He therefore faxed it to all counsel, and convened a telephone conference to discuss the evidence.

The next day, January 28, Judge Chatigny convened another telephone conference with all counsel and learned of the existence of additional new evidence bearing on the defendant's mental competency.

Shortly after midnight, the State agreed to postpone the execution until Monday, January 31, at 9 p.m. Later that morning, on January 29, defense counsel received information that the psychiatrist who had testified for the State might now have a different opinion on the issue of mental competency based on the new evidence.

Two days later, on January 31, defense counsel filed a motion in State court to stay the execution. The State did not oppose the motion, the motion was granted, and the death warrant expired.

On February 10, the State trial judge ordered a new competency hearing, which was conducted in the State court for 6 days in early April. On April 22, the State trial judge issued a decision finding that Ross was competent, and on May 10, the Connecticut Supreme Court affirmed. Three days after this final ruling was handed down, Michael Ross was executed.

Thereafter, a State prosecutor filed a complaint against Judge Chatigny alleging that his actions in the Ross case constituted judicial misconduct. The chief judge of the Second Circuit convened a special three-judge panel to investigate the allegations. The panel included former U.S. Attorney General Michael Mukasey, who was then chief judge of the U.S. District Court in Manhattan. The panel unanimously concluded that no judicial misconduct had occurred, and that ruling was unanimously adopted by the Judicial Council of the Second Circuit.

Despite the unanimous conclusion of these distinguished jurists that Judge Chatigny did nothing improper in his handling of the Ross case, it has become a focal point for objections to his confirmation. Some have argued that the judge should not have intervened, even briefly, to delay the execution of such an evil person as Michael Ross, an admitted killer of 8 young women.

I would, however, invite my colleagues to consider carefully the implications of that criticism. Here was a district judge confronted with a substantial claim, in a properly presented petition for a writ of habeas corpus, that new evidence put in doubt the competency of a defendant about to be executed.

The judge had two choices: he could turn his back on the matter and let the execution proceed without any examination of the new evidence, or he could insist that constitutional standards be followed and the new evidence be considered so that the execution, if and when it occurred, would be carried out in accordance with constitutional requirements.

Turning his back on the case would have been the easier course. Accepting the challenge to consider the habeas corpus petition, I believe, took considerable courage. The judge acted in conformity with his oath of office, which obliges him to uphold the Constitution of the United States. And for that, he is being savagely attacked.

Some critics of Judge Chatigny's nomination point out that the stay of execution issued by the judge was later vacated by the U.S. Supreme Court by a vote of 5 to 4. And, of course, that 5 to 4 majority ultimately prevailed.

But it must be noted, in assessing Judge Chatigny's decision to issue the stay, that of the 13 judges that reviewed the matter—1 district judge, 3 Circuit Judges, and 9 Supreme Court Justices—only 5 thought the stay should not have been issued, and 8 thought it was proper.

Even more significant is the fact that once the new evidence was brought to the attention of the counsel for the State, the State elected not to oppose a new court hearing so that the new evidence could be fairly considered. The new evidence was of sufficient value to require 6 days of hearings in the State court.

Ultimately, the new evidence did not change the outcome of the case, and Ross was executed. But if Judge Chatigny had not intervened, an execution would have occurred without the 6-day hearing that the State court found necessary to determine the defendant's competency, and the assurance of compliance with constitutional requirements would have been lost.

After a call for an investigation by some legislators in Connecticut was made, the Bar Association's president publicly stated that ''no one should want decisions of life or death made without consideration of all relevant facts and circumstances,'' and that the attacks on the judge threatened to ''undermine'' the independence of the judiciary. Judge Chatigny's handling of the Ross case was praised by both the Hartford Courant and the Connecticut Law Tribune.

If Judge Chatigny is to be attacked for performing his constitutional function as he saw it, what message does that send to other judges when confronted with constitutional claims in cases that understandably arouse public passions?

Let me respond to one other criticism that has been made concerning the Ross case. The critics have quoted Judge Chatigny as saying that Ross should never have been convicted. Their quotation is a serious distortion of what the judge said.

Speaking with reference to the evidence of Ross's insanity defense, the judge said, expressing the traditional standard courts use in determining whether there is sufficient evidence to present an issue to the jury, that ''looking at the record in a light most favorable to Mr. ROSS, he never should have been convicted.'' Unfortunately, the critics have left out the important first half of that statement.

Let me also briefly mention the concerns raised by some about Judge Chatigny's treatment of Michael Ross's attorney in regards to his law license. I think this criticism does not stand up to close scrutiny.

It is, of course, true that Judge Chatigny had a heated discussion with the Ross's lawyer regarding his client's competence. Judge Chatigny believed strongly that a state court in Connecticut should be given the opportunity to consider new evidence of Ross's competence and tried to convince the attorney of this.

There is no doubt that the exchange between Judge Chatigny and the defense lawyer was intense. However, as the Judicial Council of the Second Circuit found, there was no misconduct in this episode. In fact, the special committee's report stated:

The judge was clearly concerned that [the defense lawyer's] reluctance to engage the

court in the question of Ross's competence . . . might cause an unconstitutional execution. It is clear the judge's concern was to repair what he perceived as a breakdown in the adversarial process, resulting from an attorney's insistence on adhering to his client's expressed desire to waive judicial review and consent to his execution, in spite of indications that the client might be without competence to make such a waiver. The judge's perception of the need for remedial action in his communications with the attorney was reasonable. While his words were strong, when properly understood they were not unreasonable.

Further, who among us in public life during debates on contentious issues has never said anything that we would perhaps not repeat? The next business day after this episode, Judge Chatigny sought out the defense lawyer and apologized for his actions. He recognized that his words were ''excessive'' and at the first chance available sought to apologize for them. I think this shows exactly the sort of humble and self-examining personality that we need more of on the court.

But perhaps most importantly, Mr. President, one verbal exchange between a judge and counsel, in the middle of a highly contentious and emotional court case does not shed light on the entire arc of a judge's career. As demonstrated from the record and the support he has received in Connecticut, this episode is an aberration and one not likely to be repeated. We should not unduly punish someone with an outstanding record such as Judge Chatigny because of one heated exchange. What type of judicial standard would we be asking of those who aspire to the bench?

The critics have also said that the complete exoneration of Judge Chatigny on the misconduct complaint has little, if any, bearing on whether he should be confirmed for the court of appeals. Yet they persist in claiming that the Judge did something improper when the claim of improper conduct was totally rejected.

On this last point, I believe it is also worth reiterating that one of the judges who served on that panel, Michael Mukasey, also served as U.S. attorney general during the waning years of the Bush administration.

But Michael Mukasey has done more than simply reject a misconduct complaint. Once the nomination of Judge Chatigny was made, Michael Mukasey let it be known that he supported the confirmation of Judge Chatigny for a seat on the court of appeals. Can anyone seriously believe that a former U.S. attorney general would support a nominee to the Federal bench who was not unquestionably deserving of confirmation?

And Michael Mukasey's support of Judge Chatigny's nomination does not stand alone. As I mentioned earlier, three former U.S. attorneys appointed by Republican Presidents, the prosecutors most familiar with Judge Chatigny's record, have publicly informed the Senate Judiciary Committee that they strongly support his confirmation for the court of appeals, as have 17 former assistant U.S. attorneys.

One other criticism of Judge Chatigny also must be addressed. Individuals have attacked Judge Chatigny because in some instances, he imposed a sentence below the sentencing guidelines in certain cases.

What his detractors ignore is that Judge Chatigny has also imposed sentences at or above the top of the guidelines' range and that, according to Sentencing Commission statistics, Judge Chatigny's sentences are well within the mainstream of sentences of all the judges in his district.

Indeed, the best commentary on Judge Chatigny's sentences in criminal cases is the fact that in the 16 years he has been a district judge, Federal prosecutors have not sought to appeal even one of these decisions. Let me repeat that: in 16 years as a Federal judge, prosecutors have never appealed one of Judge Chatigny's sentences.

I have served in this body for nearly 30 years. I am extremely proud of this institution and believe that it plays a critical role in our republic. One of the most important functions we have is to vote on nominees to the executive and judicial branches of our government.

It saddens me to note that this body has let partisan politics and delaying tactics interfere with our constitutional responsibility to provide advice and consent on the President's nominees. Unfortunately, Judge Chatigny is not the only eminently qualified judicial nominee to face this challenge.

As of November 29, the Senate had only confirmed 41 of President Obama's Federal circuit and district court nominees so far this Congress. By contrast, during the first Congress of the George W. Bush administration, the Senate, which at that time was controlled by Democrats, confirmed 100 of that President Bush's nominees to the Federal bench.

In addition, there have been repeated roadblocks to the consideration of numerous well-qualified nominees to critically important posts within the executive branch. The Federal Government has an immense amount of work to do, and obstructionist tactics have only made that harder.

I am convinced that this Judge deserves to be confirmed. He has outstanding qualifications and an outstanding record. No one, even his critics, doubts either his qualifications or his record. I believe he is being opposed because he acted with great courage to live up to his oath of office and uphold constitutional standards in one widely publicized case involving a despicable murderer.

Would that all judges display that kind of courage when put to a similar test.

Let me conclude with one further point. I recognize that some of my colleagues believe that Judge Chatigny's handling of the Ross case merits criticism. I believe, on the contrary, that his handling of the case was a courageous defense of constitutional requirements, as do many others, including experienced Federal prosecutors from both political parties.

But let us assume, for a moment, that the criticism is valid. What I would then ask this body to consider is this: is the criticism of the handling of one case out of the thousands over which Judge Chatigny has presided in 16 years as an outstanding U.S. district judge a sufficient reason to oppose his confirmation for the court of appeals?

Have we, as Senators, permitted the President's selection of a well qualified judge with 16 years of outstanding judicial service to be thwarted because in the hours before a scheduled execution, the first in Connecticut in 40 years, this judge thought it was his duty to make sure that constitutional standards, as he understood them, required him to act, not to overturn a conviction, not to overturn a death sentence, but simply to make sure that new evidence bearing on the defendant's mental competence was fairly considered?

It goes without saying that I am very disappointed the Senate will not be voting on this nomination before the end of the 111th Congress. Judge Chatigny is superbly qualified for a seat on the Second Circuit, and I believe the Senate has made a serious mistake by not confirming him.

FLOODING IN COLOMBIA

Mr. LEAHY. Madam President, I want to take a minute to call attention to a humanitarian disaster that has received only passing mention in the international press and which many Senators may be unaware of.

On December 7, Colombia's President Juan Manuel Santos declared a state of ''economic, social and ecologic emergency'' as a result of massive flooding which he called a ''public calamity.''

Heavy rains over a period of months have caused landslides that have swept away homes and rivers to overflow their banks, and now large areas of the country are inundated with water. According to a December 17 report by the U.N. Office for the Coordination of Humanitarian Affairs which is assisting the Colombian government, so far 2.1 million people have been affected by the flooding, 270 have died, 62 are missing, and more than 300,000 houses have been damaged or destroyed. Thousands of miles of roads have been obstructed, damaged or destroyed.

Twenty-eight of the country's 32 departments, which comprise 61 percent of the country, have been affected. President Santos said the number of homeless from the flooding could reach 2 million, and that ''the tragedy the country is going through has no precedents in our history.'' What's worse, the rains are expected to continue through next June.

I do not have to remind anyone here of our close relationship with Colombia. I also know Colombia has emergency response capabilities which may not exist in remote areas of other countries similarly affected by severe flooding or other natural disasters, such as Pakistan. I was pleased to learn that the U.S. Army Corps of Engineers has people in Colombia because the devastation is on a scale more massive than any developing country could deal with alone. There may also be other ways we can provide assistance.

I also use this opportunity to note what appears to be the growing number and intensity of natural disasters around the world that are straining the international community's emergency response capabilities. While no single weather event can be definitively attributed to climate change, scientists have long predicted an increase in the frequency and severity of extreme weather events as a result of global warming. They also predict that as many as 200 million people could be displaced by natural disasters and climate change by 2050. That would cause incalculable havoc for many countries.

President Santos, who to his credit has been out in the countryside with people who have lost family members, homes and, in many cases, everything they own, said he canceled his trip to the U.N. Climate Change Conference in Cancun so he could deal with the devastation that climate change is causing in his own country. Pakistani government officials likewise blamed climate change for the massive floods there that have affected more than 20 million people over the past several months.

Whatever the cause, and there isn't time today to discuss my views about the role that deforestation and the burning of fossil fuels play in global warming, the world's climate is unquestionably changing. And a disproportionate number of recent climate related disasters has occurred in the world's poorest countries where most people's lives depend on agriculture. They have seen their homes destroyed, crops drowned in water and buried in mud, and what few possessions they have swept away. Other countries have suffered years of drought, and water sources that have sustained life for centuries have dried up. In as little as 25 years, glaciers that millions of people and their livestock depend on for drinking water have shrunk to a fraction of their size.

These issues are going to occupy our time and severely tax our resources for the foreseeable future, and we and other countries urgently need to develop plans to try to prevent and adapt to climate change and to respond when disaster strikes.

I am encouraged that there is a new field of research specifically focused on better understanding, preventing and responding to large scale displacement of people as a result of climate change and natural disasters. Nongovernmental and international organizations are working to develop strategies to protect the world's most vulnerable people from this growing threat. We need to support this and work together.

I commend President Santos who has not only helped to alert the world to a catastrophe that had previously gone largely unnoticed outside his country, but who has taken other important steps in his first months of office that have won the respect and support of the Colombian people. His efforts to diffuse tensions with Colombia's neighbors, to begin tackling head on the daunting economic, social and judicial challenges facing Colombia, and to appoint several top officials who have the necessary qualifications and integrity, are admirable.

After a decade of Plan Colombia, U.S.-Colombia relations are entering a new phase. While there will likely continue to be issues about which we disagree, I look forward to working with President Santos and his government on a wide range of issues of mutual interest and concern.

TRIBUTE TO LULU DAVIS

Mr. LEAHY. Madam President, as we approach the end of this Congress we are saying goodbye to people with whom we have been privileged to serve over the past years. We often talk about Senators who have completed their terms. In that regard, a number of my friends will be leaving the Senate and I am making statements about them.

Today, I want to talk about a woman who has served the Senate and the American people for three decades, and whose career sets a high standard of professionalism and public service that inspires countless others. She was not elected to serve as a Senator, but she has been essential to the work of the Senate for a number of years.

Lula Johnson Davis began her Senate career as a legislative correspondent for Senator Russell Long of Louisiana. She later worked for the Democratic Policy Committee. In 1993, she became a key member of our Democratic floor staff The floor staff is critical to the proper functioning of the Senate.

They advise Senators on floor procedure and help keep the Senate operating within the formal Senate Rules and the informal Senate practices that honor our traditions of courtesy and civility. When Senators are not bollixing up the proceedings, the floor staff facilitates the business of the Senate.

They are the unseen and unrecognized teachers for new Senators. They help guide all of us through Senate consideration and voting on every measure that comes before this body.

She leaves the Senate having started as a legislative correspondent and having risen to become the Secretary of the Majority of the U.S. Senate.

Through the decade of the 1990s and this first decade of the new century, as the assistant secretary and now secretary, it has been this woman from Louisiana who has helped guide the Senate. We each, Senators on both sides of the aisle, owe her our gratitude. She is a professional who helps set the right tone for all of us—Senators, staff, and pages.

The young people, high school students from around the country, who continue their studies while serving as Senate pages for a semester or a summer are another group of beneficiaries of Lula' s tutelage. She is a tough but fair taskmaster. Democratic pages learn that every job, no matter how small, needs to be done right.

They learn lessons that will serve them throughout their lives. She has been a mentor, friend and role model to hundreds of youngsters from around the country over the years. At the end of their tour of duty, they appreciate what she has given them and, I hope, share her respect for the Senate.

She has never failed to fulfill her duties as she has steadfastly served with a succession of Democratic leaders. In truth, she has served not just the Democratic Senate caucus but the Senate and the country.

I will miss Lula Davis and wanted to say how much I appreciate all she has done for each of us.

AMERICA COMPETES REAUTHORIZATION ACT

Mr. BINGAMAN. Madam President, last Friday the Senate in an act of bipartisanship reauthorized the America COMPETES Act, which was first signed into law August 9, 2007. It did so this time under unanimous consent; the last time it took 3 days of debate. I would like to note that this reauthorization continues the strong tradition of bipartisanship which augurs well for the ability of our Nation to conduct cutting edge research while innovating and competing in our global economy. In a time of concern about our budget deficit, the passing of this act by unanimous consent is an acknowledgment by the Senate as a whole that tax dollars spent on these topics is money well spent.

But behind that simple act of unanimous consent laid almost 2 years of hard work at the staff and Member level in the Senate.

First and foremost, I would like to acknowledge the leadership of Senator LAMAR ALEXANDER. Senator ALEXANDER worked with members of his Republican caucus to ensure their views were incorporated into this bill. He has kept his unwavering belief that the strength of our Nation, its ability to proposer and create good paying jobs, rests on the investment we make in educating our children in science and education, conducting research at universities and laboratories and using a well educated workforce to promote innovation in our global economy.

The America COMPETES Act involved the work of three Senate committees: the Senate Commerce, Science and Transportation Committee; the

Senate Committee on Health Education, Labor and Pensions, HELP; and the Senate Energy and Natural Resources Committee. As before, Matt Sonnesyn, who participated in the last America COMPETES effort provided a stable and steady push to keep the bill on track. In the Commerce Committee, Ann Zulkosky on Senator ROCKEFELLER's staff worked long hours through a markup and subsequent staff drafts of the bill while at the same time managing to reauthorize NASA. Maryam Khan and Hugh Derr on Senator Hutchinson's staff worked with Ann throughout this time; Robin Juliano on Senator HARKIN's staff on the HELP committee worked with Christopher Eyler on Senator ENZI's HELP staff to ensure education programs were updated where appropriate; Jonathan Epstein on my Energy Committee staff worked tirelessly, as he did on the original bill, and along with Isaac Edwards on Senator MURKOWSKI's Energy Committee staff worked through energy programs and updated them to account for changes since the last COMPETES Act.

There are other important staff I would like to acknowledge who made this effort in the Senate a success: David Cleary on the HELP Committee, Adam Rondinone and Neena Imam in Senator ALEXANDER's personal office, Ann Begeman, Senator Hutchinson's Commerce Committee Staff Director, Ellen Doneski, staff director for the majority and Chris Martin, Andrew Ruffin, Bruce Andrews, and Brian Hendricks of the Commerce Committee; Trudy Vincent, my legislative director and Peter Zamora, my education counsel; Robyn Hiestand on the Budget Committee, Rachel Sotsky in Senator LIEBERMAN's personal office, Lula Davis, the secretary for the majority, Tim Mitchell on Senator REID's floor staff, Laura Dove the assistant secretary for the minority and Bob Simon, my Energy Committee staff director. Finally, I need to give a special thanks to the legislative counsels who worked with staff to accurately draft the bill—Lloyd Ator on the Commerce Committee, Amy Gaynor who drafted the HELP Committee text and Gary Endicott who drafted the Energy Committee text.

As you can see, the America COMPETES Act involved a large number of bipartisan staff, all working together for the common goal of promoting the ability of our nation to compete in a global economy. I am grateful to all of the them for their hard work.

I am also delighted that today, December 21, the House of Representatives passed this bill as well.

LEONHART NOMINATION

Mr. KOHL. Madam President, I rise to announce that I have lifted the hold I placed earlier this month on Michele Leonhart's nomination to be Administrator of the U.S. Drug Enforcement Agency, DEA. I had placed the hold reluctantly after numerous failed attempts to work with the agency for over a year on the issue of delivering pain medication to nursing home residents in a timely matter.

At a Special Committee on Aging hearing I chaired earlier this year, panelists detailed a recent DEA enforcement initiative that has delayed many nursing home patients from receiving much-needed medication to control their pain. For several years, nurses had been able to call into pharmacies urgently needed prescriptions following a doctor's order. Pharmacies would fill the order, patients would get their pain medication, and doctors would follow up with written confirmation of the prescription. Due to the DEA's new enforcement initiative, pharmacies face huge administrative fines if they continue to follow this practice. Most disturbingly, nursing home residents sometimes must endure the pain for hours or even days as nursing home staff try to adhere to the newly enforced regulations. Finally, nursing homes have been forced to send frail and pain-ridden residents to the emergency room, at great cost, simply to get pain medication that they used to be able to get in their nursing home.

At Ms. Leonhart's nominating hearing before the Judiciary Committee in November, I expressed my disappointment that the DEA had not followed through on the pledges made to the Aging panel in March to work with us to address the problem swiftly. Nearly 2 weeks after her confirmation hearing—and three months after submitting a draft proposal to DEA—I was told that any solution would require each State to grant nursing homes the authority to dispense controlled substances pain medications. However, any solution requiring ''state-by-state'' action would take many years to achieve. The urgent pain relief situation in nursing homes will not permit such a long-term approach. When the Judiciary Committee approved Ms. Leonhart's nomination, I asked to see meaningful progress on the issue prior to her final confirmation.

I am pleased to have recently received Attorney General Eric Holder's assurance that he will promptly deliver the DOJ's support for a legislative fix. As a result of our discussion, I am releasing the hold on Michele Leonhart's nomination, and I look forward to introducing a mutually acceptable legislative fix in the opening days of the 112th Congress.

Based on our agreement, DOJ will deliver draft legislation to me in January to permit the timely delivery of pain medications to nursing home residents. The legislation will deem certain nurses or other licensed health care professionals to be ''authorized agents.'' Those agents will be chosen and designated by the nursing home as agents of DEA-licensed practitioners—practitioners being the resident's attending physician or specialist. They will be authorized to transmit the practitioner's order for a controlled substance, specifically schedule II drugs, to DEA-licensed pharmacies orally or by fax. The nursing home, while not licensed by DEA, will designate those authorized to transmit a practitioner's order and to make a list of those authorized agents available to the pharmacy. In exchange, nursing homes, practitioners, and pharmacies will be required to take certain steps to verify their accountability.

I happily submit for the record a document detailing the specifics of our agreed-upon framework for the legislation outlined above. I am confident that it will ensure our mutual interests are met by enabling nursing home residents to have the pain medication they need while preventing drug diversion and misuse. I would like to thank Attorney General Holder for his strong commitment to seeing that a Federal legislative solution can be moved forward in the opening weeks of the 112th Congress. After all, time is of the essence for nursing home residents who are in need of immediate pain relief.

CONFIRMATION OF ALBERT DIAZ

Mr. CARDIN. Madam President, I am pleased the Senate has confirmed the nomination of Albert Diaz of North Carolina to be a U.S. circuit judge for the Fourth Circuit.

Judge Diaz is strongly supported by his home State Senators, Senators HAGAN and BURR, and he received the highest possible rating of ''well qualified'' from the American Bar Association's rating committee. The process Senators HAGAN and BURR used to recommend these nominations to the President—working in a bipartisan fashion with each other and the White House—is a model for how we can improve the judicial selection and confirmation process going forward.

I chaired the confirmation hearing for Judge Diaz in December 2009, and in January 2010 the Judiciary Committee unanimously approved his nomination by a 19–0 vote.

I am disappointed that it has taken the Senate almost a full year to take final action on this nomination.

I take a special interest in the Fourth Circuit, as it includes my home State of Maryland. When President Bush was in office, in May 2008 I chaired the confirmation hearing for Justice Steven Agee, who served on the Virginia Supreme Court and was confirmed to be a U.S. circuit judge for the Fourth Circuit. Since President Obama has taken office, in April 2009 I chaired the confirmation hearing for Judge Andre Davis of Maryland, a Federal district judge in Baltimore, who was confirmed last year to be a judge on the Fourth Circuit. In October 2009, I chaired the confirmation hearing of Justice Barbara Keenan of Virginia, who had served on the Virginia Supreme Court and was confirmed in March of this year by the Senate. Finally, in December 2009, I chaired the

confirmation hearing of James Wynn of North Carolina, who had served as an associate judge of the North Carolina Court of Appeals, and was confirmed by the Senate in August 2010.

I mention these nominations by way of background for my colleagues, because the Fourth Circuit has had one of the highest vacancy rates in the country. When I came to the Senate in 2007, out of the 15 seats authorized by Congress, 5 of the seats of the Fourth Circuit were vacant. That means that one-third of the court's seats were vacant. Our circuit courts of appeals are the final word for most of our civil and criminal litigants, as the Supreme Court only accepts a handful of cases.

We should also be working to increase the diversity of the judges of the Fourth Circuit. The Fourth Circuit is one of the most diverse circuits in the Nation, according to the most recent Census estimates. In terms of the Fourth Circuit—which consists of Maryland, Virginia, West Virginia, North Carolina and South Carolina—22 percent of the residents are African American. In my home State of Maryland, African Americans constitute 30 percent of the population. By way of comparison, the U.S. population is 12 percent African American.

Ironically, the judges on the Fourth Circuit have not historically been known for their diversity. The first woman to sit on the Fourth Circuit was not appointed until 1992. The first African American to sit on the Fourth Circuit was not appointed until 2001.

In recent years I am pleased that the Fourth Circuit has indeed become more diverse and representative of the population it oversees. The Senate took another important step forward to increase diversity on the Fourth Circuit with the confirmation of Judge James Wynn before our August recess. I am pleased that 4 out of the 15 judges on the Fourth Circuit—about one-quarter of the court—are now African American. And I am also pleased that in 2007, for the first time in history, a woman served as chief judge of the Fourth Circuit. Until a vacancy occurred last year, women made up 3 out of the 15 judges on the Fourth Circuit, or one-fifth of the court. I look forward to further increasing the diversity of the Fourth Circuit in the future.

With the nomination of Judge Diaz, the Senate has another opportunity to increase diversity on the Fourth Circuit. Judge Diaz is the first Latino judge to ever sit on the Fourth Circuit in its history.

Judge Albert Diaz also comes to the Senate with a broad range of both judicial and legal experience in both the civilian and military court systems.

Judge Diaz currently serves as a special superior court judge for complex business cases, one of only three in North Carolina.

Judge Diaz began his legal career in the U.S. Marine Corps legal services support section, where he served as a prosecutor, defense counsel, and ultimately chief review officer. He then moved to the Navy's Office of the Judge Advocate General, JAG, where he served for 4 years as appellate government counsel handling criminal appeals. Upon entering private practice, Judge Diaz remained in the Marine Corps Reserves, serving over the years as a defense lawyer, trial judge, and appellate judge.

Judge Diaz was the first Latino appointed to the North Carolina Superior Court when he was named as a resident superior court judge in 2001.

I therefore pleased that the Senate has confirmed Judge Diaz, an outstanding nominee who enjoys bipartisan support from his home State Senators and a unanimous endorsement from the Judiciary Committee. By confirming Judge Diaz, the Senate takes an important step in bringing the vacancy rate down on the Fourth Circuit, and for the first time in many years the confirmed judges on the Fourth Circuit will be almost up to full strength. Finally, we will have a more diverse bench that better represents the population of this circuit.

DIPLOMACY

Mr. INHOFE. Madam President, today I wish to talk about public diplomacy. I have spent a lot of time in Africa and have built close relationships with many African leaders. As you know, our country's official diplomacy is conducted by the State Department. However, public diplomacy involving people-to-people interaction is equally important for promoting a positive image of America to the world. The United States is admired as a beacon of freedom for oppressed people everywhere. The attacks on the U.S. of 9/11 demonstrate the new challenge we face by the forces of ignorance and intolerance that seek the destruction of our country.

Today I include in the record an insightful essay that I will share with the members of the Senate Foreign Relations Committee about the critical role of public diplomacy in building bridges of good will for the United States. The author is Richard Soudriette, the president of the Center for Diplomacy and Democracy in Colorado Springs, CO. Mr. Soudriette is the founding president of the International Foundation for Electoral Systems, IFES, which has promoted free and fair elections in over 120 countries.

I have a long and personal history with Richard as he was my chief of staff in my office as mayor of Tulsa. Since then, he went on to be the founding president of the International Foundation for Electoral System, IFES, which has promoted free and fair elections in over 120 countries. Richard and I share the same heart for Africa and the same vision for developing countries around the world; that they continue to move towards self-sufficiency and become thriving economic nations.

His essay discusses public diplomacy at the local level and mentions my home town of Tulsa, OK, as an example of a community that has developed innovative international visitor programs. Public diplomacy is vital to keeping our country safe. The best way to defeat the forces of extremism is to educate people around the globe about America and our values, culture, and people.

I strongly support Richard's work around the world and I ask unanimous consent that the statement by Richard Soudriette be printed in the RECORD.

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

PUBLIC DIPLOMACY: BUILDING BRIDGES OF UNDERSTANDING

[By Richard W. Soudriette, Center for Diplomacy and Democracy, December 8, 2010]

Ever since the proclamation of the Declaration of Independence in Philadelphia over 200 years ago, America has championed the power of the human spirit. Across the globe, America is a beacon of freedom that gives hope to people living under oppression.

Our country faces many challenges never envisioned by the Founding Fathers in 1776. The deadly attacks on America that occurred on September 11, 2001 revealed that extremist elements seek to destroy America and all that it symbolizes. Al-Qaeda and their cohorts are dedicated to the eradication of human rights and democracy. Islamic extremists do a great injustice to Muslims who reject the extremist philosophy of hatred, ignorance, and intolerance.

Defeating the forces of extremism will require more than military power. It also will require tenacious public diplomacy to educate people from Muslim countries, as well as elsewhere, about America.

Public diplomacy is a term that was coined by respected career U.S. diplomat, Edmund Gullion, who also served as dean of the Fletcher School at Tufts University. Ambassador Gullion described public diplomacy as the way sovereign nations openly and transparently communicate their ideas, culture, and values to people of other countries.

Public diplomacy has become an essential component of U.S. foreign policy. The Obama Administration has sought increases in public diplomacy funding. The current Under Secretary of State for Public Diplomacy and Public Affairs, Judith McHale, recently unveiled ''The Strategic Plan for Public Diplomacy for America in the 21st Century.''

Despite bipartisan support for public diplomacy, the image of the U.S. continues to lose ground in many parts of the globe. Our image problem in many countries is documented by the work of the Pew Charitable Trusts Global Image Project. Some respected organizations such as the Council on Foreign Relations have focused on the failings of our public diplomacy apparatus. The morphing of the United States Information Agency into the State Department during the Clinton Administration is identified as a major cause for deficiencies in our public diplomacy efforts. The Council on Foreign Relations has offered recommendations to the State Department to fix our public diplomacy, but these will require time and funding to implement.

The State Department already has the means to improve our public diplomacy outreach to the world. For example, the State Department should make certain that ambassadors and foreign service officers are fully briefed on the State Department's public diplomacy strategic plan before they are

posted abroad. Also, it should be made clear that a major part of their duties will be to assist the Secretary of State in implementing the plan.

Foreign service officers provide an immediate opportunity for the U.S. to engage in effective public diplomacy. In 2008, the United States Advisory Commission on Public Diplomacy issued a report entitled ''Getting the People Part Right: A Report on the Human Resources Dimension of Public Diplomacy.'' This report highlights the public diplomacy void that has existed since 1999 when the United States Information Agency was eliminated and its functions were merged into the State Department. The report states that most foreign service officers fail to grasp the importance of public diplomacy, and at best, they merely pay lip service to it. The report also discusses the lack of recruitment of U.S. diplomats with the appropriate people skills for public diplomacy. The report cites the need for more training for our diplomats so that they might have the knowledge and the skills to effectively interact with people from other countries.

Newly hired foreign service officers frequently work at U.S. Consulates processing visa applications for persons wishing to travel to the U.S. This is a high stress job and it demands that they possess strong interpersonal skills. While serving as the director of the Peace Corps program in the Dominican Republic, I frequently heard anecdotes from Dominicans who had received rude treatment when seeking visas at the U.S. Consulate. While the visa application process requires extensive screening, all visa applicants should receive prompt and courteous service. U.S. diplomats who engage in arrogant behavior towards visa applicants create ill will and plant seeds of hatred towards America.

Another aspect of public diplomacy that needs attention is the manner in which officers of the Bureau of Customs and Border Protection receive and process arriving international visitors. Since the events of 2001, the work of Customs and Border Protection officers has become more stressful and challenging. While most officers perform well, there are some who do not receive international visitors with courtesy. Customs and Border Protection officers play a huge public diplomacy role. When officers are surly, they offend international visitors to the United States.

The Bureau of Customs and Border Protection should incorporate customer service training into its curriculum for all personnel. When developing this training, it would be wise to tap the experience of companies like the Disney Corporation which has a track record of receiving throngs of people with respect and courtesy. Courteous treatment upon arrival in our Nation can pay dividends by promoting a positive image of the United States.

The State Department and the U.S. Agency for International Development (USAID) can achieve immediate impact in public diplomacy by requiring all contractors and grantees to incorporate public diplomacy aspects into their work. USAID utilizes many for-profit and not-for-profit organizations to provide services in areas such as democracy, economic development, governance, health, public works, and rule of law. All organizations that undertake work abroad on behalf of USAID have an important public diplomacy responsibility.

USAID should require grantees and contractors, whenever feasible, to hire project managers who speak the language of the country where they are working. Personnel working abroad on USAID funded projects should undergo orientation training about local culture and customs.

International visitor programs play a key role in successful public diplomacy. For nearly sixty years, the State Department has funded visits by thousands of international visitors to acquaint them with our country. Often, these visitors eventually become leaders in their countries. The President of France, Nicolas Sarkozy, traveled to the U.S. in 1985 on a State Department sponsored trip. Today he is regarded as one of the most pro-U.S. leaders in France.

The State Department's Bureau of Educational and Cultural Affairs funds most of the government sponsored international visitor and scholarship programs. The bureau has rules in place stipulating that prime contractors and grantees for State Department funds must be in existence for a minimum of four years. These rules stifle innovative programming by new organizations and inhibit the ability of community based groups beyond the Capital Beltway to access funding.

For most international visitor programs, the State Department contracts with the same large East Coast organizations. These organizations rely on a patchwork of community based groups across the U.S. to organize meaningful professional, educational, and cultural programs for international visitors. Unfortunately, these East Coast organizations pass on very little, if any, funding to communities that have agreed to receive international visitors. Hosting of international visitors relies on local volunteers and in-kind support. The lack of financial resources at the local level results in a huge disparity in the quality of programming that international visitors receive.

Some communities like Tulsa, Oklahoma do a superb job in organizing and managing international visitor programs. Since 1995, the Tulsa Global Alliance has provided excellent programs in this area. Tulsa has developed an organizational model that relies on a mix of professional and volunteer support. The Tulsa program has been successful in developing a broad funding base that provides more than $400,000 per year for international visitor activities. Funding comes from corporations, individual donors, foundations, program fees, and limited grants from the State Department.

It is recommended that the State Department modify its rules for funding international visitor programs. Contracts for large organizations should require that they provide grants of at least 25 percent of their total project budgets to be passed on to international visitor committees at the local level. This funding will help provide needed resources to ensure that high quality programs are offered to international visitors. The public diplomacy implications of these international visitor programs are too important not to have sufficient funding.

The Bureau of Educational and Cultural Affairs of the State Department should give priority to funding small and newly established organizations engaged in international visitor programs. The Bureau should be encouraged to make available up to 25 percent of its budget for international visitor programs to small and newly established organizations. This new approach would open the door for communities across America to develop their own capacity to implement high quality international visitor programs. The end goal would be that each international visitor would have a fulfilling experience in the U.S.

The security of America and the future of our democracy demand more commitment to public diplomacy. To keep America safe and to protect our values, ideals, and principles, we must build bridges of understanding with people across the globe.

ADDITIONAL STATEMENTS

MISSOURI 2009 MALCOLM BALDRIGE AWARD RECIPIENTS

● Mrs. MCCASKILL. Madam President, I think that every Senator is understandably proud of their own State, but today I have special reason to be proud of Missouri. Just last week, Vice President BIDEN awarded the 2009 Malcolm Baldrige National Quality Awards to five different companies and three of those five companies hailed from the great State of Missouri. The Baldrige Award recognizes only the highest performing companies in the U.S. in terms of quality and performance, and the fact that three out of the five awards went to Missouri companies is a testament to the spirit and work ethics of Missourians.

Heartland Health is a health system based in St. Joseph, MO, that has an extraordinary commitment to improving their patients' health rather than just treating patients' sicknesses, as is all too often seen in the healthcare community. The staff at Heartland Health recognizes that while providing world-class treatment for acute illnesses is vital, it is equally important to understand why individuals become ill, and they do everything possible to prevent those patients from ever needing hospital care in the first place. Their mission is: ''To improve the health of individuals and communities located in the Heartland Health region and provide the right care, at the right time, in the right place, at the right cost with outcomes second to none.'' This is not just a catchy slogan, but instead it is a commitment that has yielded results. Heartland Health is among the top 15 percent of all U.S. hospitals in patient safety; they have achieved 90 percent patient satisfaction, and they have done all this while at the same time saving millions of dollars by realizing efficiencies. As our entire country struggles with providing quality healthcare at affordable prices, I invite anyone to visit the ''Show Me'' State, where Heartland Health stands as an example for how a commitment to quality can yield the best care available affordably. They have been appropriately recognized with the Malcolm Baldrige National Quality Award, joining a select group of companies that are the best of the best, and I applaud Heartland Health and all of the great men and women who make up its team for their achievement and their work.

Honeywell Federal Manufacturing & Technologies in Kansas City, MO, plays an integral role in the underappreciated work of keeping our Nation's nuclear arsenal in working order. The Kansas City Plant works to provide the National Nuclear Security Administration with electrical, mechanical and material components manufactured to exacting quality specifications to help meet key national security objectives. Honeywell Federal Manufacturing & Technologies uses a Six Sigma Plus

Continuous Improvement Model and it has resulted in an unmatched level of customer satisfaction. Honeywell has also been a key partner in the transition to the new state-of-the-art Kansas City Responsive Infrastructure, Manufacturing and Sourcing, KCRIMS, facility, which officially broke ground in September. They have been a steward in ensuring safety, quality and efficiency in all areas of their work, especially with respect to the production of the nonnuclear components for the Nation's nuclear weapons with NNSA. Honeywell's outstanding work has also provided an essential foundation for a continued partnership at the new KCRIMS facility and the company's ongoing role as a strong member of the local Kansas City community. I am deeply proud of the work the men and women on the Honeywell team carry out at the Kansas City Plant and of its central importance to our Nation's national security and I could not be more pleased to see them recognized for their work with this preeminent award.

MidwayUSA is a family-owned business located in Columbia, MO, that has been providing shooting, hunting and reloading supplies for over 30 years. The company, started by Larry Potterfield and his wife Brenda, exemplifies the ''Made in America'' motto by employing hundreds of Missourians who are themselves passionate about hunting and shooting, two activities that are centerpieces of Missouri's rich sportsman culture. The passion of Larry and Brenda shows in the quality of the work of their entire team. MidwayUSA has earned 98 percent customer retention, and a 93 percent customer satisfaction rating, both remarkable achievements. While MidwayUSA has progressed over time from taking orders by mail, then phone, and now via the internet, one thing that has not changed is its mission, ''To be the best-run business in America, for the benefit of our Customers.'' They are doing a great job accomplishing just this. In pursuit of that goal they have become ISO 9000 certified, won the Missouri Quality Award for Performance Excellence, and now they have been recognized with the 2009 Malcolm Baldrige National Quality Award. In growing from nothing more than a simple idea to one of the leading shooting supply retailers, MidwayUSA has shown what dedication to quality and performance, coupled with building an exceptionally committed, dedicated and skilled workforce, can produce in a business. I would like to congratulate the entire MidwayUSA team on their success.

These three companies, which are not just among Missouri's finest, but, as we now know, among our Nation's very best, have so much to be proud of. They embody the ''Show Me'' spirit when it comes to showing how a business should operate. Congratulations Heartland Health, Honeywell Federal Manufacturing & Technologies in Kansas City and MidwayUSA on winning the 2009 Malcolm Baldrige National Quality Award. I look forward to seeing what these companies and their employees accomplish next. I know it will be something great.●

TRIBUTE TO DR. ANTHONY CERNERA

● Mr. LIEBERMAN. Madam President, today I recognize the tremendous work of Dr. Anthony Cernera, a good friend and the very accomplished president of Sacred Heart University in Fairfield, CT. After 22 years of distinguished service to the Sacred Heart community, Tony is moving on to pursue new and different opportunities in Catholic education and beyond.

Since 1988, Dr. Cernera has led Sacred Heart with purpose and grace as he helped to fulfill the college's mission of preparing its students to be contributing members of the global community. He expanded this noble mission by increasing the school's reach and the opportunities it offers, all while preserving the rich Catholic intellectual tradition that forms its identity. He helped transform Sacred Heart from a small commuter school serving Fairfield and the neighboring community into a vibrant residential university, introducing new and innovative degree programs and course offerings to keep pace with an ever-changing world. The progress he achieved helped advance a value-driven education that will enrich the lives of all who receive it.

Dr. Cernera embodies the many deeply held values that Sacred Heart espouses. He does not see the world around him for what it is, but instead for what it can be. Where he sees promise, he leads through action. With the creation in 1992 of the Center for Christian-Jewish Understanding of Sacred Heart University, Dr. Cernera has striven for a world of greater interreligious dialogue, understanding and respect. As President of the International Federation of Catholic Universities, a federation of over 200 Catholic educational institutions around the world, Dr. Cernera has led at a global level, spreading the faith and values that define his life's work. In a world too rife with conflict and distrust, he has been a model member of the global community.

Dr. Cernera leaves behind a lasting legacy at Sacred Heart University, with an impact that reaches far beyond the halls on campus and that will touch many lives for a long time to come. I wish him and his wife Ruth my very best as they embark on the next great chapter of their lives.●

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 11:23 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 3874. An act to amend the Safe Drinking Water Act to reduce lead in drinking water.

H.R. 628. An act to establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges.

H.R. 4973. An act to amend the Fish and Wildlife Act of 1956 to reauthorize volunteer programs and community partnerships for national wildlife refuges, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. INOUYE).

ENROLLED BILLS SIGNED

At 12:27 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 1107. An act to enact certain laws relating to public contracts as title 41, United States Code, ''Public Contracts''.

H.R. 6473. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend the airport improvement program, and for other purposes.

H.R. 6510. An act to direct the Administrator of General Services to convey a parcel of real property in Houston, Texas, to the Military Museum of Texas, and for other purposes.

H.R. 6533. An act to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. INOUYE).

At 12:47 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 118. An act to amend section 202 of the Housing Act of 1959, to improve the program under such section for supportive housing for the elderly, and for other purposes.

S. 1481. An act to amend section 811 of the Cranston-Gonzalez National Affordable Housing Act to improve the program under such section for supportive housing for persons with disabilities.

ENROLLED BILL SIGNED

At 3:10 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2965. An act to amend the Small Business Act with respect to the Small Business Innovation Research Program and the Small Business Technology Transfer Program, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. INOUYE).

At 5:15 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 6540. An act to require the Secretary of Defense, in awarding a contract for the KC-X Aerial Refueling Aircraft Program, to

consider any unfair competitive advantage that an offeror may possess.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 2142) to require quarterly performance assessments of Government programs for purposes of assessing agency performance and improvement, and to establish agency performance improvement officers and the Performance Improvement Council.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 2751) to accelerate motor fuel savings nationwide and provide incentives to registered owners of high polluting automobiles to replace such automobiles with new fuel efficient and less polluting automobiles.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 5116) to invest in innovation through research and development, to improve the competitiveness of the United States, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 5809) to amend the Controlled Substances Act to provide for take-back disposal of controlled substances in certain instances, and for other purposes.

At 6:00 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 81) to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 1746) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 4748) to amend the Office of National Drug Control Policy Reauthorization Act of 2006 to require a northern border counternarcotics strategy, and for other purposes.

The message also announced that pursuant to section 5605 of the Patient Protection and Affordable Care Act (Public Law 111–148), and the order of the House of January 6, 2009, the Speaker appoints the following members on the part of the House of Representatives to the Commission on Key National Indicators: Dr. Stephen Heintz of New York, New York, and Dr. Marta Tienda of Princeton, New Jersey.

The message further announced that pursuant to section 306(k) of the Health Service Act (42 U.S.C. 242k), and the order of the House of January 6, 2009, the Speaker appoints the following member on the part of the House of Representatives to the National Committee on Vital and Health Statistics for a term of 4 years: Dr. Vickie M. Mays of Los Angeles, California.

At 7:09 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 3243. An act to require U.S. Customs and Border Patrol to administer polygraph examinations to all applicants for law enforcement positions with U.S. Customs and Border Protection, to require U.S. Customs and Border Protection to initiate all periodic background reinvestigations of certain law enforcement personnel, and for other purposes.

S. 3592. An act to designate the facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, as the ''First Lieutenant Robert Wilson Collins Post Office Building''.

The message also announced that the House has passed the following bill, with an amendment:

S. 2925. An act to establish a grant program to benefit victims of sex trafficking, and for other purposes.

ENROLLED BILLS SIGNED

At 7:20 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 1746. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency.

H.R. 4748. An act to amend the Office of National Drug Control Policy Reauthorization Act of 2006 to require a northern border counternarcotics strategy, and for other purposes.

H.R. 6412. An act to amend title 28, United States Code, to require the Attorney General to share criminal records with State sentencing commissions, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. INOUYE).

At 7:49 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has agreed to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 3082) making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

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

ENROLLED BILLS SIGNED

At 9:05 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 118. An act to amend section 202 of the Housing Act of 1959, to improve the program under such section for supportive housing for the elderly, and for other purposes.

S. 1481. An act to amend section 811 of the Cranston-Gonzalez National Affordable Housing Act to improve the program under such section for supportive housing for persons with disabilities.

H.R. 81. An act to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

Report to accompany S. 2889, a bill to reauthorize the Surface Transportation Board, and for other purposes (Rept. No. 111–380).

Report to accompany S. 3302, a bill to amend title 49, United States Code, to establish new automobile safety standards, make better motor vehicle safety information available to the National Highway Traffic Safety Administration and the public, and for other purposes (Rept. No. 111–381).

Report to accompany S. 3566, a bill to authorize certain maritime programs of the Department of Transportation, and for other purposes (Rept. No. 111–382).

By Mr. KERRY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute:

S. 1633. A bill to require the Secretary of Homeland Security, in consultation with the Secretary of State, to establish a program to issue Asia-Pacific Economic Cooperation Business Travel Cards, and for other purposes.

S. 2982. A bill to combat international violence against women and girls.

S. 3798. A bill to authorize appropriations of United States assistance to help eliminate conditions in foreign prisons and other detention facilities that do not meet minimum human standards of health, sanitation, and safety, and for other purposes.

By Mr. KERRY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and an amendment to the title and with an amended preamble:

S.J. Res. 37. A joint resolution calling upon the President to issue a proclamation recognizing the 35th anniversary of the Helsinki Final Act.

By Mr. KERRY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and with an amended preamble:

S. Con. Res. 71. A concurrent resolution recognizing the United States national interest in helping to prevent and mitigate acts of genocide and other mass atrocities against civilians, and supporting and encouraging efforts to develop a whole of government approach to prevent and mitigate such acts.

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. CARDIN:

S. 4051. A bill to improve, modernize, and clarify the espionage statutes contained in

chapter 37 of title 18, United States Code, to promote Federal whistleblower protection statutes and regulations, to deter unauthorized disclosures of classified information, and for other purposes; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 619

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 619, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S. 3424

At the request of Mr. DURBIN, the names of the Senator from California (Mrs. BOXER) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 3424, a bill to amend the Animal Welfare Act to provide further protection for puppies.

S. 3914

At the request of Mrs. MURRAY, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 3914, a bill to amend title VIII of the Elementary and Secondary Education Act of 1965 to require the Secretary of Education to complete payments under such title to local educational agencies eligible for such payments within 3 fiscal years.

S.J. RES. 37

At the request of Mr. CARDIN, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S.J. Res. 37, a joint resolution calling upon the President to issue a proclamation recognizing the 35th anniversary of the Helsinki Final Act.

S. CON. RES. 71

At the request of Mr. FEINGOLD, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. Con. Res. 71, a concurrent resolution recognizing the United States national interest in helping to prevent and mitigate acts of genocide and other mass atrocities against civilians, and supporting and encouraging efforts to develop a whole of government approach to prevent and mitigate such acts.

S. RES. 680

At the request of Mr. KERRY, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. Res. 680, a resolution supporting international tiger conservation efforts and the upcoming Global Tiger Summit in St. Petersburg, Russia.

AMENDMENT NO. 4851

At the request of Mr. SESSIONS, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 4851 intended to be proposed to Treaty Doc. 111–5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

AMENDMENT NO. 4904

At the request of Mr. CORKER, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of amendment No. 4904 proposed to Treaty Doc. 111–5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

AMENDMENT NO. 4913

At the request of Mr. LIEBERMAN, the name of the Senator from Tennessee (Mr. CORKER) was added as a cosponsor of amendment No. 4913 intended to be proposed to Treaty Doc. 111–5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CARDIN:

S. 4051. A bill to improve, modernize, and clarify the espionage statutes contained in chapter 37 of title 18, United States Code, to promote Federal whistleblower protection statutes and regulations, to deter unauthorized disclosures of classified information, and for other purposes; to the Committee on the Judiciary.

Mr. CARDIN. Mr. President, the current framework concerning the espionage statutes was designed to address classic spy cases involving persons who intended to aid foreign governments and harm the United States. The current framework traces its roots to the Espionage Act of 1917, which made it a crime to disclose defense information during wartime. The basic idea behind the legislation, which was upheld by the U.S. Supreme Court as constitutional in 1919, was to stop citizens from spying or interfering with military actions during World War I. The current framework was formed at a time when intelligence and national security information existed primarily in some tangible form, such as blueprints, photographs, maps, and other documents.

Our Nation, however, has witnessed dramatic changes to nearly every facet of our lives over the last 100 years, including technological advances which have revolutionized our information gathering abilities as well as the mediums utilized to communicate such information. Yet, the basic terms and structure of the espionage statutes have remained relatively unchanged since their inception. Moreover, issues have arisen in the prosecution and defense of criminal cases when the statutes have been applied to persons who may be disclosing classified information for purposes other than to aid a foreign government or to harm the United States. In addition, the statutes contain some terms which are outdated and do not reflect how information is classified by the Executive branch today.

Legal scholars and commentators have criticized the current framework, and over the years, some federal courts have as well. In 2006, after reviewing the many developments in the law and changes in society that had taken place since the enactment of the espionage statutes, one district court judge stated that ''the time is ripe for Congress'' to reexamine them. *United States* v. *Rosen*, 445 F. Supp. 2d 602, 646 E.D. Va. 2006, Ellis, J. Nearly 20 years earlier in the *Morison* case, one federal appellate judge stated that ''[i]f one thing is clear, it is that the Espionage Act statutes as now broadly drawn are unwieldy and imprecise instruments for prosecuting government 'leakers' to the press as opposed to government 'moles' in the service of other countries.'' That judge also stated that ''carefully drawn legislation'' was a ''better long-term resolution'' than judicial intervention. See *United States* v. *Morison*, 844 F.2d 1057, 1086, 4th Cir. 1988.

As Chairman of the Senate Judiciary's Terrorism and Homeland Security Subcommittee, I chaired a Subcommittee hearing on May 12, 2010, entitled ''The Espionage Statutes: A Look Back and A Look Forward.'' At that Subcommittee hearing, I questioned a number of witnesses, which included witnesses from academia as well as former officials from the intelligence and law enforcement communities, about how well the espionage statutes have been working. Since that hearing, I have been closely and carefully reviewing these statutes, particularly in the context of recent events. I am now convinced that changes in technology and society, combined with statutory and judicial changes to the law, have rendered some aspects of our espionage laws less effective than they need to be to protect the national security. I also believe that we need to enhance our ability to prosecute spies as well as those who make unauthorized disclosures of classified information if we add to the existing statutes. We don't need an Official State Secrets Act, and we must be careful not to chill protected First Amendment activities. We do, however, need to do a better job of preventing unauthorized disclosures of classified information that can harm the United States, and at the same time we need to ensure that public debates continue to take place on important national security and foreign policy issues.

As a result, I am introducing the Espionage Statutes Modernization Act, ESMA, of 2010. This legislation makes important improvements to the espionage statutes to make them more effective and relevant in the 21st century. This legislation is narrowly-tailored and balanced, and will enable the government to use a separate criminal statute to prosecute government employees who make unauthorized disclosures of classified information in violation of the nondisclosure agreements

they have entered, irrespective of whether they intend to aid a foreign government or harm the United States.

This legislation is not designed to make it easier for the government to prosecute the press, to chill First Amendment freedoms, or to make it more difficult to expose government wrongdoing. In fact, the proposed legislation promotes the use of Federal whistleblower statutes and regulations to report unlawful and other improper conduct. Unauthorized leaks of classified information, however, are harmful to the national security and could endanger lives. Thus, in addition to proposing important refinements to the espionage statutes, this legislation will deter unauthorized leaks of classified information by government employees who knowingly and intentionally violate classified information nondisclosure agreements.

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. 4051

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 ''The Espionage Statutes Modernization Act of 2010''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) As of 2010, the statutory framework with respect to the espionage statutes is a compilation of statutes that began with Act of June 15, 1917 (40 Stat. 217, chapter 30)(commonly known as the ''Espionage Act of 1917''), which targeted classic espionage cases involving persons working on behalf of foreign nations.

(2) The statutory framework was formed at a time when intelligence and national security information existed primarily in a tangible form, such as blueprints, photographs, maps, and other documents.

(3) Since 1917, the United States has witnessed dramatic changes in intelligence and national security information, including technological advances that have revolutionized information gathering abilities as well as the mediums used to communicate such information.

(4) Some of the terms used in the espionage statutes are obsolete and the statutes do not fully take into account the classification levels that apply to national security information in the 21st century.

(5) In addition, the statutory framework was originally designed to address classic espionage cases involving persons working on behalf of foreign nations. However, the national security of the United States could be harmed, and lives may be put at risk, when a Government officer, employee, contractor, or consultant with access to classified information makes an unauthorized disclosure of the classified information, irrespective of whether the Government officer, employee, contractor, or consultant intended to aid a foreign nation or harm the United States.

(6) Federal whistleblower protection statutes and regulations that enable Government officers, employees, contractors, and consultants to report unlawful and improper conduct are appropriate mechanisms for reporting such conduct.

(7) Congress can deter unauthorized disclosures of classified information and thereby protect the national security by—

(A) enacting laws that improve, modernize, and clarify the espionage statutes and make the espionage statutes more relevant and effective in the 21st century in the prosecution of persons working on behalf of foreign powers;

(B) promoting Federal whistleblower protection statutes and regulations to enable Government officers, employees, contractors, or consultants to report unlawful and improper conduct; and

(C) enacting laws that separately punish the unauthorized disclosure of classified information by Government officers, employees, contractors, or consultants who knowingly and intentionally violate a classified information nondisclosure agreement, irrespective of whether the officers, employees, contractors, or consultants intend to aid a foreign power or harm the United States.

SEC. 3. CRIMES.

(a) IN GENERAL.—Chapter 37 of title 18, United States Code, is amended—

(1) in section 793—

(A) in the section heading, by striking ''**OR LOSING DEFENSE INFORMATION**'' and inserting ''**OR, LOSING NATIONAL SECURITY INFORMATION**'';

(B) by striking ''the national defense'' each place it appears and inserting ''national security'';

(C) by striking ''foreign nation'' each place it appears and inserting ''foreign power'';

(D) in subsection (b), by inserting ''classified information, or other'' before ''sketch'';

(E) in subsection (c), by inserting ''classified information, or other'' before ''document'';

(F) in subsection (d), by inserting ''classified information, or other'' before ''document'';

(G) in subsection (e), by inserting ''classified information, or other'' before ''document'';

(H) in subsection (f), by inserting ''classified information,'' before ''document''; and

(I) in subsection (h)(1), by striking ''foreign government'' and inserting ''foreign power'';

(2) in section 794—

(A) in the section heading, by striking ''**GATHERING**'' and all that follows and inserting ''**GATHERING OR DELIVERING NATIONAL SECURITY INFORMATION TO AID FOREIGN POWERS**''; and

(B) in subsection (a)—

(i) by striking ''foreign nation'' and inserting ''foreign power'';

(ii) by striking ''foreign government'' and inserting ''foreign power'';

(iii) by inserting ''classified information,'' before ''document'';

(iv) by striking ''the national defense'' and inserting ''national security''; and

(v) by striking ''(as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978)'';

(3) in section 795(a), by striking ''national defense'' and inserting ''national security'';

(4) in section 798—

(A) in subsection (a), by striking ''foreign government'' each place it appears and inserting ''foreign power''; and

(B) in subsection (b)—

(i) by striking the first undesignated paragraph (relating to the term ''classified information''); and

(ii) by striking the third undesignated paragraph (relating to the term ''foreign government''); and

(5) by adding at the end the following:

''§ 800. Definitions

''In this chapter—

''(1) the term 'classified information' has the meaning given the term in section 1 of the Classified Information Procedures Act (18 U.S.C. App.);

''(2) the term 'foreign power' has the meaning given the term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

''(3) the term 'national security' has the meaning given the term in section 1 of the Classified Information Procedures Act (18 U.S.C. App.).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of section for chapter 37 of title 18, United States Code, is amended—

(1) by striking the item relating to section 793 and inserting the following:

''793. Gathering, transmitting, or losing national security information.'';

(2) by striking the item relating to section 794 and inserting the following:

''794. Gathering or delivering national security information to aid foreign powers.'';

and

(3) by adding at the end the following:

''800. Definitions.''.

SEC. 4. VIOLATION OF CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT.

(a) IN GENERAL.—Chapter 93 of title 18, United States Code, is amended by adding at the end the following:

''§ 1925. Violation of classified information nondisclosure agreement

''(a) DEFINITIONS.—In this section—

''(1) the term 'classified information' has the meaning given the term in section 1 of the Classified Information Procedures Act (18 U.S.C. App.); and

''(2) the term 'covered individual' means an officer, employee, contractor, or consultant of an agency of the Federal Government who, by virtue of the office, employment, position, or contract held by the individual, knowingly and intentionally agrees to be legally bound by the terms of a classified information nondisclosure agreement.

''(b) OFFENSE.—

''(1) IN GENERAL.—Except as otherwise provided in this section, it shall be unlawful for a covered individual to intentionally disclose, deliver, communicate, or transmit classified information, without the authorization of the head of the Federal agency, or an authorized designee, knowing or having reason to know that the disclosure, delivery, communication, or transmission of the classified information is a violation of the terms of the classified information nondisclosure agreement entered by the covered individual.

''(2) PENALTY.—A covered individual who violates paragraph (1) shall be fined under this title, imprisoned for not more than 5 years, or both.

''(c) WHISTLEBLOWER PROTECTION.—The disclosure, delivery, communication, or transmission of classified information by a covered individual in accordance with a Federal whistleblower protection statute or regulation applicable to the Federal agency of which the covered individual is an officer, employee, contractor, or consultant shall not be a violation of subsection (b)(1).

''(d) REBUTTABLE PRESUMPTION.—For purposes of this section, there shall be a rebuttable presumption that information has been properly classified if the information has been marked as classified information in accordance with Executive Order 12958 (60 Fed. Reg. 19825) or a successor or predecessor to the order.

''(e) DEFENSE OF IMPROPER CLASSIFICATION.—The disclosure, delivery, communication, or transmission of classified information by a covered individual shall not violate subsection (b)(1) if the covered individual proves by clear and convincing evidence that at the time the information was originally

classified, no reasonable person with original classification authority under Executive Order 13292 (68 Fed. Reg. 15315), or any successor order, could have identified or described any damage to national security that reasonably could be expected to be caused by the unauthorized disclosure of the information.

''(f) EXTRATERRITORIAL JURISDICTION.—There is jurisdiction over an offense under this section if—

''(1) the offense occurs in whole or in part within the United States;

''(2) regardless of where the offense is committed, the alleged offender is—

''(A) a national of the United States (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)));

''(B) an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))); or

''(C) a stateless person whose habitual residence is in the United States;

''(3) after the offense occurs, the offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States; or

''(4) an offender aids or abets or conspires with any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (b)(1).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 93 of title 18, United States Code, is amended by adding at the end the following:

''1925. Violation of classified information nondisclosure agreement.''.

SEC. 5. DIRECTIVE TO SENTENCING COMMISSION.

(a) IN GENERAL.—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 and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to a person convicted of an offense under section 1925 of title 18, United States Code, as added by this Act.

(b) CONSIDERATIONS.—In carrying out this section, the Sentencing Commission shall ensure that the sentencing guidelines account for all relevant conduct, including—

(1) multiple instances of unauthorized disclosure, delivery, communication, or transmission of the classified information;

(2) the volume of the classified information that was disclosed, delivered, communicated, or transmitted;

(3) the classification level of the classified information;

(4) the harm to the national security of the United States that reasonably could be expected to be caused by the disclosure, delivery, communication, or transmission of the classified information; and

(5) the nature and manner in which the classified information was disclosed, delivered, communicated, or transmitted.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4917. Mr. HARKIN (for Mr. CARDIN (for himself, Mr. VOINOVICH, Ms. CANTWELL, Mrs. MURRAY, and Mr. INHOFE)) proposed an amendment to the bill S. 3481, to amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution.

SA 4918. Mr. CORNYN (for himself and Mr. RISCH) submitted an amendment intended to be proposed to amendment SA 4904 submitted by Mr. CORKER to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table.

SA 4919. Mr. CONRAD (for himself, Mr. BAUCUS, and Mr. TESTER) submitted an amendment intended to be proposed to amendment SA 4884 submitted by Mr. BARRASSO (for himself and Mr. ENZI) and intended to be proposed to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4920. Mr. THUNE (for himself and Mr. KYL) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4917. Mr. HARKIN (for Mr. CARDIN (for himself, Mr. VOINOVICH, Ms. CANTWELL, Mrs. MURRAY, and Mr. INHOFE)) proposed an amendment to the bill S. 3481, to amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. FEDERAL RESPONSIBILITY TO PAY FOR STORMWATER PROGRAMS.

Section 313 of the Federal Water Pollution Control Act (33 U.S.C. 1323) is amended by adding at the end the following:

''(c) REASONABLE SERVICE CHARGES.—

''(1) IN GENERAL.—For the purposes of this Act, reasonable service charges described in subsection (a) include any reasonable nondiscriminatory fee, charge, or assessment that is—

''(A) based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution (in terms of quantities of pollutants, or volume or rate of stormwater discharge or runoff from the property or facility); and

''(B) used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.

''(2) LIMITATION ON ACCOUNTS.—

''(A) LIMITATION.—The payment or reimbursement of any fee, charge, or assessment described in paragraph (1) shall not be made using funds from any permanent authorization account in the Treasury.

''(B) REIMBURSEMENT OR PAYMENT OBLIGATION OF FEDERAL GOVERNMENT.—Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, as described in subsection (a), shall not be obligated to pay or reimburse any fee, charge, or assessment described in paragraph (1), except to the extent and in an amount provided in advance by any appropriations Act to pay or reimburse the fee, charge, or assessment.''.

SA 4918. Mr. CORNYN (for himself and Mr. RISCH) submitted an amendment intended to be proposed to amendment SA 4904 submitted by Mr. CORKER to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

On page ____ of the amendment, between lines ____ and ____, insert the following:

(____) PRESIDENTIAL CERTIFICATION REJECTING INTERRELATIONSHIP BETWEEN STRATEGIC OFFENSIVE AND STRATEGIC DEFENSIVE ARMS.—The New START Treaty shall not enter into force until the President certifies to the Senate and notifies the President of the Russian Federation in writing that the President rejects the following recognition stated in the preamble to the New START Treaty: ''Recognizing the existence of the interrelationship between strategic offensive arms and strategic defensive arms, that this interrelationship will become more important as strategic nuclear arms are reduced, and that current strategic defensive arms do not undermine the viability and effectiveness of the strategic offensive arms of the Parties''.

(____) PRESIDENTIAL CERTIFICATION REGARDING ADDITIONAL GROUND-BASED INTERCEPTORS.—The New START Treaty shall not enter into force until the President certifies to the Senate and notifies the President of the Russian Federation in writing that the President intends to continue to improve and modernize the United States ground-based midcourse defense system, including—

(A) two-stage interceptors that could be deployed in Europe if the Iranian ICBM threat emerges before Phases 3 and 4 of the Phased Adaptive Approach are ready; and

(B) three stage ground-based interceptors in the United States, including additional missiles for testing and emergency deployment, as necessary.

SA 4919. Mr. CONRAD (for himself, Mr. BAUCUS, and Mr. TESTER) submitted an amendment intended to be proposed to amendment SA 4884 submitted by Mr. BARRASSO (for himself and Mr. ENZI) and intended to be proposed to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation of Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

On page 2 of the amendment, beginning on line 3, strike ''that—'' and all that follows through line 7 and insert ''that the Department of Defense will maintain not fewer than 450 deployed and non-deployed ICBM launchers silos for the duration of the treaty.''

SA 4920. Mr. THUNE (for himself and Mr. KYL) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation of Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the resolution of ratification, add the following:

(11) RUSSIAN COOPERATION ON IRAN.—(A) In giving its advice and consent to ratification of the New START Treaty, the Senate has accepted and relied upon the representation

of President Barack Obama, including the statement on November 18, 2010, that ''[t]he New START treaty is also a cornerstone of our relations with Russia'' for the reason that ''Russia has been fundamental to our efforts to put strong sanctions in place to put pressure on Iran to deal with its nuclear program''. Accordingly, the advice and consent of the Senate to ratification of the New START Treaty is conditioned on the expectation that the Russian Federation will cooperate fully with United States and international efforts to prevent the Government of Iran from developing a nuclear weapons capability.

(B) Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that—

(i) the Russian Federation is in full compliance with all United Nations Security Council Resolutions relating to Iran;

(ii) the Government of the Russian Federation has assured the United States that neither it nor any entity subject to its jurisdiction and control will—

(I) transfer to Iran the S-300 air defense system or other advanced weapons systems or any parts thereof; or

(II) transfer such items to a third party which will in turn transfer such items to Iran;

(iii) the Government of the Russian Federation has assured the United States that neither it nor any entity subject to its jurisdiction and control will transfer to Iran goods, services, or technology that contribute to the advancement of the nuclear or missile programs of the Government of Iran; and

(iv) the Government of the Russian Federation has assured the United States that it will support efforts at the United Nations Security Council and elsewhere to increase political and economic pressure on the Government of Iran to abandon its nuclear weapons program.

(C) Each annual report submitted pursuant to paragraph (10) shall include a certification by the President that between the date the New START Treaty entered into force and December 31, 2011, or, in subsequent reports, during the previous year—

(i) the Russian Federation was in full compliance with all United Nations Security Council Resolutions relating to Iran;

(ii) neither the Government of the Russian Federation nor any entity subject to its jurisdiction and control has, with the knowledge of the Government of the Russian Federation, transferred to Iran the S-300 air defense system or other advanced weapons systems;

(iii) neither the Government of the Russian Federation nor any entity subject to its jurisdiction and control has, with the knowledge of the Government of the Russian Federation, transferred to Iran goods, services, or technology that contribute to the advancement of the nuclear weapons or missile programs of Iran; and

(iv) the Russian Federation has supported efforts at the United Nations Security Council and elsewhere to increase political and economic pressure on the Government of Iran to abandon its nuclear weapons program, and has not sought to weaken initiatives aimed at increasing such pressure.

(D) If in any annual report submitted pursuant to paragraph (10) the President fails to make the certification described in subparagraph (C), then the President shall—

(i) consult with the Senate regarding the implications of the Russian Federation's actions for the national security interests of the United States;

(ii) seek on an urgent basis a meeting with the Russian Federation at the highest diplomatic level with the objective of persuading the Russian Federation to fully support United States and international efforts to prevent the Government of Iran from developing a nuclear weapons capability; and

(iii) submit a report to the Senate promptly thereafter, detailing—

(I) whether adherence to the New START Treaty remains in the national security interests of the United States; and

(II) how the United States will redress the impact of the actions of the Russian Federation on the national security interests of the United States.

At the end of subsection(c), add the following:

(14) RUSSIAN COOPERATION ON IRAN.—It is the sense of the Senate that failure by the Russian Federation to cooperate with United States and international efforts to prevent Iran from developing a nuclear weapons capability would lead to an increased threat to the United States and its allies, undermining the long-term foundation of the New START Treaty.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. CASEY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on December 21, 2010 at 2:30 p.m.

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

ORDER OF PROCEDURE

Mr. KERRY. Madam President, I ask unanimous consent to proceed as in legislative session and as in morning business to process some cleared legislative items.

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

FEDERAL WATER POLLUTION CONTROL ACT

Mr. HARKIN. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 715, S. 3481.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3481) to amend the Federal Water Pollution Control Act to clarify Federal responsibility for storm water pollution.

There being no objection, the Senate proceeded to consider the bill.

Mr. HARKIN. Madam President, I ask unanimous consent that a Cardin amendment, which is at the desk, be agreed to, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the bill be printed in the RECORD, as if read.

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

The amendment (No. 4917) was agreed to, as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. FEDERAL RESPONSIBILITY TO PAY FOR STORMWATER PROGRAMS.

Section 313 of the Federal Water Pollution Control Act (33 U.S.C. 1323) is amended by adding at the end the following:

''(c) REASONABLE SERVICE CHARGES.—

''(1) IN GENERAL.—For the purposes of this Act, reasonable service charges described in subsection (a) include any reasonable nondiscriminatory fee, charge, or assessment that is—

''(A) based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution (in terms of quantities of pollutants, or volume or rate of stormwater discharge or runoff from the property or facility); and

''(B) used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.

''(2) LIMITATION ON ACCOUNTS.—

''(A) LIMITATION.—The payment or reimbursement of any fee, charge, or assessment described in paragraph (1) shall not be made using funds from any permanent authorization account in the Treasury.

''(B) REIMBURSEMENT OR PAYMENT OBLIGATION OF FEDERAL GOVERNMENT.—Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, as described in subsection (a), shall not be obligated to pay or reimburse any fee, charge, or assessment described in paragraph (1), except to the extent and in an amount provided in advance by any appropriations Act to pay or reimburse the fee, charge, or assessment.''.

The bill (S. 3481), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

APPLICATION OF CERTAIN ENERGY EFFICIENCY STANDARDS UNDER THE ENERGY POLICY AND CONSERVATION ACT

Mr. KERRY. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5470, received from the House and at the desk.

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

The legislative clerk read as follows:

A bill (H.R. 5470) to exclude an external power supply for certain security or life safety alarms and surveillance system components from the application of certain energy efficiency standards under the Energy Policy and Conservation Act.

There being no objection, the Senate proceeded to consider the bill.

Mr. KERRY. Madam President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD.

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

The bill (H.R. 5470) was ordered to a third reading, was read the third time, and passed.

INDIAN PUEBLO CULTURAL CENTER CLARIFICATION ACT

Mr. KERRY. Madam President, I ask unanimous consent that the Senate

proceed to the immediate consideration of Calendar No. 720, H.R. 4445.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4445) to amend Public Law 95–232 to repeal a restriction on treating as Indian country certain lands held in trust for Indian pueblos in New Mexico.

There being no objection, the Senate proceeded to consider the bill.

Mr. KERRY. Madam President, I further ask that the bill be read three times and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4445) was ordered to a third reading, was read the third time, and passed.

AUTHORIZING LEASES OF UP TO 99 YEARS FOR LANDS HELD IN TRUST FOR OHKAY OWINGEH PUEBLO

Mr. KERRY. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 701, S. 3903.

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

The legislative clerk read as follows:

A bill (S. 3903) to authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 3903

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

SECTION 1. OHKAY OWINGEH PUEBLO LEASING AUTHORITY.

[(a) AUTHORIZATION FOR 99-YEAR LEASES.—**]**Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)), is amended in the second sentence by inserting ''and lands held in trust for Ohkay Owingeh Pueblo'' after ''of land on the Devils Lake Sioux Reservation,''.

[(b) APPLICATION.—The amendment made by subsection (a) shall apply to any lease entered into or renewed after the date of the enactment of this Act.**]**

Mr. KERRY. Madam President, I further ask that the committee-reported amendments be agreed to, the bill as amended be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements be printed in the RECORD.

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

The committee amendments were agreed to.

The bill (S. 3903), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3903

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

SECTION 1. OHKAY OWINGEH PUEBLO LEASING AUTHORITY.

Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)), is amended in the second sentence by inserting ''and lands held in trust for Ohkay Owingeh Pueblo'' after ''of land on the Devils Lake Sioux Reservation,''.

SIGNING AUTHORITY

Mr. KERRY. Madam President, I ask unanimous consent that Senator WEBB be authorized to sign any duly enrolled bills or joint resolutions beginning December 27 through 11:59 a.m., Monday, January 3, 2011.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDERS FOR WEDNESDAY, DECEMBER 22, 2010

Mr. LEVIN. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9 a.m., on Wednesday, December 22; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate proceed to executive session and resume consideration of the New START treaty; and finally, I ask that the time during adjournment or period of morning business count postcloture.

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

PROGRAM

Mr. LEVIN. Madam President, cloture was invoked on the New START treaty today. We hope we will be able to reach an agreement to yield back some of the postcloture debate time. We will also continue to work on an agreement to consider the 9/11 health legislation and a number of other executive nominations.

We also would hope that we can complete work on the Defense authorization bill tomorrow morning as well, early in the day, hopefully, right around 9 o'clock.

Senators will be notified when any votes are scheduled.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. LEVIN. Madam 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 11:05 p.m., adjourned until Wednesday, December 22, 2010, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Tuesday, December 21, 2010:

THE JUDICIARY

BENITA Y. PEARSON, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO.

WILLIAM JOSEPH MARTINEZ, OF COLORADO, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLORADO.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.