Justice Graves also has considerable judicial experience. He was appointed to Mississippi Circuit Court judge in 1991 and was re-elected twice. Since 2001, Justice Graves has served on the Mississippi Supreme Court and has authored 151 majority opinions for the court and 92 concurring or dissenting opinions. The American Bar Association Standing Committee on the Federal Judiciary unanimously rated him ''Qualified.''

I also rise in support of Judge Edward Davila to be U.S. district judge for the Northern District of California. With today's vote, we will have confirmed 7 of President Obama's nominees to the district courts of California. Judge Davila received his B.A. from California State University, San Diego and his J.D. from University of California's Hastings College of the Law. A majority of the American Bar Association Standing Committee on the Federal Judiciary rated him ''Qualified.''

Judge Davila began his career at the Santa Clara County Public Defender before entering private practice. He represented criminal defendants in State and Federal courts. In August 2001, Governor Gray Davis appointed Judge Davila to the Superior Court of California, County of Santa Clara, a trial court of general jurisdiction. Judge Davila was re-elected without opposition twice.

We are making good progress in considering judicial nominations. I am pleased the chairman and I have been able to move forward. We are filling judicial vacancies, with a particular focus on judicial emergencies. We are working in a manner that treats each nominee in a fair manner and permits each Senator to thoroughly review the qualifications of each nominee.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative proceeded to call the roll.

Mr. LEAHY. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. LEAHY. Mr. President, we are prepared to yield back any time on this side. I understand from my colleague that they will yield back on their time.

Parliamentary inquiry: Is the first nomination the Graves nomination?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. It is my understanding there is not a request for a rollcall vote on that one.

The PRESIDING OFFICER. If all time is yielded back, the question is, Will the Senate advise and consent to the nomination of James E. Graves, Jr., of Mississippi, to be a U.S. circuit judge for the Fifth Circuit?

The nomination was confirmed.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Edward J. Davila, of California, to be a U.S. district judge for the Northern District of California?

Mr. LEAHY. 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 Massachusetts (Mr. KERRY), the Senator from Maryland (Ms. MIKULSKI), the Senator from Arkansas (Mr. PRYOR), and the Senator from New Mexico (Mr. UDALL) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BLUNT), the Senator from South Carolina (Mr. DEMINT), and the Senator from South Carolina (Mr. GRAHAM).

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

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 15 Ex.]

YEAS—93

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

NOT VOTING—7

Blunt	Kerry	Udall (NM)
DeMint	Mikulski	
Graham	Pryor	

The nomination was confirmed.

The PRESIDING OFFICER (Mr. MANCHIN). Under the previous order, the motion to reconsider is considered made and laid upon the table.

VOTE EXPLANATION

Mr. KERRY. Mr. President, I was necessarily absent for the vote on the nomination of Edward Davila to be U.S. district judge for the Northern District of California. If I were able to attend today's session, I would have supported the nominee.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The majority leader.

FAA AIR TRANSPORTATION MODERNIZATION AND SAFETY IMPROVEMENT ACT—Continued

Mr. REID. For the information of all Senators, there will be no more votes tonight. I have had a number of conversations with the Republican leader today. We are going to have one or two votes before our caucus lunches tomorrow. We will have a number of votes set up after the caucus luncheons. We want to finish this bill as quickly as we can, which will be this week. I know a number of people are waiting around for votes. I know Senator PAUL is waiting around for a vote on his amendment tomorrow afternoon, and I know Senator NELSON of Nebraska and Senator WICKER have amendments we are trying to get a vote on. We are trying to move to those as soon as we can.

Anyway, we are going to have some votes tomorrow. No more votes tonight.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that the distinguished senior Senator from Oklahoma and I be recognized for a total of 6 minutes evenly divided.

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

Mr. LEAHY. I yield to the Senator from Oklahoma.

AMENDMENT NO. 6 WITHDRAWN

Mr. INHOFE. Mr. President, Senator LEAHY and I have two amendments. He has Leahy amendment No. 50 and my amendment is No. 6. I say to my friend from Iowa, I will just be a few minutes, as he was kind enough to allow us to do this first.

This has to do with the liability of those individuals who are making their own sacrifice to help people in distress. It is something that those of us who are pilots have done—helping individuals in being relieved of some of the individual liability that might be incurred. The Leahy amendment goes a little further than mine, but I am satisfied with his. So what I wish to do is request unanimous consent to withdraw my amendment No. 6 that gives liability protection to volunteer pilots and organizations, as well as request to be added as a cosponsor to the Leahy amendment No. 50. We have been in negotiations for a number of weeks. In fact, we were even last year. I think we

have reached an agreement we both find acceptable.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Vermont.

Mr. LEAHY. Mr. President, the distinguished Senator from Oklahoma and I worked together to advance both of these amendments in a bipartisan way. We worked together during the last year, and we are working together again this year.

Our amendment closes a gap in our Public Safety Officers Benefits Act for emergency service providers by extending Federal benefits to emergency service providers who die or are disabled in the line of duty and who work for private, nonprofit emergency services organizations.

A tragedy in Vermont 2 years ago highlighted this issue. First responder Dale Long from Bennington, VT, was Bennington Rescue Squad's 2008 EMT of the Year and a 2009 recipient of the American Ambulance Association's Star of Life Award. Shortly after that ceremony, he was killed in the line of duty. Given the private, nonprofit status of his ambulance service, he is ineligible for Federal death benefits.

The Judiciary Committee—all Republicans, all Democrats—unanimously approved this legislation last Congress. The Leahy-Inhofe amendment is fully paid through an included offset.

The distinguished Senator from Oklahoma and I have talked about this. He comes from a part of the country where people have to fly to rescue. We drive to rescue. We are much smaller. They fly. Either way, we ought to be doing something to protect the people who are out there trying to rescue or aid people in distress.

I am proud to join with Senator INHOFE, and I hope at some appropriate time the amendment, as now amended, will be accepted.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I will respond by saying that on numerous occasions in my 55 years of flying airplanes, I have done a lot of Good Samaritan things. It never really occurred to me, but one time I went all the way down to Dominica, near Caracas, Venezuela—I was telling the Senator from Iowa about it—leading 10 planes. Eight of us made it down and back. That is something we did not have to do, but no one else would do it.

I believe we can encourage a lot more people to do these Good Samaritan duties if we give them a little bit of relief from liability.

I ask unanimous consent that after the Senator from Iowa makes his remarks, I be recognized for up to 10 minutes as in morning business.

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

Mr. LEAHY. I yield back any time remaining.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I wish to discuss for a few moments a few amendments that are pending that I think would undermine the basic rights and protections of American workers. In these difficult economic times, working families are struggling enough. Wages are stagnant. In fact, I saw a report the other day that, in real terms, if you take inflation into account, wages right now for working men and women are about where they were in 1974—almost 40 years. Job security is harder to find. More and more companies facing financial pressures are deciding to cut corners on fundamentals such as worker safety.

Now more than ever, workers need the basic protections our laws provide. The last thing we need to do is take a step backward and make working people even more vulnerable than they are today, especially in terms of their safety and health. That is exactly what the Wicker amendment and the Paul amendment would do for two groups of very dedicated people—flight crews and transportation security officers who work every day to keep us safe when we travel.

First, the Paul amendment would undermine valuable safety and health protections for flight crews. I do not think it would come as a surprise to any of us that working on an airplane could be a dangerous job. According to the Bureau of Labor Statistics, flight attendants, as well as other employees in the air transportation industry, suffer occupational injuries and illnesses at rates far higher than workers in nearly every other sector of private industry. This industry raises unique safety challenges, and we need to make special efforts to keep these workers safe on the job.

The Federal Aviation Administration regulates all workplace safety issues on airplanes. However, at Congress's urging, FAA has entered into a memorandum of understanding with the Occupational Safety and Health Administration that is supposed to facilitate consultation and coordination between the two agencies about safety issues. This is entirely appropriate since the Occupational Safety and Health Administration has the expertise in this area. But that coordination has not been effective in recent years. While a 2000 OSHA/FAA report identified areas where flight crew safety could be improved, after that report, coordination essentially stopped, and the FAA has failed to take additional action to review and implement the recommended workplace safety standards.

The bill we are considering on the floor would restore and improve the level of coordination between the FAA and OSHA so that they can complete the valuable work outlined in that memorandum of understanding. It would basically require the two agencies to put their heads together and consider whether any OSHA standards should properly be applied to people working on aircrafts.

I wish to be very clear on this point. The bill does not supplant FAA's authority. OSHA would not be conducting investigations or issuing fines for FAA-covered employees. That is the sole purview of the FAA. All the bill says is that the two agencies should continue to talk and to coordinate. This seems to be eminently sensible. It simply defies explanation to preclude this kind of coordination, and it could put workers' lives and workers' safety at risk.

For example, flight crews are currently exposed to a variety of dangerous chemicals, including jet fuel vapors, compressed oxygen, commercial cleaning agents, deicing chemicals. Yet there is no current rule requiring that the employees be informed of hazardous materials in their workplace.

OSHA has a safety standard about hazard communication requiring that workers be informed of such hazardous materials. This simple, easy-to-comply-with standard saves workers' lives. The 2000 report I referred to earlier found that FAA could implement the OSHA standard on hazard communication without any implications for flight safety. But what has happened? Absolutely nothing. Despite finding that the OSHA standard could improve safety for airline employees and that it would not impact aviation safety, the cooperative effort stalled in its tracks. This bill would resuscitate that cooperation. This is just one of a number of important reforms that would improve workplace safety without compromising flight safety. Hard-working flight attendants and other flight crew workers deserve our best efforts to make these reforms a reality.

Again, I wish to make one point very clear. The legislation does not change or undermine FAA's role at all. It simply fosters cooperation between two government agencies—one that has a lot of technical expertise, the other one which has the jurisdiction.

Again, I think this would be something where one would say: Sure, they should cooperate and communicate. The amendment before us would undermine a common sense practice—collaboration between agencies—and would make people less safe on the job. I urge my colleagues to protect the safety of our workers by opposing this amendment.

I am equally concerned about the impact the amendment by Senators WICKER and COLLINS would have on the hard-working people who keep our airports and planes safe. I have spoken about this amendment before. I would like to bring it up again.

In legislation creating the Transportation Security Administration, TSA, Congress gave TSA the right to determine whether transportation security officers, TSOs, have the right to collectively bargain. Those are the people we see every time we go through the airport. They check our IDs. They run the machines and check our bags. These are the transportation safety officers.

The Transportation Security Administration found that collective bargaining could improve security by addressing the agency's chronic low morale and employee engagement. However, certain subjects remain off limits for bargaining, including pay, deployment, training, and any TSA emergency response measures. Right now, the TSOs, under what the TSA wanted to do, would be allowed to collectively bargain but for those certain items. As I said, they could not collectively bargain on pay or deployment or training or emergency response measures.

As I mentioned when I previously addressed this issue on the Senate floor, a recent ''best places to work'' survey ranked the TSA 220 out of 224 Federal employers. The agency's turnover and injury rates are among the highest for any Federal agency. Low morale and high turnover at a front-line security agency are a recipe for disaster.

TSA determined that collective bargaining will address those problems and improve the agency's ability to fulfill its mission. The TSA's decision is well reasoned and sound. It states that a ''one-size-fits-all model of labor relations that undermines initiative and flexibility would not serve TSA or its workforce well.'' That is exactly what this amendment by Senators WICKER and COLLINS would do. It would lock into place one model of labor relations—the most adversarial model—that is most harmful to employee morale. As I just said, we know employee morale at the TSO level is very low, and there is a very high turnover rate.

While my colleagues who support this amendment cite concerns about disruptions to security procedures, the agency believes—and I agree—that those concerns are misguided.

First and foremost, I question the assumption underlying this concern: that men and women who take a job protecting our Nation would cast that duty aside if they were granted basic labor concessions such as collective bargaining. I think that is an insult to every man and woman in uniform who works under collective bargaining agreements across this country. To suggest unionized security personnel are somehow less effective, less dedicated, less willing to put their lives on the line in an emergency is just plain scandalous. Most Federal security employees, including Border Patrol personnel, Immigration and Customs officials, our Capitol police officers who protect us, Federal Protective Services officers—they all have collective bargaining rights.

I always point out that famous picture of September 11, 2001, when that awful tragedy happened in New York and those buildings came down and we saw the thousands of people running away from this disaster and the buildings falling down, while running into the buildings were our police, our firefighters, and our emergency personnel. Those workers were members of a union and covered by a collective bargaining agreement. Did they shirk their duty? Did they shirk their responsibility? Not a bit. We are proud of them. Why should TSOs be any different?

Again, the exclusion of deployment and training and emergency response measures from bargaining will prevent any disruptions to security procedures.

I firmly believe collective bargaining is the best way to bring dignity, consistency, and fairness to a workplace. It will make our TSO workforce safer and more stable. Restoring these essential rights is long overdue. I urge my colleagues to oppose the Wicker-Collins amendment.

Finally, while I think it is critically important that the bill we are considering must not be a vehicle for rolling back worker protections, I regret that it will not be a vehicle to correct an outrageous attack on workers' rights that was enacted on this legislation in 1996.

In a rider to the 1996 FAA reauthorization bill, Congress made it harder for employees of an express carrier to organize a union in order to unfairly advantage one company—FedEx Express. The bill carved out employees of an express carrier delivery company—which meant only one company: FedEx—from coverage under the National Labor Relations Act and placed them under the Railway Labor Act. As a result, it is much more difficult for FedEx employees to organize and bargain collectively. What is the difference? Under the National Labor Relations Act, workers can act locally in seeking to organize and bargain collectively. Under the Railway Labor Act, workers must organize nationally—an enormous challenge in today's labor environment, especially for workers who do not necessarily work in mobile industries. Under the current law, if package sorters in Des Moines, for example, want to organize a union, they would have to go to New York and Georgia and Texas and California to get every warehouse worker in the country to join them, which is obviously extremely difficult.

This quirk in the law is not only illogical, it is the worst kind of political favoritism. Why do I say that? Obviously because one of the biggest competitors of FedEx is United Parcel Service. United Parcel Service is under the National Labor Relations Act. Not every single one of their employees is unionized, but they are allowed to organize and bargain collectively locally. In certain States that are covered by union shop, then they would all be covered. In a State such as Iowa, which is a right-to-work State, some of the employees of United Parcel Service would be members of a union and some would not. But they would all be covered by a collective bargaining agreement.

United Parcel Service workers, doing the same exact job as FedEx workers, can organize and bargain collectively locally. FedEx workers cannot because they are under the Railway Labor Act, not the National Labor Relations Act. That was a rider to this bill in 1996 to favor one company. Again, identical jobs for FedEx and another company, different rights under the law—that is unfair. Congress should ensure that companies compete on a level playing field. We should not be picking favorites, especially not by silencing the voices of employees of one company.

In past Congresses, I have introduced legislation to eliminate this special treatment and ensure that employees who have nothing to do with air transport have all the rights they are entitled to under the National Labor Relations Act. There are tens of thousands of truckdrivers and warehouse employees who have nothing to do with airline travel, and the rules of the game are rigged against them.

I had hoped this bill would provide an opportunity to right these past wrongs, but I know it is important to complete our work on the FAA reauthorization in short order. This bill will create hundreds of thousands of jobs. It will make crucial investments in our Nation's infrastructure. As a pilot myself—and my friend from Oklahoma has been flying even longer than I have, I think, but we have both been flying for a long time—I have been waiting for the NextGen to come on board because it will enhance flight safety and make it a lot easier for our general aviation pilots to fly in this environment and it is important to get the bill done. So that is why I support the bill.

Again, I had hoped we would address this inequity that exists as regards the Federal Express, but we did not, so we will have to carry on the battle on another bill on another day. It is just an issue of fundamental fairness for workers, so I expect that we will revisit this again in the future.

I thank my friend from Oklahoma for being so patient, and I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Before my friend from Iowa leaves the floor, when he talked about NextGen, I can remember—and he can remember—years ago, when we first flew, there was nothing but low frequency out there, and we used to shoot those low-frequency approaches. Then they came along with VORs, and I thought this has to be the end of it. Then they came along with RNAV. They could pick up a VR and move it over here. What more could they ever do than that? Then LORAN came along and then GPS. So I quit saying they can't get better because now there is hardly a runway in the world you can't shoot an instrument approach on using GPS. I flew an airplane around the world, all across Siberia—bad weather all the way—and I shot my approaches with GPS. You could train a chimpanzee to do it with a GPS.

I agree with my friend from Iowa. We are anxious for NextGen and these opportunities we have that are coming up to enhance the safety and abilities of general aviation along with commercial aviation.

Mr. HARKIN. If my friend would yield just for a second, I would just tell him the first plane I owned had an old—I called it a coffee grinder in it, you would get the ANN—annuls—and that would take you into the airport. So I can remember those days quite well. Thank God we have GPS now.

Mr. INHOFE. I thank my friend.

Mr. President, a few minutes ago I talked about two amendments I had in the FAA bill. One was what I would call the Good Samaritan amendment. We have talked about this for years. Senator LEAHY and I have come to an agreement. I would like to have it go further and offer liability protection beyond just the pilots who might be offering their services, as my friend from Iowa and I have done many times at our own expense because no one else would do it.

I would say to the occupier of the chair, it wasn't that many years ago there was a horrible hurricane that wiped out an island called Dominica, north of Caracas, Venezuela. I remember putting together 10 airplanes, general aviation airplanes, and we took doctors and nurses and generators and goods down there and food and water because nobody else would do it. This type of thing is going on all the time, and I think they should be afforded some protection from the liability laws. But I do realistically know with this compromise, we can get it passed and this would offer individuals protection.

The other amendment I have is quite different. It has to do with something called subpart S of FAR in the regulations, part 121. The Department of Defense—in the movement of many of the troops and individuals—relies on supplemental carriers. We are talking about nonscheduled carriers or charter airlines, and these are people or airlines that are nonscheduled. They come under a separate part, subpart B, and they are given some exemption from the crew rest rigid parts that affect the scheduled airlines. It is easy for a scheduled airline to have these very rigorous crew rest times because they are, as it says, scheduled. But when you get into nonscheduled, you are getting into areas where it is much more difficult.

So I wish to say two things about it. First of all, the supplemental air carriers have had a safety record that is even better than scheduled. There has never been one time in 15 years that the NTSB has cited something wrong, something that has happened with the part B or nonscheduled carriers as a result of fatigue. It hasn't happened. I often say we get too anxious to pass laws around here. I have always had the philosophy if it ''ain't'' broken, don't fix it. This is not broken, and it has worked very well. So I think their record speaks for itself.

The thing a lot of people are not aware of is if you are a nonscheduled airline, you are able to have longer rest periods, even though you may go over the 15 hours of actual flight time. So it works out, in the long range, they can do things they couldn't do otherwise.

Here is the thing not many people realize about nonscheduled airlines. The Department of Defense depends on them for 95 percent of all military passengers and 40 percent of military cargo. That is going into Iraq, Afghanistan, all throughout the danger points, and Southwest Asia, and it is expected that these new regulations will negatively impact the mission capability and increase the cost to both the carriers and to DOD.

Supplemental flights in support of the Department of Defense are carried out under control of the Air Mobility Command, which is at Fort Scott Air Force Base in Illinois. A central feature of the supplemental carrier's ability to complete these critical missions every day is the flexibility built into subpart S of the FAA regulations.

I am not offering something that is going to change how they treat subpart S. I am only going to say they currently have a rule they are considering, and this rule would do away with the distinction between subpart Q, R, and subpart S, which is nonscheduled airlines. So if we are depending upon these nonscheduled airlines to fly our troops, our cargo into these war-torn areas, then there is no other way of doing it.

You can say: Well, the Air Force can use their C–17s. Right now the Air Force's C–17s are in an OPTEMPO, where they can't take on any more missions. So you have critical things that are happening—such as flying blood into areas of combat. Let me give a couple examples. There is a regular run that goes from NATO—that is Belgium—from Belgium to Bagram, then back to Amsterdam. They are taking things such as tents, cargo, gasoline, food, and other supplies. That would be 19.6 hours. That means they can't do it. To do it, they would have to have crew rest time, and that would have to take place in Bagram. There are rules against it. You can't leave a commercial airline in Bagram. It cannot be done. So you have to figure out some way to get that cargo in and out of Bagram.

There is another regular run from Germany to Kandahar and then to Hong Kong. Well, that is 17.5 hours, so you can't do that because you can't leave your aircraft in a war zone. There is another run from Shannon to Kyrgystan and return, and that is something that is 16 hours and 15 minutes. That can't be done.

I think the one that is most critical is twice a week one carrier currently operates and takes lifesaving blood runs from McGuire Air Force Base in New Jersey to Ramstein in Germany and then to Qatar. From Qatar, they have to go all the way into Afghanistan and back, and that round trip extends beyond the 15 hours that would be allowed with a scheduled airline. So under subpart S, they can do it. We are talking about twice a week, regular runs, taking blood into areas in Afghanistan where it is critical we get it in.

So I am just saying the FAA, in promulgating the rules they are looking at right now, should take into consideration that there is a separate type of a mission that has to be performed for our young men and women in harm's way, and we can't do it unless we treat the subpart S of the rule FAR 121 from the scheduled airlines. So I am hoping we will have a chance.

My concern is this: There are a lot of people who, for some labor reasons, don't want to have anyone to have the ability to go beyond the 15 hours, even though they get more rest time. I am the only one talking about the fact we have the lives of our young men and women in harm's way at stake depending on this subpart S treatment. So this thing is very critical. I believe we should do something to make sure, if they are going to look at the rules, they at least look at the rules in a different light than just looking at them altogether, but look at subpart S and hear the testimony and see if that doesn't work, the special consideration.

THE BUDGET

Mr. President, I don't see anyone else in the Chamber waiting to talk, so I wish to make one additional comment. I was in shock when I got off the plane and read what the President came out with in his budget. I think it is unbelievable—$8.7 trillion in new spending, $1.6 trillion in new taxes, $13 trillion in new debt, the current year deficit increased by $1.6 trillion—not $1.4 or $1.5, as they talked before—and it is incredible this could be happening right now.

I wonder if he didn't get the message of last November 2; that is, people know we cannot keep extending the spending, the fact we had an increase in the first 2 years—and this came straight from the White House, from the administration—in our spending greater than all spending in the history of this country from George Washington to George W. Bush can't happen. People are talking about the deficits that took place during George W. Bush, with an average deficit of $247 billion, and that was right after trying to rebuild a military and after 9/11, when we found ourselves, for all practical purposes, in two wars. So instead of a deficit of $247 billion, the deficit in this administration has been $3 trillion in 2 years. That is inconceivable.

I thought he would come out with something, after listening to the State of the Union Message, that would start moderating and start trying to save some money, but it hasn't happened. There is spending money on everything except the military, which is the big loser. I don't know why it is that liberals never want to spend money on the military—an $80 billion cut over a 5-year period in the Department of Defense. This is right after we went through the 1990s, where we had a

drawdown of our Defense by about 40 percent, and of course we find ourselves now, after 9/11, in two wars.

So I think we need to make sure the American people realize the State of the Union Message sounded real good when he said we are going to start putting a freeze on. You know what that freeze is? The freeze is to take the nondefense discretionary spending and freeze it for 5 years. But wait a minute, that is after he increased it over 20 percent. So he increased it so we can't afford it and then he freezes it there so we can't bring it back down.

So anyway, I hope people are looking carefully and seeing what is happening. They will. If you look at what they are doing just to the oil and gas industry—and I know a lot of people in the liberal communities who want to put them out of business, and they are going to successfully do it if they pass this particular budget—I am talking about percentage depletion, the IDC—the section 199 manufacturer's deduction. By the way, the only industry under this budget that is affected negatively by that is oil and gas. All other manufacturers in industry are all right. So I hope people have a chance to look at this carefully.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 75, AS MODIFIED

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the pending amendment also be set aside to call up the Baucus amendment, No. 75, as modified.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia [Mr. ROCKEFELLER], for Mr. BAUCUS, proposes an amendment numbered 75, as modified.

Mr. ROCKEFELLER. I ask unanimous consent 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 substitute)

Strike title VIII and insert the following:

TITLE VIII—AIRPORT AND AIRWAY TRUST FUND PROVISIONS AND RELATED TAXES

SEC. 800. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 801. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND.

(a) FUEL TAXES.—Subparagraph (B) of section 4081(d)(2) is amended by striking ''March 31, 2010'' and inserting ''September 30, 2013''.

(b) TICKET TAXES.—

(1) PERSONS.—Clause (ii) of section 4261(j)(1)(A) is amended by striking ''March 31, 2010'' and inserting ''September 30, 2013''.

(2) PROPERTY.—Clause (ii) of section 4271(d)(1)(A) is amended by striking ''March 31, 2010'' and inserting ''September 30, 2013''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 2011.

SEC. 802. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY.

(a) IN GENERAL.—Paragraph (1) of section 9502(d) is amended—

(1) by striking ''April 1, 2010'' in the matter preceding subparagraph (A) and inserting ''October 1, 2013'', and

(2) by striking the semicolon at the end of subparagraph (A) and inserting ''or the FAA Air Transportation Modernization and Safety Improvement Act;''.

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 9502(e) is amended by striking ''April 1, 2010'' and inserting ''October 1, 2013''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 2011.

SEC. 803. MODIFICATION OF EXCISE TAX ON KEROSENE USED IN AVIATION.

(a) RATE OF TAX ON AVIATION-GRADE KEROSENE.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) in the case of aviation-grade kerosene, 35.9 cents per gallon.''.

(2) FUEL REMOVED DIRECTLY INTO FUEL TANK OF AIRPLANE USED IN NONCOMMERCIAL AVIATION.—Subparagraph (C) of section 4081(a)(2) is amended to read as follows:

''(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation by a person registered for such use under section 4101, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.''.

(3) EXEMPTION FOR AVIATION-GRADE KEROSENE REMOVED INTO AN AIRCRAFT.—Subsection (e) of section 4082 is amended—

(A) by striking ''kerosene'' and inserting ''aviation-grade kerosene'',

(B) by striking ''section 4081(a)(2)(A)(iii)'' and inserting ''section 4081(a)(2)(A)(iv)'', and

(C) by striking ''KEROSENE'' in the heading and inserting ''AVIATION-GRADE KEROSENE''.

(4) CONFORMING AMENDMENTS.—

(A) Clause (iii) of section 4081(a)(2)(A) is amended by inserting ''other than aviation-grade kerosene'' after ''kerosene''.

(B) The following provisions are each amended by striking ''kerosene'' and inserting ''aviation-grade kerosene'':

(i) Section 4081(a)(3)(A)(ii).

(ii) Section 4081(a)(3)(A)(iv).

(iii) Section 4081(a)(3)(D).

(C) Subparagraph (D) of section 4081(a)(3) is amended—

(i) by striking ''paragraph (2)(C)(i)'' in clause (i) and inserting ''paragraph (2)(C)'', and

(ii) by striking ''paragraph (2)(C)(ii)'' in clause (ii) and inserting ''paragraph (2)(A)(iv)''.

(D) Paragraph (4) of section 4081(a) is amended—

(i) by striking ''KEROSENE'' in the heading and inserting ''AVIATION-GRADE KEROSENE'', and

(ii) by striking ''paragraph (2)(C)(i)'' and inserting ''paragraph (2)(C)''.

(E) Paragraph (2) of section 4081(d) is amended by striking ''(a)(2)(C)(ii)'' and inserting ''(a)(2)(A)(iv)''.

(b) RETAIL TAX ON AVIATION FUEL.—

(1) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—Paragraph (2) of section 4041(c) is amended by inserting ''at the rate specified in subsection (a)(2)(A)(iv) thereof'' after ''section 4081''.

(2) RATE OF TAX.—Paragraph (3) of section 4041(c) is amended to read as follows:

''(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax in effect under section 4081(a)(2)(A)(iv) (4.3 cents per gallon with respect to any sale or use for commercial aviation).''.

(c) REFUNDS RELATING TO AVIATION-GRADE KEROSENE.—

(1) AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—Clause (ii) of section 6427(l)(4)(A) is amended by striking ''specified in section 4041(c) or 4081(a)(2)(A)(iii), as the case may be,'' and inserting ''so imposed''.

(2) KEROSENE USED IN AVIATION.—Paragraph (4) of section 6427(l) is amended by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

''(B) PAYMENTS TO ULTIMATE, REGISTERED VENDOR.—With respect to any kerosene used in aviation (other than kerosene to which paragraph (6) applies), if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay (without interest) the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(3) AVIATION-GRADE KEROSENE NOT USED IN AVIATION.—Subsection (l) of section 6427 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) REFUNDS FOR AVIATION-GRADE KEROSENE NOT USED IN AVIATION.—If tax has been imposed under section 4081 at the rate specified in section 4081(a)(2)(A)(iv) and the fuel is used other than in an aircraft, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the amount of tax imposed on such fuel reduced by the amount of tax that would be imposed under section 4041 if no tax under section 4081 had been imposed.''.

(4) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 4082(d)(2) is amended by striking ''6427(l)(5)(B)'' and inserting ''6427(l)(6)(B)''.

(B) Paragraph (4) of section 6427(i) is amended—

(i) by striking ''(4)(C) or (5)'' and inserting ''(4)(B) or (6)'', and

(ii) by striking '', (l)(4)(C)(ii), and (l)(5)'' and inserting ''and (l)(6)''.

(C) Subsection (l) of section 6427 is amended by striking ''DIESEL FUEL AND KEROSENE'' in the heading and inserting ''DIESEL FUEL, KEROSENE, AND AVIATION FUEL''.

(D) Paragraph (1) of section 6427(l) is amended by striking ''paragraph (4)(C)(i)'' and inserting ''paragraph (4)(B)''.

(E) Paragraph (4) of section 6427(l) is amended—

(i) by striking ''KEROSENE USED IN AVIATION'' in the heading and inserting ''AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION'', and

(ii) in subparagraph (A)—

(I) by striking ''kerosene'' and inserting ''aviation-grade kerosene'',

(II) by striking ''KEROSENE USED IN COMMERCIAL AVIATION'' in the heading and inserting ''IN GENERAL''.

(d) TRANSFERS TO THE AIRPORT AND AIRWAY TRUST FUND.—

(1) IN GENERAL.—Subparagraph (C) of section 9502(b)(1) is amended to read as follows:

''(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and''.

(2) TRANSFERS ON ACCOUNT OF CERTAIN REFUNDS.—

(A) IN GENERAL.—Subsection (d) of section 9502 is amended—

(i) by striking ''(other than subsection (l)(4) thereof)'' in paragraph (2), and

(ii) by striking ''(other than payments made by reason of paragraph (4) of section 6427(l))'' in paragraph (3).

(B) CONFORMING AMENDMENTS.—

(i) Paragraph (4) of section 9503(b) is amended by striking ''or'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting a comma, and by inserting after subparagraph (D) the following new subparagraphs:

''(E) section 4081 to the extent attributable to the rate specified in clause (ii) or (iv) of section 4081(a)(2)(A), or

''(F) section 4041(c).''.

(ii) Subsection (c) of section 9503 is amended by striking paragraph (5).

(iii) Subsection (a) of section 9502 is amended—

(I) by striking ''appropriated, credited, or paid into'' and inserting ''appropriated or credited to'', and

(II) by striking '', section 9503(c)(5),''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to fuels removed, entered, or sold after March 31, 2011.

(f) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—In the case of aviation-grade kerosene fuel which is held on April 1, 2011, by any person, there is hereby imposed a floor stocks tax on aviation-grade kerosene equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date on such kerosene under section 4081 of the Internal Revenue Code of 1986, as in effect on such date.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding aviation-grade kerosene on April 1, 2011, shall be liable for such tax.

(B) TIME AND METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury shall prescribe.

(3) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to the Airport and Airway Trust Fund, the tax imposed by this subsection shall be treated as imposed by section 4081(a)(2)(A)(iv) of the Internal Revenue Code of 1986.

(4) DEFINITIONS.—For purposes of this subsection—

(A) AVIATION-GRADE KEROSENE.—The term ''aviation-grade kerosene'' means aviation-grade kerosene as such term is used within the meaning of section 4081 of the Internal Revenue Code of 1986.

(B) HELD BY A PERSON.—Aviation-grade kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(C) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury or the Secretary's delegate.

(5) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to any aviation-grade kerosene held by any person exclusively for any use to the extent a credit or refund of the tax is allowable under the Internal Revenue Code of 1986 for such use.

(6) EXCEPTION FOR CERTAIN AMOUNTS OF AVIATION-GRADE KEROSENE.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on any aviation-grade kerosene held on April 1, 2011, by any person if the aggregate amount of such aviation-grade kerosene held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this subparagraph.

(B) EXEMPT AVIATION-GRADE KEROSENE.—For purposes of subparagraph (A), there shall not be taken into account any aviation-grade kerosene held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (5).

(C) CONTROLLED GROUPS.—For purposes of this subsection—

(i) CORPORATIONS.—

(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(II) CONTROLLED GROUP.—The term ''controlled group'' has the meaning given to such term by subsection (a) of section 1563 of the Internal Revenue Code of 1986; except that for such purposes the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of persons under common control if 1 or more of such persons is not a corporation.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of the Internal Revenue Code of 1986 on the aviation-grade kerosene involved shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section.

SEC. 804. AIR TRAFFIC CONTROL SYSTEM MODERNIZATION ACCOUNT.

(a) IN GENERAL.—Section 9502 is amended by adding at the end the following new subsection:

''(f) ESTABLISHMENT OF AIR TRAFFIC CONTROL SYSTEM MODERNIZATION ACCOUNT.—

''(1) CREATION OF ACCOUNT.—There is established in the Airport and Airway Trust Fund a separate account to be known as the 'Air Traffic Control System Modernization Account' consisting of such amounts as may be transferred or credited to the Air Traffic Control System Modernization Account as provided in this subsection or section 9602(b).

''(2) TRANSFERS TO AIR TRAFFIC CONTROL SYSTEM MODERNIZATION ACCOUNT.—On October 1, 2011, and annually thereafter the Secretary shall transfer $400,000,000 to the Air Traffic Control System Modernization Account from amounts appropriated to the Airport and Airway Trust Fund under subsection (b) which are attributable to taxes on aviation-grade kerosene.

''(3) EXPENDITURES FROM ACCOUNT.—Amounts in the Air Traffic Control System Modernization Account shall be available subject to appropriation for expenditures relating to the modernization of the air traffic control system (including facility and equipment account expenditures).''.

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 9502(d) is amended by striking ''Amounts'' and inserting ''Except as provided in subsection (f), amounts''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 805. TREATMENT OF FRACTIONAL AIRCRAFT OWNERSHIP PROGRAMS.

(a) FUEL SURTAX.—

(1) IN GENERAL.—Subchapter B of chapter 31 is amended by adding at the end the following new section:

''SEC. 4043. SURTAX ON FUEL USED IN AIRCRAFT PART OF A FRACTIONAL OWNERSHIP PROGRAM.

''(a) IN GENERAL.—There is hereby imposed a tax on any liquid used during any calendar quarter by any person as a fuel in an aircraft which is—

''(1) registered in the United States, and

''(2) part of a fractional ownership aircraft program.

''(b) AMOUNT OF TAX.—The rate of tax imposed by subsection (a) is 14.1 cents per gallon.

''(c) FRACTIONAL OWNERSHIP AIRCRAFT PROGRAM.—For purposes of this section—

''(1) IN GENERAL.—The term 'fractional ownership aircraft program' means a program under which—

''(A) a single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners,

''(B) 2 or more airworthy aircraft are part of the program,

''(C) there are 1 or more fractional owners per program aircraft, with at least 1 program aircraft having more than 1 owner,

''(D) each fractional owner possesses at least a minimum fractional ownership interest in 1 or more program aircraft,

''(E) there exists a dry-lease aircraft exchange arrangement among all of the fractional owners, and

''(F) there are multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

''(2) MINIMUM FRACTIONAL OWNERSHIP INTEREST.—

''(A) IN GENERAL.—The term 'minimum fractional ownership interest' means, with respect to each type of aircraft—

''(i) a fractional ownership interest equal to or greater than 1/16 of at least 1 subsonic, fixed wing or powered lift program aircraft, or

''(ii) a fractional ownership interest equal to or greater than 1/32 of a least 1 rotorcraft program aircraft.

''(B) FRACTIONAL OWNERSHIP INTEREST.—The term 'fractional ownership interest' means—

''(i) the ownership of an interest in a program aircraft,

''(ii) the holding of a multi-year leasehold interest in a program aircraft, or

''(iii) the holding of a multi-year leasehold interest which is convertible into an ownership interest in a program aircraft.

''(3) DRY-LEASE AIRCRAFT EXCHANGE.—The term 'dry-lease aircraft exchange' means an agreement, documented by the written program agreements, under which the program aircraft are available, on an as needed basis without crew, to each fractional owner.

''(d) TERMINATION.—This section shall not apply to liquids used as a fuel in an aircraft after September 30, 2013.''.

(2) CONFORMING AMENDMENT.—Subsection (e) of section 4082 is amended by inserting ''(other than an aircraft described in section 4043(a))'' after ''an aircraft''.

(3) TRANSFER OF REVENUES TO AIRPORT AND AIRWAY TRUST FUND.—Subsection (1) of section 9502(b) is amended by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting after

subparagraph (A) the following new subparagraph:

''(B) section 4043 (relating to surtax on fuel used in aircraft part of a fractional ownership program),''.

(4) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 31 is amended by adding at the end the following new item:

''Sec. 4043. Surtax on fuel used in aircraft part of a fractional ownership program.''.

(b) FRACTIONAL OWNERSHIP PROGRAMS TREATED AS NON-COMMERCIAL AVIATION.—Subsection (b) of section 4083 is amended by adding at the end the following new sentence: ''For uses of aircraft before October 1, 2013, such term shall not include the use of any aircraft which is part of a fractional ownership aircraft program (as defined by section 4043(c)).''.

(c) EXEMPTION FROM TAX ON TRANSPORTATION OF PERSONS.—Section 4261, as amended by this Act, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

''(j) EXEMPTION FOR AIRCRAFT IN FRACTIONAL OWNERSHIP AIRCRAFT PROGRAMS.—No tax shall be imposed by this section or section 4271 on any air transportation provided before October 1, 2013, by an aircraft which is part of a fractional ownership aircraft program (as defined by section 4043(c)).''.

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to fuel used after March 31, 2011.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to uses of aircraft after March 31, 2011.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall apply to taxable transportation provided after March 31, 2011.

SEC. 806. TERMINATION OF EXEMPTION FOR SMALL JET AIRCRAFT ON NON-ESTABLISHED LINES.

(a) IN GENERAL.—the first sentence of section 4281 is amended by inserting ''or when such aircraft is a turbine engine powered aircraft'' after ''an established line''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable transportation provided after March 31, 2011.

SEC. 807. TRANSPARENCY IN PASSENGER TAX DISCLOSURES.

(a) IN GENERAL.—Section 7275 (relating to penalty for offenses relating to certain airline tickets and advertising) is amended—

(1) by redesignating subsection (c) as subsection (d),

(2) by striking ''subsection (a) or (b)'' in subsection (d), as so redesignated, and inserting ''subsection (a), (b), or (c)'', and

(3) by inserting after subsection (b) the following new subsection:

''(c) NON-TAX CHARGES.—

''(1) IN GENERAL.—In the case of transportation by air for which disclosure on the ticket or advertising for such transportation of the amounts paid for passenger taxes is required by subsection (a)(2) or (b)(1)(B), if such amounts are separately disclosed, it shall be unlawful for the disclosure of such amounts to include any amounts not attributable to such taxes.

''(2) INCLUSION IN TRANSPORTATION COST.—Nothing in this subsection shall prohibit the inclusion of amounts not attributable to the taxes imposed by subsection (a), (b), or (c) of section 4261 in the disclosure of the amount paid for transportation as required by subsection (a)(1) or (b)(1)(A), or in a separate disclosure of amounts not attributable to such taxes.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable transportation provided after March 31, 2011.

SEC. 808. TAX-EXEMPT BOND FINANCING FOR FIXED-WING EMERGENCY MEDICAL AIRCRAFT.

(a) IN GENERAL.—Subsection (e) of section 147 is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply to any fixed-wing aircraft equipped for, and exclusively dedicated to providing, acute care emergency medical services (within the meaning of 4261(g)(2)).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 809. PROTECTION OF AIRPORT AND AIRWAY TRUST FUND SOLVENCY.

(a) IN GENERAL.—Paragraph (1) of section 9502(d) is amended by adding at the end the following new sentence: ''Unless otherwise provided by this section, for purposes of this paragraph for fiscal year 2012 or 2013, the amount available for making expenditures for such fiscal year shall not exceed 90 percent of the receipts of the Airport and Airway Trust Fund plus interest credited to such Trust Fund for such fiscal year as estimated by the Secretary of the Treasury.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fiscal years beginning after September 30, 2011.

Mr. ROCKEFELLER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

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

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

GALLAUDET UNIVERSITY

Mr. BROWN of Ohio. Mr. President, I rise to talk about one of America's great institutions, Gallaudet University. On July 4, 1861, President Lincoln celebrated our Nation's independence on the eve of the Civil War by declaring to Congress the principal aim of the U.S. Government should be ''to elevate the condition of men; to lift artificial weights from all shoulders; to clear the paths of laudable pursuit for all; to afford an unfettered start and a fair chance in the race of life.''

Just a few months before that President Lincoln signed into Federal law the authorization to confer collegiate degrees to the deaf and to the hard of hearing at a campus in Washington, DC. For the first time in the Nation's history and still alone to this day Gallaudet University is the only liberal arts university in the world dedicated to the pursuit of higher education for deaf and hard of hearing people. Simply put, Gallaudet is a gem, a gem for this city, a gem for our country, a gem for the world for higher education, truly a national university located a short distance from the Capitol and founded by President Abraham Lincoln.

I am one of two appointees—one from the House, one from the Senate—by statute to the board of trustees at Gallaudet University. During my tenure on the board I have met with proud alumni and supporters of Gallaudet in Ohio and in Washington.

Last Friday I was again on campus and met with members of the board, the president's cabinet, and a few students. Some people I admire a great deal, with whom I have talked about the culture of our nation's deaf communities, are Jay and Meredith Crane. Jay is a member of the Gallaudet board of trustees.

Jay and his wife Meredith are outstanding advocates for Ohio's deaf community and culture. Jay and Meredith have a son and a daughter who are deaf. They demonstrate to all of us how important a Gallaudet education can be in one's life.

Jay's son, at an event in Columbus last year, explained to us how Gallaudet is an oasis for students, students who have lived all over the country, generally integrated into a community but having a sense of isolation among people who are not deaf. Yet Jay's son, when coming to the university, talked about what an oasis Gallaudet University is for him and for his classmates.

The parents, the educators, the administrators at Gallaudet serve as role models and continue to make a difference in the lives of students. That is why the relationship between Gallaudet and our Federal Government is so important. It is why our support and encouragement of deaf and hard-of-hearing students allow them to explore new opportunities and experiences to enrich our workplaces and our communities.

The overwhelming majority of undergraduate students at Gallaudet are deaf. About half of the students at the graduate school at Gallaudet are deaf and half of them are hearing students. Many of those graduates, graduates and undergraduates in the master's program at Gallaudet, go into serving the deaf around the country. Many of them, as Jay and Meredith's son, go into other professions not directly concerned with the deaf. Jay and Meredith's son, for example, is in law school in California. Most of these students come from middle-class or working-class families.

In 2008–2009, more than 80 percent of Gallaudet students received financial aid in order to get the education they deserve. These students are talented. I will soon have a Gallaudet intern by the name of Brianna Johnson, a student at Gallaudet, who is an education and human rights justice major. She will be graduating in May 2010. She is on the dean's scholar list. She is originally from Atlanta, GA.

The Gallaudet University women's basketball team, ranked 18th in the Nation, was undefeated until, unfortunately, this past weekend when they lost to Penn State-Harrisburg. They play in the North Eastern Athletic Conference, division III. One of their guards is a graduate from the Columbus School for the Deaf in Columbus,

OH. Their head coach is Mark Ehlen. Their assistant coach came out of one of the great women's basketball programs in Ohio, Stephanie Stevens, a 2010 graduate of the University of Cincinnati. She went to Pickerington High School, which has been in the state finals and final four many times.

As we prepare our Nation to ''win the future'' and outcompete and outeducate the rest of the world, we must ensure that mission includes all Americans. The creation of Gallaudet, 140-plus years ago, helped establish a nationwide community for generations of deaf children.

Ohio's first school for the deaf was established in 1829 in a small house right near where the State House now is on Broad and Highway in Columbus. That school, the Columbus School for the Deaf for Ohio, will soon have a new campus on 200 acres on Morse Road in Columbus with convenient student housing and modern education technology and space for future expansion. Such progress demonstrates how far education for deaf and hard-of-hearing students has come, and how much farther it can go.

Last year I gave a speech on this floor honoring Gallaudet as the Senate passed a resolution commemorating the 145th anniversary of Gallaudet's charter that was authored by President Lincoln. And 141 years ago, the three members of Gallaudet's first graduating class received degrees signed by President Lincoln.

Last year, during Gallaudet's 140th commencement, 10 Ohio students graduated from Gallaudet with a degree signed by President Obama. I am concerned, though, that funding for Gallaudet may be compromised in the budget that is working its way through the House of Representatives. Gallaudet's budget has been frozen at $118 million for, I believe, 3 straight years. They have gotten no increase in Federal funding. They raise private money. They obviously charge tuition, although a huge percentage of their students, as I said, are on scholarship. The Federal money they have has not increased over the last, I believe, 3 years.

My concern is as the budget makes its way through here, we do not just help those students who are going to Gallaudet but we do understand that Gallaudet is one of our Nation's gems, a national university unlike any other, not just in the United States of America but any other university anywhere in the world. The proud alumni of Gallaudet have enriched our communities and have taught all of us the meaning of the values President Lincoln laid before us, that we educate ourselves as part of a community, full of opportunity, free of, as Lincoln said, artificial weight that works toward the good of our society.

Gallaudet is a jewel for our country. It is an honor to be on their board. It is an honor, frankly, to me, as a mission for the United States of America, that we continue to assist this great national university that is a credit to all of us.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I ask unanimous consent that the Senate resume consideration of S. 223 on Tuesday, February 15, at 11 a.m.; further that at 11:40 a.m., the Senate proceed to the consideration of the Nelson of Nebraska amendment No. 58; that a Nelson second-degree amendment, which is at the desk, be agreed to, there be up to 20 minutes of debate, equally divided, prior to a vote in relation to the amendment, as amended; that no further amendments be in order to the Nelson of Nebraska amendment prior to the vote; and that the motion to reconsider be laid upon the table and there be no intervening action or debate.

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

Mr. REID. I further ask unanimous consent that at 2:15 p.m. there be 10 minutes of debate equally divided and controlled in the usual form prior to a vote on or in relation to Wicker amendment No. 14, as modified; that all amendments covered in this agreement be subject to a 60-vote threshold; that if an amendment does not achieve 60 affirmative votes, the amendment be withdrawn; that there be no second-degree amendments in order prior to the votes; and that the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning, with Senators allowed to speak for up to 10 minutes each.

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

TRIBUTE TO ELLEN MALDONADO

Mr. INOUYE. Mr. President, it is a somewhat poorly kept secret that many of the successes of government are attributable to those who work outside of the limelight. While Senators, Cabinet Secretaries, and even the generals in our military are the public face of the policies of the United States, behind every leader is a cadre of dedicated and knowledgeable civil servants.

Today I wish to call out one name in particular. Ellen Maldonado, a professional staff member on the Senate Appropriations Committee, will soon be retiring after 30 years of government service. Ellen joined the Defense Subcommittee in 2006, brought onboard by my friend and former colleague, Senator Ted Stevens. The subcommittee, and in fact the Senate as a whole, was fortunate to find someone with such a wealth of talent and experience in the complex field of budgeting for our Armed Forces.

Ellen has worked at every level of the budgeting workforce for our military establishment. She began her career as a program analyst at the Naval Ship Research and Development Center in Carderock, MD, and rapidly progressed through the ranks in critical budgeting positions both inside and outside the beltway. Some of her most rewarding positions outside of Washington have included service at the Defense Language Institute in Monterey, CA, Air Force Special Operations Command at Hurlburt Field, and even the U.S. Embassy in Lima, Peru.

Inside the Pentagon, Ellen worked on an impressive array of budgeting issues. From revising the Army's reprogramming process to programming for military health care, from reviewing defense research and development programs to developing emergency spending requests for the wars in Iraq and Afghanistan, she has earned the respect of all of those around her. She has won a reputation of being an expert on the most arcane points of the Financial Management Regulations, as well as understanding the details of highly complex weapons systems. Ellen has been recognized for her outstanding achievements by being awarded both the Secretary of Defense Medal for Meritorious Service and the Exceptional Civilian Service Award.

Ellen's career at the Pentagon culminated in her 2005 appointment as the Director for Investment for the Comptroller of the Department of Defense. In this position, she was responsible for overseeing the budget for every stage of developing, testing, and procuring equipment for all of the military services. This position brought her into regular contact with the highest levels of the Department of Defense, as well as Congress and the Office of Management and Budget.

It is extremely fortunate for the Committee on Appropriations that we managed to lure her away from this important position in 2006. While serving on the Defense Subcommittee, Ellen has excelled in reviewing the budget proposals on critical Army, Navy, Air Force, Marine Corps, and intelligence programs. She has tackled some of the greatest national security challenges facing our country today, including an in-depth investigation into our government's cyber security efforts and exhaustive reviews of the Nation's most expensive military program in history, the Joint Strike Fighter. Her impressive track record made her a natural pick to join President Obama's transition team at the Department of Defense in 2008 and 2009.