appointee, wrote months ago to the Senate to urge the speedy confirmation of Judge Scola to address his court's overburdened schedule. I am glad we are finally able to consider his nomination today.

I hope that in the weeks ahead we can build on today's progress by considering more of the nearly two dozen well-qualified nominees still awaiting a Senate vote. This is an area where the Senate must come together to address the serious judicial vacancies crisis on Federal courts around the country that has persisted for well over 2 years. We can and must do better for the nearly 170 million Americans being made to suffer by these unnecessary Senate delays.

Mr. GRASSLEY. Mr. President, today the Senate will vote on three more judicial nominations. With these votes, we will have confirmed 14 nominees this month and 52 nominees this year. We continue to achieve great progress in committee as well. Eighty-four percent of the judicial nominees submitted this Congress have been afforded hearings. Only 78 percent of President Bush's nominees had hearings for the comparable time period during his Presidency. We have reported 76 percent of the judicial nominees, compared to only 71 percent of President Bush's nominees. In total, the committee has taken positive action on 83 of the 99 nominees submitted this Congress, or 84 percent. Overall, we have confirmed over 70 percent of President Obama's judicial nominees since he took office.

I will support the confirmation of each of the nominees today. I have a few words to say about each nominee.

Mark Raymond Hornak is nominated to be U.S. district judge for the Western District of Pennsylvania. Mr. Hornak graduated with a B.A. from the University of Pittsburgh in 1978, and with a J.D. from the University of Pittsburgh School of Law in 1981. He began his legal career as a clerk for Judge Sprouse on the Fourth Circuit. Since his clerkship, the nominee has spent his entire career at Buchanan Ingersoll & Rooney where he practices labor and employment law, representing primarily employers and public agencies.

Mr. Hornak received a unanimous ''well qualified'' rating from the American Bar Association Standing Committee on the Federal Judiciary.

Robert David Mariani is nominated to be U.S. district judge for the Middle District of Pennsylvania, a seat deemed to be a judicial emergency. He received his A.B., cum laude, from Villanova University in 1972, and his J.D. from Syracuse University College of Law in 1976. Mr. Mariani began his legal career by practicing labor, employment, commercial, real estate, civil, and criminal law. During this time, Mr. Mariani also served as the Solicitor to the Scranton-Dumore Sewer Authority.

Beginning in 1980, Mr. Mariani dedicated himself to the exclusive practice of labor and employment law. His expertise includes collective bargaining, labor arbitration, and employee pension and benefits law under ERISA and the Internal Revenue Code. Mr. Mariani has practiced before Federal and State courts, the NLRB, the EEOC, and the Pennsylvania Human Rights Campaign. He also serves as counsel to the Northeast Pennsylvania School District Health Trust and the Berks County School District Health Trust. In addition to his practice, Mr. Mariani also serves as an arbitrator, where he resolves complex labor disputes through negotiation.

Mr. Mariani received a unanimous ''well qualified'' rating from the American Bar Association Standing Committee on the Federal Judiciary.

I had some initial concerns regarding Mr. Mariani's nomination. Mr. Mariani has expressed labor policy preferences against at-will employment and in favor of card check for union employees. I asked him about these statements at his hearing and in followup questions. Based on his responses, I am willing to give him the benefit of the doubt that he will be able to be fair and impartial as a judge.

Robert N. Scola is nominated to be U.S. district judge for the Southern District of Florida, another seat deemed to be a judicial emergency. Judge Scola earned his B.A. in 1973 from Stanford University and his J.D. from Boston College of Law in 1980. From 1980 to 1986, Judge Scola served as a prosecutor in State court. He began with misdemeanor cases and finished with prosecuting first degree murder and death penalty cases.

From 1986 to 1995, Judge Scola served as a criminal defense attorney. He practiced solo for most of this time. From 1992 to 1993, he joined two other attorneys in criminal defense. Judge Scola specialized in criminal defense in both State and Federal court.

Governor Lawton Chiles appointed Judge Scola to his current position as a circuit judge for the Eleventh Judicial Circuit of Florida in and for Miami-Dade County in 1995. Since then, the circuit has elected and reelected him without opposition in 1996, 2002, and 2008. He has served in the family division, civil division, and has also served as an appellate judge for county court and administrative law cases.

Judge Scola received a unanimous ''well qualified'' rating from the American Bar Association Standing Committee on the Federal Judiciary.

The PRESIDING OFFICER. Under the previous order, the Hornak and Scola nominations are confirmed.

The question is, Will the Senate advise and consent to the nomination of Robert David Mariani, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania?

Mr. CASEY. 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 bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Wisconsin (Mr. KOHL) is necessarily absent.

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

The result was announced—yeas 82, nays 17, as follows:

[Rollcall Vote No. 169 Ex.]

YEAS—82

Akaka	Graham	Murkowski
Alexander	Grassley	Murray
Ayotte	Hagan	Nelson (NE)
Baucus	Harkin	Nelson (FL)
Begich	Hatch	Portman
Bennet	Heller	Pryor
Bingaman	Hoeven	Reed
Blumenthal	Inouye	Reid
Boxer	Isakson	Rockefeller
Brown (MA)	Johanns	Rubio
Brown (OH)	Johnson (SD)	Sanders
Cantwell	Kerry	Schumer
Cardin	Kirk	Sessions
Carper	Klobuchar	Shaheen
Casey	Kyl	Snowe
Chambliss	Landrieu	Stabenow
Coats	Lautenberg	Tester
Cochran	Leahy	Thune
Collins	Levin	Toomey
Conrad	Lieberman	Udall (CO)
Coons	Lugar	Udall (NM)
Corker	Manchin	Warner
Cornyn	McCain	Webb
Crapo	McCaskill	Whitehouse
Durbin	Menendez	Wicker
Feinstein	Merkley	Wyden
Franken	Mikulski	
Gillibrand	Moran	

NAYS—17

Barrasso	Enzi	Paul
Blunt	Hutchison	Risch
Boozman	Inhofe	Roberts
Burr	Johnson (WI)	Shelby
Coburn	Lee	Vitter
DeMint	McConnell	

NOT VOTING—1

Kohl

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.

LEGISLATIVE SESSION

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

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT OF 2012—Continued

AMENDMENT NO. 739

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided between the Senator from Arizona, Mr. MCCAIN, and the Senator from California, Mrs. BOXER, or their designees.

Mrs. BOXER. Mr. President, could we have order?

The PRESIDING OFFICER. I ask for order.

Mrs. BOXER. The reason I asked for order is because this amendment affects each and every one of you and

your constituents. The McCain amendment says to the States that they cannot use a certain section of the transportation bill for several things, including scenic or historic highway programs, including tourist centers, landscaping, or scenic beautification, historic preservation, and it goes on.

The point I want to make is this amendment is opposed by the National Association of Counties, the American Association of State Highway Transportation Officials, the National League of Cities, the National Trust for Historic Preservation, and the U.S. Travel Association. That is a nonpartisan list, and let me tell you why. The way this amendment is drafted, historic bridges could never even be repaired. The Brooklyn Bridge or other historic bridges could not be repaired and we could not control erosion. We would have major problems.

I move to table the McCain amendment.

The PRESIDING OFFICER. That motion is not in order while time is remaining.

The Senator from Arizona has 1 minute.

Mr. McCAIN. Mr. President, I have made the argument that these projects are unnecessary. We have tens of thousands of bridges that are deficient. We need to spend the money where it should be spent, and I hope my colleagues will understand that this might have been appropriate some time ago, but in this day and age, with our crumbling infrastructure, we need to put the money in the right place.

I yield the remainder of my time.

Mrs. BOXER. Mr. President, I move to table McCain amendment No. 739, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Wisconsin (Mr. KOHL) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

Further, if present and voting, the Senator from Georgia (Mr. ISAKSON) would have voted ''nay.''

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

The result was announced—yeas 59, nays 39, as follows:

[Rollcall Vote No. 170 Leg.]

YEAS—59

Akaka	Cantwell	Franken
Alexander	Cardin	Gillibrand
Baucus	Carper	Hagan
Begich	Casey	Harkin
Bennet	Coats	Hoeven
Bingaman	Cochran	Inhofe
Blumenthal	Collins	Inouye
Blunt	Conrad	Johnson (SD)
Boozman	Coons	Kerry
Boxer	Durbin	Kirk
Brown (OH)	Feinstein	Klobuchar
Landrieu	Murray	Shaheen
Lautenberg	Nelson (NE)	Stabenow
Leahy	Nelson (FL)	Tester
Levin	Pryor	Udall (NM)
Lieberman	Reed	Warner
Menendez	Reid	Webb
Merkley	Rockefeller	Whitehouse
Mikulski	Sanders	Wyden
Murkowski	Schumer	

NAYS—39

Ayotte	Hatch	Paul
Barrasso	Heller	Portman
Brown (MA)	Hutchison	Risch
Burr	Johanns	Roberts
Chambliss	Johnson (WI)	Rubio
Coburn	Kyl	Sessions
Corker	Lee	Shelby
Cornyn	Lugar	Snowe
Crapo	Manchin	Thune
DeMint	McCain	Toomey
Enzi	McCaskill	Udall (CO)
Graham	McConnell	Vitter
Grassley	Moran	Wicker

NOT VOTING—2

Isakson	Kohl

The motion was agreed to.

Mrs. BOXER. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

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

The Senator from Iowa.

UNANIMOUS CONSENT REQUEST—AUTHORITY FOR COMMITTEE TO MEET

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Wednesday, October 19, 2011, in Dirksen Room 106, for the consideration of a bill to reauthorize the Elementary and Secondary Education Act.

The PRESIDING OFFICER. Is there objection?

The Senator from Kentucky.

Mr. PAUL. Mr. President, reserving the right to object, I find it a tragedy that in the Senate we are operating in a way that allows an 868-page bill to be offered with only 48 hours to read it and approximately 1,000 pages' worth of amendments to this bill with virtually no time to even think about the amendments. I think it is precisely what is wrong with this body, that we would try to rush things through.

I have been here since January, and there have been no hearings on No Child Left Behind. I have had no hearings that involve teachers, no hearings that involve superintendents, no hearings that involve principals. I think this is an affront to the process.

As I go around my State and I talk to teachers, I have yet to meet one teacher who is in favor of No Child Left Behind. They abhor it. They hate all the stuff we are telling them to do from Washington. They want more local control.

I am one of the old-fashioned conservatives who believes that schools are and should be under local and State control. There is no provision in the Constitution for the Federal Government to be involved, period. This was part of the Republican platform for nearly 30 years, that we didn't believe in Federal control; we wanted to have local control.

I met with six teachers recently from Marion County. Some of them are special ed teachers. They like what they do. They like teaching kids who have difficulty learning and have to be taught in a different fashion in order to get through to these kids. But they showed me a cute little boy of 15 years old who has a three-word vocabulary. He was tested in world geography and then the teacher was told she is a bad teacher because the child, who has a three-word vocabulary, did poorly on testing.

This is insane, and it needs to be discussed in a rational fashion. We need to have teachers involved in the process, for goodness' sakes, principals, superintendents.

I have a letter here from the American Association of School Administrators, the National Association of Elementary School Principals, the National Education Association, the National School Boards Association, and the National Association of Secondary School Principals, and they said:

> We . . . hope that the important work of getting policy right will not be pushed to the side in a race against the clock. . . .

I feel pushed aside—an 868-page bill and 48 hours to read it. It is wrong. All I am asking for is a hearing to listen to teachers—should we not listen to the teachers—a hearing to listen to the superintendents, a hearing to listen to the principals. Let them read the bill and find out what is in the bill.

I am not going to accept what NANCY PELOSI said: You can read about it after the fact. That is the process that is going on here. Mr. President, 868 pages—when are we going to read it? After they pass it. Who has been involved in crafting this legislation? I am on the committee. Nobody asked me. Nobody consulted with me. And I think that is the same with most of the people on the committee.

The letter from this group also says:

> . . . we note that the proposed law . . . is still heavily reliant on the idea of testing every child, every year through one single high-stakes summative assessment. . . .

There are many problems. I would be in favor of getting rid of No Child Left Behind. No teachers are for it. I would like to see a survey of teachers. I would like to have the teachers do a survey of their population to ask who is in favor of No Child Left Behind before we act. I would like teachers to propose amendments to my office to fix No Child Left Behind if we are not going to scrap it. I would like to hear from the superintendents: What do you think of this 868-page bill we got yesterday or on Monday? What do you think of this bill, and how could we make it better?

We will not have time to hear from them because we are struggling to get through the 868 pages and another thousand pages of amendments. This process is rotten from the top to the bottom.

What I would ask for is that we have a hearing. Let's invite teachers to

Washington, let's invite superintendents, let's invite principals to Washington. Let's find out what they think of No Child Left Behind before we rush through an 868-page bill that no one has had time to read. This is what is wrong with Washington. This is the type of arrogance about the way Washington works that is really making us unpopular in the public's eyes.

I say fix No Child Left Behind. I say repeal it or fix it, but at least give us time to read the bill.

I object to this unanimous consent request.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Objection is heard.

The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I am sorry the Senator from Kentucky is objecting to our meeting.

I say to my friend from Kentucky, the one thing I believe both Senator ENZI and I did and other members of our committee on both sides of the aisle did to get this bill to where it is was to put aside ideology—to put aside ideology—to do what is best for our kids.

I believe the HELP Committee—on both sides of the aisle, Senator ENZI and I on both sides—has done everything possible to move the bill in a considerate, logical legislative manner. We started on this last year. I say to my friend from Kentucky, we had 10 hearings last year—10 good, long hearings. We had superintendents. We had teachers. We had principals. We had broad input from across America as to what they wanted in a reauthorization bill. I am sorry the Senator was not here last year, but the Senate is a continuing body. Does that mean every 2 years we have to start all over from scratch every time? So we had all our hearings last year. And that was cleared again with Senator ENZI and me. We talked about: Well, lets get the hearings out of the road, and this year we could focus on putting the bill together. So we had our hearings. I say to my friend, we brought in teachers, principals, superintendents from all over America.

Then, starting in January, we began a time-honored process whereby the chair and ranking member started working on putting the bill together with our professional staff. That is why we have professional staff. Senator ALEXANDER was involved in that. Other Senators were brought in—Senator BENNET, Senator FRANKEN. Others on the Republican side were brought in on that.

I would say this: The Senator from Kentucky had every day since he was sworn in in January to come to me or go to Senator ENZI and say: I am on the committee. Here is what I would like in the bill. And that would have been considered. Other Senators did that. I see two of them sitting here right now who came and said: Here is what I would like to have in the bill.

Well, I sat down with Senator ENZI. We discussed it. Some yes, some no, some modifications—we would work it out through the process as we went through. I do not know if the Senator from Kentucky went to see Senator ENZI about what he wanted in the bill. I know he did not come see me. Our doors are open. There was no secret that we were meeting about this. We started in January. Everybody on our committee, the staffs, all knew that.

That is the legislative process. When it was all done, we wanted to put together a bipartisan bill. That is what we did. I say to my friend from Kentucky, it was not filed 48 hours ago; it was filed a week ago yesterday, Tuesday. That bill was filed. It was put online. I put that bill online. So we had a whole week to look at it, and, quite frankly, what happened is we got feedback. I say to my friend, we put the bill online. We got feedback from a lot of people—the community out there—and as a result of that, we made some final changes. That is the legislative process. Senator ENZI and I worked together on a managers' amendment to incorporate some of the objections that came in during the week to make the bill even more bipartisan. We filed that managers' amendment on Monday morning at 10 o'clock. But that was not the whole bill. I put the whole bill online a week ago Tuesday. It was just the managers' amendment that was, again, a fine-tuning of it before we met in markup.

So I say the Senator from Kentucky had every opportunity to let us know what he wanted in that bill, and I never saw him. I never saw him. He never came to me. I am on the floor all the time. My door is open. My staff is available. My professional staff is available. If the Senator from Kentucky had something he wanted in the bill and it was not included, he has the right to offer an amendment.

I wanted this committee to operate in an open manner—in a manner in which we have operated in the past legislatively. If the Senator did not have something in the bill that he wanted in, he has the right to offer an amendment and to debate it and to get a vote on it in our committee.

The Senator has filed 74 amendments. We had 144 amendments filed. Under our rules, they had to be filed 48 hours before. The Senator from Kentucky filed 74 amendments. Well, now the Senator from Kentucky is objecting to our even meeting to consider his own amendments. Please, someone, explain the logic of that to the Senator from Iowa. He has the amendments. The process is open. He can offer amendments, get them debated, get them voted on. But the Senator from Kentucky is objecting to us meeting in order to even consider his amendments.

Secondly, I heard the Senator again on the floor today—and earlier, when we met earlier this morning in committee to start our process of marking up the bill—he said he wanted to do away with No Child Left Behind. That is exactly what this bill does. It gets rid of No Child Left Behind and some of the narrow proscriptions and prescriptions in the bill and does, in fact, return a lot to local control. And we build a partnership with the Federal Government and State and local governments—a better partnership than what we have had in the past. I think that is why we have a good, bipartisan bill.

Again, the Senator from Kentucky and I probably have different views on this. I understand that. That is why we have the Senate. That is why we have debates. That is why we have committee meetings and markups. If I were writing the bill, I would write a completely different bill than the Senator from Kentucky would write. He would write one completely different from mine. That is why we meet in committees. That is why we hammer these things out over a long process. You do not just shut the door and say: It is my way or no way.

I am the chairman. I am willing to listen to his amendments and have him offer them. But how can I hear his amendments, how can we consider his amendments if the Senator will not even allow us to meet under the rules of the Senate? I have no logical explanation for that.

Well, there is a lot more I could say, Mr. President, but this is just illogical. That is all I can say: It is just illogical.

I see the Senator from Colorado on his feet. I yield to the Senator from Colorado for any questions he might have.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BENNET. Mr. President, I have never done this in the 2½ years I have been in the Senate. I have not been here a long time, and I have spent a lot of time complaining about the way this place works. But I had to come to the floor to implore the Senator from Kentucky to reconsider his objection. I do it not because I have a perspective on this as a Senator; I do it because I had the honor of serving as the superintendent of the public schools in Denver for 4 years of my life and have dedicated years of my life but, more importantly, seen the dedication of the people who are working in our schools.

The Senator speaks of the tragedy of this process. I will tell you what a tragedy is. A tragedy is that only 9 of 100 children living in poverty in this country, in 2011, can expect to get a college degree—that is a tragedy; the fact that when I became superintendent in the Denver public schools, on the 10th grade math test, there were 33 African-American students proficient on that test and 61 Latinos proficient on that test—the test that, if we are honest with ourselves, which we are not, measures a junior high school standard of mathematical proficiency in Europe. That is a tragedy. It is a tragedy that there are people working in our schools right now, at 11:15 a.m. in Colorado, doing the best they can to serve our kids, and we think a 2-hour meeting is too long. That is a tragedy.

I would not have drafted the bill exactly the way it has been drafted. The chairman knows that. He and I even have disagreements about some of the things in this bill. But finally, after 2½ years, there is a bipartisan piece of legislation in front of the committee that is having the benefit of the work of the Senators who are there, and we are told that meeting for 2 hours is too long.

The Senator has every right to make his objection under the Senate rules, which the Presiding Officer has observed may need some updating. But I think if you ask yourself, why is it that we have a 12-percent approval rating, which is going down, it is because of this kind of thing.

I actually look forward to hearing the amendments of the Senator from Kentucky. I wanted to know what they were. As the chairman mentioned, there are 146 amendments that have been filed. I have some I have filed—only three or four. The Senator from Kentucky has 74 of the 140 amendments.

In the 2 hours we met today, we considered three amendments or voted on three. We were debating a Republican amendment, and I was very interested in what Senator ISAKSON had to say when our meeting came to an end. If we are going to do this in 2-hour increments, my math—I am proficient in math, thank goodness—is that it would take 60 days to do this in 2-hour increments.

Do you know why people are fed up with this place? It is because they do not think the debate we are having is about them. They think the debate we are having is about us. And do you know what. They are right about that.

The teachers all across my State, all across the district I worked in, want us to lift this burden from them—in my view, the biggest Federal overreach ever in domestic policy. That is what the bill does, not for ideological reasons but to help respond to the voices of our teachers, respond to the voices of our superintendents, respond to the voices of our parents who are sick and tired of the almost comical but to them painful measures of annual, yearly progress—the idea that we are going to label all our schools ''failing'' by 2014 because we have a completely made-up accountability standard in Washington, DC.

This bill does away with that. It does not do it in exactly the way I would want to do it, left to my own devices, but it does it in a way that can get bipartisan support in the Senate. I mean this broadly. I am not saying it in this case. When people see the political games that are being played, when they see people who are unwilling to work together, and they are killing themselves to deliver for our kids, I am not sure there is anything more backhanded we could do.

So I would beg the Senator from Kentucky to let us have the hearing, the committee meeting. Let us consider his amendments. I and all the rest—today's conversation was one of the first—I regret saying this—one of the first substantive conversations I have had in a committee hearing since I have been here.

I thank the chairman and I thank the ranking member for creating a context where that can happen. Let's have the conversation. I would be happy to meet 24 hours a day to talk about this subject with the Senator from Kentucky—24 hours a day, every day. Because if we care about the widening gap between rich and poor in this country, we cannot sustain anything remotely approaching our——

Mr. PAUL. Will the Senator yield?

Mr. BENNET. I will in 1 second—anything remotely approaching our claim to be a land of opportunity when 9 out of 100 children born in poverty can graduate with a college degree, when 91 out of 100 children who are unfortunate enough to be born poor are constrained to the margin of our democracy, the margin of our economy. I will stop here.

But to be clear about it, there are 100 seats in the Senate. When I walk into this room, I think about what if the 100 people who were here were children living in poverty in the United States. Here is how many would have a college degree. That chair. That chair. That chair. These four chairs and this one. That is it. The rest of this Chamber would be occupied by people who did not have the benefit of a college degree.

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

Mr. BENNET. Yes.

Mr. HARKIN. I believe I have the floor.

The PRESIDING OFFICER. The Senator from Iowa has the floor.

Mr. HARKIN. Again, I want—I recognize the Senator wants to speak. Let's do this in a logical, orderly manner. If people want to be here to speak, I think the Senator from Colorado made some good points. I was yielding to him for a question. I would yield if the Senator from Minnesota has a question. Then, obviously, the Senator from Kentucky will have every right to speak.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Parliamentary inquiry: Under the current structure, how long before a Member on this side can be recognized?

The PRESIDING OFFICER. A Senator cannot be recognized until the floor is relinquished.

Mr. BURR. I thank the Chair.

Mr. HARKIN. I yield to the Senator from Minnesota for a question.

Mr. FRANKEN. I thank the chairman for allowing me to ask a question. I want to know because I have only been here 2-plus years. But it seems to me that actually, from my perspective—this is my perspective—this committee has worked in a pretty functional way. It took a long time. We started having hearing on this however long ago was it, about a year and a half?

Mr. HARKIN. It started at least a year and a half ago, maybe a year and three-quarters.

Mr. FRANKEN. During this whole period, I talked with the Senator. I have asked to see the ranking member and meet with him in his office to tell him what I wanted to see in this bill. I agree with the Senator from Kentucky, who has talked about there is just one test at the end of the year and the kids do not—the teachers do not get to see the results until the kids are out the door. I think that is terrible. I am offering an amendment that the ranking member referred to today.

I have gone all around my State since I have been a committee member and talked to teachers about what they want to see to fix this or to get rid of No Child Left Behind and replace it with something that makes sense. That is exactly what we are doing. Is this not the normal order of things?

That is my question.

I went to Senator ALEXANDER and met with him in his office to explain what I wanted. My staff has been meeting every other Member—not every other Member's staff but every other Member's staff who seems to be engaged in this on both sides of the aisle, with Senator HARKIN's staff, with the committee staff, with staff from Senator ENZI's office. I keep hearing whose staff they are talking to about this piece of this amendment or that amendment or this piece is going to be in the managers' bill. I think I have spent more time on this bill than on any other bill in my time here, and nothing has stopped me from being engaged in it. I do not think there is anything that has stopped anyone in our committee from going back over the transcripts of the many hearings we had. I do that often.

So my question is: Am I wrong or has this not been conducted in a way that is actually, as these things go, pretty functional for any Member who wants to be engaged in the process? I think there is a responsibility on the behalf of committee members, and is there not a responsibility on the behalf of committee members to be active in the committee, to come to hearings, to be engaged in the process, to approach the chair, to approach the ranking member? Is that not part of our responsibility?

Mr. HARKIN. I say to my friend from Minnesota, I think that is right. If the Senator wants to be engaged in the process of legislation, then, as I say, the Senator from Minnesota has talked to me many times about what he wants in the bill. The Senator from Colorado and even Members on the Republican side have talked to me about what should be in the bill, what should not be in the bill. That is the process.

I would say to my friend from Minnesota, I have been chairman twice before, not of this committee but of the Agriculture Committee when we did major agricultural bills. One was in 2001 and the other one was in 2007, and

both times I worked with the ranking members, basically, the same kind of process. We got bipartisan bills through that were signed by President Bush both times, 2001 and in 2007. This was the process we used.

We let amendments be offered. We opened it up. No one on the committee ever raised an objection to our meeting during the Senate session. We got our jobs done. That is the way we have always done it. That is just the legislative—as I said, considerate, logical legislative process. That is the way we have always conducted it. What it does is it allows Members—Senators who are interested, as the Senator from Minnesota has been so keenly interested in this Education bill, to give them time to go to the ranking member, to go to me, to go to other Members, to see what they can get in the bill.

I say to my friend from Minnesota, I am sure we did not put in everything the Senator wanted in the bill.

Mr. FRANKEN. Absolutely not.

Mr. HARKIN. But I think the Senator has the right to offer the amendments in committee.

Mr. FRANKEN. I wish to thank the ranking member. We talk on the phone about this. We have talked over dinner about this bill. I wish to thank Senator ALEXANDER, whom I asked to come to his office. We spent a very substantive session talking exactly about how I saw this—what was wrong with No Child Left Behind and how we could essentially get rid of it and solve what it is that every teacher hates about it and what principals hate about it and what superintendents hate about it.

Senator ALEXANDER and I had some disagreements on things. But, man, I think we agreed on 80 percent of this. I think I had an 80-percent agreement—I mean, that is Senator ENZI's rule. He has this 80-percent rule, which is that we agree on 80 percent and we focus on the 20 percent. I have a 64-percent rule which is that 80 percent of the time we agree on 80 percent. We see that Senator BENNET laughed because he is proficient at math.

Mr. HARKIN. I did not know if the Senator from Kentucky wanted me to yield to him for a question to get involved in the colloquy or the Senator from North Carolina.

Mr. BURR. I would like my own time.

Mr. PAUL. I do have a question. Several Senators on the committee have said they would be happy to have meetings 24 hours a day. Why do we not have a hearing on the bill? Why do we not invite teachers, superintendents, and principals? There has been no hearing since the last election. There is no reason why we cannot.

The other question we have and we need to answer is: What do we say to the American Association of School Administrators, the National Association of Elementary School Principals, the National Education Association, the National School Boards Association, and the National Association of Secondary School Principals that say: Let's do not get pushed aside in this race against the clock.

I am not opposed to much of what is going to happen with the bill. I think No Child Left Behind has many errors and we can fix some of them. What I am opposed to is the process of giving us an 868-page bill yesterday and saying take it or leave it. We need more time to read the bill. We need these organizations that are very interested in education—it is their livelihood—to come in and make comments on this bill. That would be an open-hearing process. Anything else to me is disingenuous.

Mr. HARKIN. I will yield the floor very soon. I say to my friend from Kentucky, I will say again: We put this bill online 1 week ago Tuesday. Some of the mail the Senator is talking about, the letters came in after that because they read the bill. I think the primary objections on all those letters had to do with teacher evaluations and what we were going to do in the bill on teacher evaluations.

That is what we fixed in the managers' amendment that we laid down Monday morning. I am told—I have not seen it—but I am told the National Education Association, for example, has withdrawn from that letter because of the fix we made. That is why we put the bill online.

I said that earlier. We put it online. A lot of objections came in. We modified it in the managers' amendment to move forward on that bill. That is exactly how we do it. I say to my friend from Kentucky that we have had a whole week.

Again, my friend filed 74 amendments to the bill. How can you file 74 amendments if you haven't read the bill? It seems to me that if you file 74 amendments, you must have read the bill. I assume that last week the Senator must have read the bill and then filed 74 amendments. You cannot have it both ways—say I haven't read the bill, but here are 74 amendments. That doesn't hold together logically.

Again, I will close on this note. The Senator from Colorado is absolutely right. We are here talking about process and who is up, who is down, all of this kind of stuff. These teachers out in America who are grappling with kids who are under this burden of No Child Left Behind and these AYPs, knowing that no matter how much they progress their kids in 1 year, they are still failing—this bill relieves them of that, takes that yoke off them.

Every one of us has heard from teachers, parents, and administrators that this No Child Left Behind is not good, that it has to be fixed, and that is what our bill does. How are we going to change it and fix it if we are not even allowed to meet?

Again, I hope the Senator from Kentucky will allow us to move forward in this process and allow us to have our amendment process. I say to my friend he has another shot at this bill on the floor. We will have committee, and we will come to the floor, and amendments will be offered on the floor. That is the legislative process. No one person gets to dictate what is in this bill—not me, not Senator ENZI, not the Senator from Kentucky. But all working together collaboratively in a bipartisan fashion, I think we can move this bill forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. BURR. Mr. President, I say to my colleagues that there were a lot of blanket statements about one's level of participation. I have negotiated with the chairman of this committee for 9 months on the reauthorization of our emergency preparedness and biodefense in this country. I know what negotiations are. I know what compromise is. I know what commitment of time is. I got this bill last Friday. I will find out where it went online, or which copy went online. My staff got this bill last Friday. Yes, we have read it. We have eight amendments, which is not as voluminous as Senator RAND PAUL; but he gets that ability, as he gets the ability to be heard.

The minority's only leverage in this institution is to have an opportunity to offer amendments and to debate them. I hear what the Senator is saying, but based upon the timeframe you set—you don't get the privilege of doing that when you have to deal with the minority.

I know the chairman, for whom I have deep respect, has been here a long time, and he knows it. This could have been something very easily worked out with communications on both sides of the aisle. The fact is that, as I prepared for this markup, I was told there was an agreement, and that agreement meant the chairman and ranking member were going to hold this bill intact. There were going to be no exceptions to it. They were going to vote to make sure this bill didn't change.

That doesn't give one a lot of comfort, knowing what the outcome of amendments will be regardless of the merit of the amendments. When we started this morning, the chairman was very gracious and let me say my due for about 5 minutes. I am appreciative of that. I made it very clear to Members at that time, the only thing I asked them to do was weigh it on the merits of the amendment—my first amendment out of the chute, and it was my best shot. I will say right here on the floor, it was a damn good amendment. You know what. Lockstep we went down the line, and they proved to me that there is a deal.

You know, the next amendment was offered by Senator FRANKEN. I was the first one who stood up and said I disagree with the base text—it was offered by both of them—but I will support it. I am in year 17. Senator FRANKEN said he spent more time on this bill than any bill ever. Boy, if that is the case,

that is a sad statement about how much time we spend on legislation, because you could not have had it more than since last Tuesday, according to the chairman himself.

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

Mr. BURR. I will take questions at some point, but I patiently sat here waiting for my own time. I will use it, and then I will allow the Senator to stand and ask a question.

In the same statement, there was criticism of the participation. Apparently, I or Senator PAUL had not spent the time or hadn't devoted the time to this particular piece of legislation. I have been working on this for years. I think the chairman knows I am passionate when I get involved. It is not from a standpoint of a lack of knowledge, it is from a standpoint of trying to achieve the right end.

The chairman said very clearly that we are not going to make this perfect out of committee; we are going to have another shot at it on the Senate floor.

Let me remind my colleagues that 55 times in this Congress the majority has chosen to fill the amendment tree, meaning that no minority Member has had an opportunity to amend the legislation. How could I feel good about a truncated markup process that happens 4 days after I physically got an 868-page bill, when the caveat that I am given is: Oh, but you will have another opportunity to do it on the floor? Maybe, maybe not. I don't think the chairman can make an assurance to me that we are going to have an open rule on the Senate floor that allows unlimited amendments. If he can, I will yield to him for that consent. It is above his pay grade. It is above mine, too. That decision won't be made by the chairman or ranking member, and it won't be made because somebody is trying to perfect the bill.

I learned a long time ago that coming to the Senate floor and screaming doesn't do any good. It wakes people up in the gallery, and people at home think this must be important. This is about our kids. This is about whether K–12 education works. There is one takeaway we can all make: No Child Left Behind was well-intended legislation, and it was implemented poorly, embraced by very few. North Carolina happened to be a State that received a tremendous amount of waivers. We got a waiver from Average Yearly Progress because our State had a yardstick that was actually better, and the Secretary of Education recognized that. It didn't, through those waivers, change any of the Federal intrusion into K–12.

Let me explain what I mean. We have right now about 93 education programs that are authorized; not all of them are funded. If your system determines that you can use one of those programs, you can access that money. But if there is not a program for what your problem is, you don't get a shot at the money. I suggested through legislation that we take all of those programs and throw them into two pots and give States full flexibility to decide how they use the money.

This bill—they talk about flexibility. Well, it does eliminate the title of 40 programs, and it throws them into 6 new major mega-education programs—still with the strings. You have to spend it the way we design it in Washington, not the way you interpret it at home. And for a superintendent, that should not settle real well—flexibility versus prescription. One way is Federal intrusion into local education. The other is a partnership for education success.

Having gone with this one-size-fits-all called No Child Left Behind, I would think the natural swing would be, gee, if we want to fix education, why don't we enlist educators, superintendents, and principals in this bill? The 868 pages that we are going to debate—it will happen; minority rules can only last so long, and we will be marking this bill up and, hopefully, it will come to the floor and we will get an opportunity to amend it.

But incorporated into this bill is 20 pages that define reading. I want you to think about that. When the claims are made that this is not Federal intrusion, a one-size-fits-all, this bill spends 20 pages defining for every local school system what reading is. This is insane.

I have a simple challenge for my colleagues. What happened about the accountability of parents, teachers, principals, elected school boards, and community leaders? Healthy communities today have a relatively successful K–12 education system. In most cases, it is because employers recognize the fact that that is potentially their future workforce, and their educational success is that community's success for survival and for advancement.

But what this bill does is say we are going to determine what ''highly gifted'' is for teachers, and we will determine what success or failure is. We are going to take the place of the parent, teacher, superintendent, elected officials, and the business community; we are going to take that all over.

From the standpoint of the amount of money, we are still participating at about the same level—about 10 percent of the overall cost of K–12. But if you don't play by our rules, you don't get our programs or our money. I daresay there is not one of us who recognizes the fact that every community has a unique problem—where one is a school building, the next one is available highly gifted teachers; and where one might be the ability to have a second language taught, the other might be the passion of Teach for America teachers that infiltrate their system.

I cannot come up—no matter how many pages I write—with a K–12 education bill that I can honestly say trumps any community's that I represent that they could come up with on their own. If anything, I know I would be woefully short of what they could do.

The answer, to me, is let's get them more in charge, empower them more, and let's give them greater flexibility. Let's be what we are best at—a financial partner in the success of education. As a matter of fact, we will take up an amendment at some point that triggers the flexibility in the 868 pages. But it is only triggered if a school system accepts one of six things. One of those things is actually federally mandated firing of the principal or X amount of teachers of a failing school.

How in the world could we put in Federal legislation that you get the full flexibility if you are willing to go out and fire the principal or 20 teachers at a school that has been determined by Washington to be a failure?

This is almost surreal to me. In many ways, it goes way past where No Child Left Behind tried to get to, which was creating a measurement tool that could be seen by all and judgments made based upon that, though it wasn't perfect.

What my colleague Senator PAUL has asked for, quite honestly, is very reasonable. Take the bill—the one that we are considering, not the one that went up last Tuesday—I got this e-mail while I am standing here, which says:

> The original ESE bill was put up on line one week ago. The managers' amendment on Monday. The document explaining the changes was online yesterday.

So everybody is right. The only problem is what Senator PAUL described, which was the bill that we are considering right now went up on Monday.

The explanations for the changes went up yesterday. I am sure if Senator PAUL came up with 74 amendments, his staff has been a little busier than mine because they only came up with 7 or 8. But what Senator PAUL has asked for is very reasonable.

Take this bill—not a hypothetical bill—and let's have a hearing on it—not a markup, a hearing—at whatever speed the chairman can put it together, where we bring in actual educators, we bring in superintendents or we bring in school board members, maybe we bring in a parent. That would be novel.

I can still remember, when I started 17 years ago, and reading about the Washington, DC, schools, my first teacher-parent mentor meeting. I remember the expectations I had of a parent who didn't care about a fifth grader's future. If they did, why would this child be so challenged to read? What I was met with, as I walked in and met with that parent, was the parent of a fifth grader who said: Congressman, you are my son's only hope. I want him to have so much more than I do.

I wasn't there because of a government program. I was there because I think every child ought to have the opportunity to succeed, and we can't write that in a bill. We can't describe for every community how they get to success. If we could, No Child Left Behind would have been perfect because

everybody believed it would have that big a change. So you see, this is about not just changing a system, it is about creating passion—a passion for success.

I will tell you, passion for success is not taking the Federal Government's HR Department—which is pitiful—and saying: Well, let's export this to every school in America. That is not the answer. The answer is for us to get out of the way and for us to empower those local officials to make the changes they need to and for the judgment to be of those community leaders and those parents.

We will have a debate soon on what is highly qualified, and it is very proscriptive as to what a highly qualified teacher needs to be. But in my definition, highly qualified is a pharmacist who has decided they don't want to work in a store anymore and would like to teach chemistry in a high school. Unfortunately, under all the Federal standards today, that person can't do that because they don't have a certificate to do so. We will codify that into law, in 868 pages, and all the talented folks we have around the country—who could walk into a classroom and not only have the educational foundation to be able to teach our students but the passion to want to be there and to say it in a way that isn't taught out of a textbook but is learned through their occupation—will be gone. It will be gone. Even though that pharmacist may not want to compound drugs anymore, if their choice is that or retirement, they will retire because we have cut out something that would allow them to contribute.

I didn't mean to go this long, but I will be honest, in my patience to get the opportunity to speak, I heard some outlandish comments that, quite honestly, I could take to be very personal. To suggest any Member had sufficient time to review this legislation—the only person who could make that comment would be one who got the bill before I did, and I think I am entitled to have it at the same time every other member of the committee gets it.

To have an agreement that says we are not going to take amendments—that says one can offer them, but we are not going to take them—I think that is a black eye on the entire institution, if we would adopt a policy such as that. But I have seen it up close and personal already.

I would love to take the chairman at his word that we will have an opportunity on the floor to fix this bill, but—based upon how the floor has been run up to this time—I can't believe there will be even one opportunity for me to offer an amendment. So I have to roll my dice on the markup process in committee, and I have to do it in a way that accommodates every member. If Senator PAUL believes he needs more time, I have to be there to try to defend his time.

If that is inconvenient for people, it is going to be inconvenient. The truth is, our children's future is way more important than our convenience. Our children's future is way too important to rush a bill. Our children's future is way more important than a deal between a ranking member and a chairman as to how to make this easy out of committee so we can fix it on the floor.

I have been here 17 years. Perfection is not possible in Congress, but perfection should be our goal every day. When we look at what we have debated, we understand why less than 15 percent of the American people think highly of us. I think what we are getting ready to do will have a significant impact on how that number is reduced, not how it is increased.

I thank my colleagues for their patience. They certainly don't have to request time from me. I will yield back and gladly allow them whatever of their own time they would like to take.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. I would like to say to the Senator from North Carolina, before he leaves the floor, that I am well aware of his longstanding commitment to education issues and to the kids in this country. I have no doubt of that, and I hope he didn't take anything I said to suggest that. I actually think the two of us probably share a lot of agreement on what we ought to be doing.

My issue is simply—and as I said about the Senator from Kentucky, he has every right to do this—that, as my colleague and other members of the committee, I want to engage in a debate on the bill. I want to consider the amendments of my colleagues and to offer my own.

I am painfully aware, having been in a school system, that Congress was supposed to reauthorize this bill in 2007. It is now 4 years later, and because of our own fecklessness, our own inability to get anything done, every single year teachers and parents and principals keep having to put up with what is the crudest accountability system I could imagine. The only thing cruder than the accountability system was the response of big school districts, such as the one I used to work in, to that accountability as people tried to comply with well-intentioned but incredibly poorly thought-through laws and regulations from Washington, DC. I don't want these schools to have to endure 1 more year of this meaningless accountability, where we are comparing this year's fourth graders to last year's fourth graders and telling ourselves that actually makes a difference.

There is a lot of good work being done in our States right now around standards—elevating them—so we quit fooling ourselves about whether we are meeting international norms when it comes to our kids. There is a lot of great work being done in Colorado and other States that have come along creating a growth model that we—not we but moms and dads and teachers and principals—can actually track how this group of fifth graders did compared to how they did as fourth graders and how they did as third graders and then compare them to similarly situated kids across the country. That makes all the sense in the world compared to what we currently have.

I sat out there in absolute despair wondering why this town was so mean to our teachers and to our kids. Isn't it a bare minimum that the Congress could reauthorize the legislation when they were supposed to—in 2007? Yet now we find ourselves here.

I thought the Senator from North Carolina was very eloquent this morning and today on the floor as well and I appreciated the points he made. My objection is a narrow one, which is the idea that the right way to approach reauthorizing No Child Left Behind, the right way to approach trying to fix this situation is to create a bunch of procedural barriers that don't allow us to have a substantive discussion about it.

I agree completely with what the Senator from North Carolina said 1 minute ago. There is a reason we have not a 15-percent approval rating but a 12-percent approval rating. There is a reason. I think we should come together in a bipartisan way and reauthorize this bill, get rid of AYP, and do some of the important things in this legislation. Then I hope the Senator would look at one of my amendments, because one of my amendments has his pharmacist in mind, if only we could get to a discussion of the merits of this bill.

I see the Senator from Kentucky has left the floor, but I would just say that my only objective in coming down here today was simply to implore him to withdraw that objection. Knowing it is his right to object, I can't think of why he would do it if he wanted to change the trajectory of the work from the Federal level.

I thank the Senator from North Carolina and the Senator from Minnesota and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, I also respect my good friend from North Carolina, and I want to thank him for his vote on my amendment. I think he is going to like some of my other amendments too.

I wish to take issue too with one thing he said. I think he said it in a moment where, if he thought about what he said, he might reconsider it. I had commented that I have spent more time probably on this bill than on any other, and I have spent a lot of time on the Affordable Care Act. The Senator from North Carolina then said, if I had spent more time on this bill than any other, that is a pathetic commentary or a sad commentary because we just got this bill the other day. The fact is—and I think the Senator would acknowledge this—work on any piece of legislation doesn't start when the bill is introduced. My work on this bill

started very soon after I arrived in the Senate.

My work started with a bill I coauthored with ORRIN HATCH, which is going to be an amendment. It is an amendment to recruit and train principals for high-needs schools. We have had schools I have seen turned around by principals because principals can create the ethos of the school. They have so much to do with selecting the teachers and transforming a school. This amendment would create a program where we recruit people who want to be principals in high-needs schools and have them monitored—if they haven't been a principal before—by a principal who has successfully turned around a high-needs school. That work started immediately upon my getting to the Senate.

I have been going back to and traveling around the State of Minnesota talking to teachers and superintendents and principals. The Senator from North Carolina talked about the need to have superintendents and principals and teachers here. We had 10 hearings. I believe it was the other side at one point that said, please, stop the hearings.

My colleague talked about the transformation models, which I do have problems with. What do we do with a school that has failed? What do we do now with a school in the bottom 5 percent? If the Senator from North Carolina was there, we had a superintendent—Joel Klein, superintendent of schools or chancellor of the schools in New York—who spoke exactly to the transformation models. Again, what works in New York certainly doesn't work in Pine City, MN, or parts of North Carolina, but there are plenty of teachers available and plenty of principals available in New York City. So I think we need more flexibility in transformation models than in this bill—than Joel Klein suggests—and maybe that is in the managers' bill now. Joel Klein is a superintendent, and he spoke to the transformation models. He said the transformation models gave him the ability to fix schools that were failing, schools that were dropout factories.

So the very thing we have been asked for here: Let's have testimony from superintendents; aren't these transformation models surreal? We have had these hearings.

I would suggest to the Senator from Kentucky who has just come in, my office will print out the transcripts of all the hearings we have had and you can read what teachers and principals and superintendents have said.

I have to say that the work you do on these bills doesn't start when the bill hits the desk. In my case, it started 2 years before. And I don't think the Senator actually meant——

Mr. BURR. Would the Senator yield for 1 second?

Mr. FRANKEN. For a question. Sure.

Mr. BURR. If the Senator interpreted my comments to be personally targeted to him, then I do apologize. The Senator said—and I wrote it down: I spent more time on this bill than any other bill ever.

My criticism about the statement was, I said: If the Senator got the bill when I did, then there is not a whole lot of time between Friday when I got the bill and Wednesday when it was marked up.

I don't question for a minute the Senator from Minnesota or the staff has spent a tremendous amount of hours on education. But in defense of Senator PAUL and what he has sought is there has not been a hearing on this legislation. There are some things in this 868-page bill our committee has not had a hearing on that it would be great to have the opportunity to ask someone who is an education professional. In the absence of the ability to do that, you, I, the Senator from Kentucky, our staffs, all have to rely on what committee staff tells us. And that is not always the most accurate thing, regardless of which side of the aisle you are seeking that information.

I appreciate what the Senator from Minnesota has said. I think that education should be a passionate debate, and we have seen some passion here this afternoon. I would hope the Senator from Minnesota would suggest to Senator HARKIN, maybe there is a pathway where we can get predictability in the number of amendments, predictability in the time it takes to mark this up, with some accommodation to the sensitivities that Senator PAUL and others have raised, because I hope the Senator from Minnesota will agree with me, there is not an urgency to do it this week, and if we could, when we come back from the end of October, have a hearing, I think we could have a pathway to mark up and completion.

Having said that, it probably will be a product that I couldn't support, I will aggressively try to amend, and I would be anxious and hopeful that I would have the opportunity again on the floor to try to affect its content.

But if the Senator will be an advocate for that, I think there is a pathway that doesn't in any way, shape, or form delay our ability in this institution to conference with the House or to present the President a bill. I would be more concerned with whether we produced the right product, and I think we can achieve that better.

I thank the Senator for yielding to me.

Mr. FRANKEN. Certainly. And obviously I believe in the markup we will have a healthy discussion of every part of this bill and of every amendment. I think the Senator from North Carolina is going to be so thrilled with my amendments, that at the end of the day he is going to not just cast an aye vote on the bill but an enthusiastic one.

I accept your apology. I don't think you said exactly what you said you said. What you said was if the Senator spent—it is not worth going into.

The point is that your work on a bill doesn't start when a piece of legislation is written. Most of the work comes before. And I want everyone to understand that who is listening.

This bill has been a tremendous passion of mine. You mentioned passion for success. I want the growth model. Senator BENNET was superintendent of the Denver schools, and very successful. When I did my principal bill, I went to a school in St. Paul, MN, Dayton's Bluff, which had been a failed school and was turned around by a successful principal. So I had a roundtable there. This was very early in my tenure here. One of the principals said, You know those No Child Left Behind tests, we call them autopsies. What he meant was you take them at the end of the year, you take them in late April, and you don't get the results until the kids are out of school, and then the results are abrogated.

We have something in Minnesota that the teachers, superintendents, and principals agree on, something called the NWEEA tests. What are those? They are computer-adaptive tests. What does that mean? In Minnesota, very often they take these three times a year. They are computer tests so that teachers get the results right away. The principal called the No Child Left Behind test autopsies because the kids are out of school and the teacher can't use it to inform instruction. If you do a computer test and you get it right away, the teachers can use the tests to inform their instruction. I think that is what most parents thought we were doing in the first place when President Bush first suggested this law.

Secondly, they are adaptive. What does that mean? Well, that means if a kid gets a question right and keeps getting questions right, the questions get harder; but if they start getting questions wrong, they get easier. It is much more diagnostic and you can see exactly where a child is. Right now, the No Child Left Behind test forbids these assessments from going outside grade level.

Arne Duncan, Secretary of Education, said something profound. He said that a sixth grade teacher who takes a kid from a third grade level of reading to a fifth grade level is a success, is a great teacher; but under No Child Left Behind, the way it is now, that teacher is a failure. That makes no sense whatsoever. We have to measure growth. That is what the Senator from Colorado was talking about. We need to measure growth. And that is no mystery.

I go around to schools, and I remember being in a school in St. Cloud, MN. I was introduced by the principal to the teacher who won Teacher of the Year, a math teacher. I met the math teacher, and the math teacher said, ''Growth.''

This is not a mystery, and we have had hearings on this and we know this. We need to be measuring how much kids grow, and that will help kids who are from poor schools, because they are starting at a lower level. But if the

school is good and they are increasing their growth, they will be rewarded.

My daughter graduated from college. I am looking at the pages now who are juniors in high school. My daughter, immediately out of college, became a teacher at a school in the Bronx, 97 percent free and reduced price lunches, a third-grade teacher. That is the first year they do No Child Left Behind testing. She had to take her kids from here to here, to this arbitrary level of proficiency in order to be considered a success, where 15 miles to the north a teacher in Westchester had to take her kids from here to here. That doesn't make any sense.

In Minnesota, I have learned from my teachers I have talked to that there is something called ''the race to the middle.'' What is that? Under No Child Left Behind, the way it works now is that there is an arbitrary bar of proficiency a teacher is judged on, on what percentage of their kids in these different subgroups meet or exceed that bar of proficiency.

Well, the smartest kid in the class is going to pass, no matter what. There is nothing you can do to that kid that won't make that kid exceed the bar of proficiency. So guess what. The teacher ignores that kid.

The kid at the bottom, the most challenged kid, well, no way that kid is going to make it, so let's ignore that kid.

A race to the middle. The kid right below and right above proficiency, those are the kids who are drilled—drilled and killed, as they call it in Minnesota.

We know what is wrong with No Child Left Behind. We have been discussing it for 1½ years in hearings. We have been talking about it. I have been talking to the ranking member. He mentioned today these computer-adaptive tests in the markup. These things aren't mysteries. Members were welcomed to the hearing, and some didn't come.

But the work on a bill doesn't start the day the bill hits the table. The work of a Senator, if the Senator is a hard-working Senator, is every day. It is going back to your State and finding out what teachers and principals and superintendents need. It is going to the hearings. It is talking to the other Members, to the chairman, to the ranking member, and to your staff. And your staff is getting information from other staffers—not just the committee staff but from other staffers. I don't want to leave people with the impression that we work once the bill hits the table.

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

The PRESIDING OFFICER (Mr. CARDIN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BROWN of Ohio. 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. BROWN of Ohio. Mr. President, I would like to speak about two amendments, if I could. One is about basic civil rights and fair housing organizations and the other is about counseling and I would like to speak on both of them.

Our Nation's fair housing organizations help enforce basic civil rights, something that has been important in this country for many years. They investigate housing discrimination and they educate tenants and homeowners of their rights. They fight the pernicious discrimination that targets and redlines low-income Americans in communities of color. Housing discrimination not only violates our laws, it is a barrier to economic mobility. That is why the Department of Housing and Human Development invests in the Fair Housing Initiative Program which supports fair housing groups across the country.

They investigate mortgage lending fraud and predatory lending. They investigate foreclosure cases that force homeowners out of their homes—an endemic problem in the Presiding Officer's State of Maryland, my State of Ohio, and across the country—before facts and underlying rights are observed. Simply put, FHIP helps the very organizations that educate the public and enforce the laws that protect people from housing discrimination.

The program is cost-effective, saving HUD money as it streamlines government resources to move more effectively and efficiently and investigate complaints. The fair housing organizations investigated 65 percent of the Nation's complaints of housing discrimination, nearly twice as many as all agencies combined. Fair housing advocates in Cincinnati, Dayton, Toledo, Cleveland, Akron, Columbus, and in towns across Appalachian Ohio fight predatory lenders.

For millions of Americans, the barrier to opportunity and security is the latent discrimination of ruthless landlords and unscrupulous lenders. Without FHIP, our country and our economy are subject to the very discrimination that not only hurts individual renters and homeowners but holds too many communities back. That is why I am offering this amendment to restore full funding to FHIP in line with the House level. State and Federal fair housing enforcement is already stretched thin. In my home State, the State Civil Rights Commission has four investigators devoted to housing complaints. It would be devastating to cut private fair housing programs any further.

This amendment is supported by the Leadership Conference on Civil and Human Rights, the NAACP, the National Council of La Raza, and the National Fair Housing Alliance. It is also supported by Miami Valley Fair Housing Center, Neighborhood Housing Services of Greater Cleveland, the Coalition on Homelessness and Housing in Ohio, the Ohio CDC Association, the Toledo Fair Housing Association, and the Homeownership Center of Greater Dayton.

On Sunday, the Martin Luther King, Jr., Memorial was dedicated on our National Mall. It is a reminder of the era that blatant Jim Crow laws, brutal beatings and segregation may be over, but our fight to remove stains and strains of discrimination continues.

It continues through thousands of fair housing organizations that serve millions of our fellow Americans. It continues with this body investing in these organizations.

I ask unanimous consent to have printed in the RECORD a letter of endorsement of many organizations. This is a letter from those civil rights organizations supportive of our legislation.

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

OCTOBER 18, 2011.

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

Hon. THAD COCHRAN,
Ranking Member, U.S. Senate Committee on Appropriations, Washington, DC.

DEAR CHAIRMAN INOUYE AND RANKING MEMBER COCHRAN: The, undersigned civil rights organizations, urge you to support level funding for the Fair Housing Initiatives Program (FHIP) by accepting the House number of $42.5 million in your upcoming negotiations. FHIP funding is crucial to protecting all families and individuals seeking fair housing choices across the United States.

As you know, the Senate Appropriations Committee's Transportation-HUD bill includes only $35.9 million for FHIP, $7 million less than the figure approved by the House Subcommittee. Such a decrease in FHIP funding would greatly limit the abilities of local organizations to educate the community and the industry about fair housing, and limit the establishment of fair housing organizations in areas where pervasive housing discrimination occurs unchecked.

FHIP provides unique and vital services to the public and the housing industry. Private non-profit fair housing organizations are the only private organizations in the country that educate the community and the housing industry and enforce the laws intended to protect all of us against housing discrimination.

FHIP saves money for the federal government, and for state and local governments. According to a recent HUD-funded study, ''FHIP grantee organizations weed out cases that are not covered by civil rights statutes'' or that do not have merit, thereby avoiding costly lawsuits and mediations. The vetting of complaints by fair housing organizations ''saves resources for HUD and state agencies that do not have to investigate these complaints.''

''FHIP funding is a critical component of the U.S. civil rights enforcement infrastructure,'' according to HUD. 71% of the cases in which a FHIP organization is a complainant result in conciliation or a cause versus 37% of nonFHIP referred cases.

Cuts to FHIP and FHAP will leave entire states and many communities without a place to protect their rights or to report housing discrimination. Over the past ten years, more than 25 fair housing organizations have already had to close their doors or drastically limit their staff due to insufficient funding levels. By cutting FHIP, many more states and communities will be at risk of losing any fair housing resources.

Fair housing organizations operate efficiently and effectively on shoestring budgets. In 2010, there were 28,851 complaints of housing discrimination filed. This number of complaints still represents less than one percent of the annual incidence of discrimination, which is estimated to exceed four million. Private fair housing organizations investigated 65% of the nation's complaints, i.e. almost twice as many as all government agencies combined.

We cannot afford to leave states and communities without a place to protect their rights or report housing discrimination. With the cuts HUD currently faces, the role of fair housing organizations will only become increasingly important.

We thank you for your past support for the Fair Housing Initiatives Program, and we ask that you support level funding of $42.5 million as the budget process moves forward. In this economy and devastated housing market, everyone deserves a fair shake at purchasing and renting the home of their choice, regardless of their identity characteristics. We as a nation cannot afford to limit the housing activities of any single family or individual.

Sincerely,

Bazelon Center for Mental Health Law, Lawyers' Committee for Civil Rights Under Law, Leadership Conference on Civil and Human Rights, NAACP, National Association of Neighborhoods, National Community Reinvestment Coalition, National Council of La Raza, National Fair Housing Alliance, National Gay & Lesbian Task Force Action Fund, Poverty & Race Research Action Council.

Mr. BROWN of Ohio. Mr. President, I would like to speak on a second amendment. Since a peak in 2006, housing prices, as we know in this country, have fallen by nearly one-third. Total homeowner equity slashed in half with the loss of more than $7 trillion. Some 6 million people have lost homes since the height of the financial crisis. Yet just yesterday we heard a leading Republican Presidential candidate tell an editorial board in Nevada that his solution to the Nation's housing crisis is to speed up the rate of foreclosures. This despite clear evidence that basic legal requirements have often gone ignored in foreclosure proceedings; this despite clear evidence that some banks have specifically targeted certain communities in specific neighborhoods for foreclosure; this despite the fact that persistent foreclosures are dragging down property values across the Nation.

I remember some years ago in Cleveland, in Cuyahoga County in my State, we had more foreclosures—except for the moratorium year last year—every year than the year before for the last 14 years. I remember neighborhoods in Cleveland where there might be only a couple of foreclosures on a street, but we knew what happened when those homes were foreclosed on—well, what obviously happened was vandalism and stripping off the aluminum siding and stealing the pipes, and the property would be degraded and the property would be ignored—and what happened to other homes in the neighborhood and what happened to the prices and the values of those homes even though people were paying their mortgages and staying in their homes.

So this—this statement to the Nevada newspaper—this despite the clear message from my distinguished colleagues, Senator MCCAIN of Arizona and Senator NELSON of Florida, representing States such as Ohio that have been devastated by high rates of foreclosures.

Earlier this week, my colleagues stated on this floor—some colleagues said we need to do more to get people mortgages they can afford, to make payments on them, rather than throwing them out of their homes. I couldn't agree more. If we are going to strengthen our economy, we must find a stronger response to the foreclosure crisis, not rushing the process but better managing it.

Right now, the provision of homeowner counseling is one of the most effective ways we have to deal with this crisis. I remember talking to fair housing coalitions and organizations in Toledo and Dayton and all over my State, telling how they were able, one family at a time, to avert foreclosure. We know what that means not just for that family but to that community because they were able to do foreclosure counseling. I have seen firsthand in my State how these programs help better manage the mortgage payment process that helps to keep homeowners in their homes.

Organizations such as the Neighborhood Services of Greater Cleveland, the Columbus Housing Partnership, and the Coalition of Homelessness and Housing in Ohio are leaders in foreclosure counseling. The Department of Housing and Urban Affairs invests in the Housing Counseling Assistance Program that supports these Ohio programs and hundreds like them across the country. Housing counselors provide guidance and assistance and advice to help families meet the responsibilities of tenancy and home ownership.

Foreclosure counseling is particularly valuable to those obviously in danger of losing their home. According to a study by the Urban Institute, homeowners who are assisted by mortgage counselors have a 60-percent better chance of saving their home. If a family has counseling with a professional counselor, somebody to advocate for them and assist them, they have a 60-percent better chance of saving their home than if they don't have that assistance.

HUD has requested $88 million for housing counseling for each of the last 2 fiscal years. Yet, last year, Congress provided no money for this important program—a program that keeps people in their home, helps their neighbors because this house might not be foreclosed on, helps those people build equity and savings that are essential for stable houses, stable families, stable homes, stable neighborhoods, stable communities.

Given this lack of funding, I am particularly grateful for the work done by the subcommittee chair and ranking member in restoring funding for this program. Special thanks to Senator MURRAY and Senator COLLINS. The subcommittee has worked hard to find $60 million to fund the program. I applaud them for their efforts. Senator SANDERS has also been a great champion in this effort. Even with this level of funding, the demand for housing counseling exceeds the level of services that would be supported.

It is imperative that we provide these investments. They are necessary to meet the needs of the record number of homeowners facing foreclosure, they are necessary to help advise borrowers preparing to purchase new homes, and they are necessary and vital to our housing and economic recovery.

Historically, we know that to pull ourselves out of recession in this country, we need a vibrant manufacturing sector, especially driven by auto, and we need housing, more home construction, more home renovation, and appreciation of housing prices. We are doing OK with auto manufacturing, but we are not doing nearly well enough with housing.

I applaud my colleagues for their work. I appreciate their support for this program, and I look forward to their continued support and to their supporting the Senate number in conference.

Thank you, Mr. President. I yield the floor.

Ms. MIKULSKI. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. CARDIN. Mr. President, I know the Senator from Missouri is here, and I am going to make a unanimous consent request that I anticipate he will object to on behalf of other Senators. So let me do that formally and then make my comments.

Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination: Calendar No. 112; that the nomination be confirmed, the motion to reconsider be considered made and laid upon the table, with no intervening action or debate; that no further motions be in order to the nomination; that any related statements be printed in the RECORD; that the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

The Senator from Missouri.

Mr. BLUNT. Mr. President, I object on behalf of Senator HATCH and Senator ISAKSON.

The PRESIDING OFFICER. Objection is heard.

Mr. CARDIN. Mr. President, I certainly understand that my friend from Missouri is doing this on behalf of other Senators. I want to express my disappointment that these Senators are objecting to the confirmation of William J. Boarman, an individual who is eminently qualified to be our Nation's 26th Public Printer and head of the Government Printing Office.

President Obama nominated Bill Boarman 18 months ago. The Senate Committee on Rules and Administration reported the nomination favorably in July of 2010. The nomination languished because of Republican objections so President Obama made a recess appointment on January 3, 2011, and renominated Mr. Boarman on January 27, 2011. Again, the Senate Rules Committee reported the nomination favorably by voice vote this past May.

The Public Printer is not a controversial position. Previous Printers have been confirmed without controversy or delay. This obstruction is unprecedented.

Bill's career in the printing industry spans 40 years. He started as a practical printer, trained under the apprenticeship program of the International Typographical Union and served his apprenticeship at McArdle Printing Company in Washington, DC.

In 1974, he accepted an appointment as a journeyman printer at the GPO. Mr. Boarman was elected president of his home Local 101–12 when he was 30 years of age. He later served as a national officer with the ITU, where he was a key architect of the merger between the ITU and the Communications Workers of America. He was elected ITU president shortly before the merger and has been reelected to seven successive terms since.

He has served as an unpaid consultant to several Public Printers and has testified before various congressional committees regarding GPO programs and policies. He is an expert in this field. He is eminently qualified. I think the Members of this body know that.

Mr. Boarman served as chairman of the $1 billion CWA/ITU Negotiated Pension Plan and the $125 million Canadian Negotiated Pension Plan. He has experience in management. He was among the union leaders who spearheaded the creation of the AFL–CIO Capital Stewardship Program and the Center for Working Capital in the Federation.

Because of his experience in the field of pension administration, he was chosen to represent CWA on the Council of Institutional Investors, serving 12 years as a member of the CII Executive Board and three terms as its cochairman. He has also served on the Maryland Commission on Judicial Disabilities and as cochair of the Taft-Hartley Northern American Study Group educational investment conference.

He has served as president of the Union Printers Home, a 122-bed skilled nursing facility in Colorado Springs, CO. I mention his extensive background to underscore the point that Bill Boarman is, perhaps, uniquely qualified to serve as the Nation's Public Printer, and there is absolutely no good reason to hold up his confirmation.

All we are asking is, let's bring this nomination forward for a vote—a person who has eminent qualifications. There is no substantive objection to his confirmation. I hope my colleagues who have raised the objection will allow us to move forward.

The Public Printer serves as the chief executive officer of the GPO, the agency charged with keeping the American people informed about the work of the Federal Government.

GPO is one of the world's largest printing plants and digital factories and is one of the biggest print buyers in the world. GPO disseminates the CONGRESSIONAL RECORD and the Federal Register and a number of other products and services in both print and digital form.

The agency has been tasked to build its digital capability into a state of the art operation to improve transparency and citizen access to government documents and reports.

We hear all the time about making this system more transparent. Mr. Boarman knows how to do that. Let's give him a confirmed position so we can help bring the public more into what we do here in Congress.

Bill Boarman faces the challenges of maintaining the traditional printing skills of an aging workforce while helping a 150-year-old organization adapt to a world in which most documents are ''born digital.''

As Bill has said:

> Few Federal agencies can count as their heritage the scope of the work GPO has performed, ranging from the first printing of the Emancipation Proclamation to providing digital access to the Government's publications today. The men and women of GPO are responsible for that heritage.

It is past time that Bill Boarman—a man with over 40 years of experience in the printing industry—be considered and confirmed as the Nation's 26th Public Printer.

I urge my colleagues on the Republican side of the aisle: Let the Senate do what it is legally responsible to do: advise and consent on these nominations. Let us vote so we can confirm this position that was first brought forward over a year and a half ago.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I want to associate myself with the remarks of my colleague from Maryland regarding the nomination of Mr. Boarman. My colleague from Maryland has offered a spirited and comprehensive description of why Mr. Boarman should be confirmed as our Public Printer. I wish to, one, validate everything he said; and, second, Mr. Boarman, we need to know, is a reformer. He has the heart of a reformer. He has the spirit of a reformer. He has the know-how of a reformer.

As we look at the position he is being asked to serve in, we need someone who has technical competence in the field, experience in managing a large organization, and also one who has dealt with the challenges related to both delivering a product but also those related to the workforce.

I think we are doing a national disservice by not putting this man in office so he can take charge and maintain something that is a nonpartisan job—the Government Printing Office. It is not as though he is going to be in some back room reprinting little pamphlets from the 1930s Bread March. He is here to be our Public Printer.

We know we are into a new age, a digital age. He has a lot of reform to do. We know there is workforce reform that needs to be done but done with sensitivity. Again, he is somebody who himself is from the rank and file.

I think this: Once again, we are playing politics with a job that certainly is not political. We have an esteemed, qualified individual who wants to be a reformer, to get the job done, and who knows we are in a more frugal atmosphere.

I think we are wasting time, we are wasting money, and we are wasting the talent of an exceptional individual.

I am going to say this: The more we continue to delay and be deleterious on these appointments, why would anybody want to come forth to serve in the public domain? They often have to give up jobs or put their jobs on hold while they are waiting for these confirmation processes. We put more sand in the gears of government, and then we blame government for grinding to a halt.

Let's have an orderly way of dealing with nominations and at least give the man a vote up or down, yes or no.

Mr. President, I yield the floor.

Mr. CARDIN. 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.

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

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

Ms. MIKULSKI. Mr. President, the American people are watching this and saying: What are they doing? Well, actually we are doing a lot. Senator BLUNT and I are managing the bill. You might say: But there is nothing going on. Well, there is a lot going on because we are reviewing amendments of Senators. That is what all this discussion is, to see what we can take or there might even be bipartisan agreement. And then we are lining up how we will proceed on the next four to six amendments, again alternating both sides of the aisle.

So if people are watching this and saying: What are they doing, just what are they doing, well, we are doing a lot. We hope to, by the close of business tomorrow, finish the Agriculture, Commerce-Justice, and Transportation-Housing bill appropriations. We are going to have some robust debate on some amendments. Some are quite controversial. But right now, we are trying to see what we agree on and, what we don't agree on, how could there be a regular, civilized, orderly process for having a debate and then voting.

We anticipate that somewhere around 5:30 or 6:00, we will have a cluster of votes. So that is kind of the game plan so far.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the next first-degree amendments in order to be called up and made pending to H.R. 2112 and the substitute amendment No. 738 be the following: Ayotte, No. 753; Crapo, No. 814; Moran, No. 815; Coburn, No. 793; Coburn, No. 798; DeMint, No. 763; DeMint, No. 764; Grassley, No. 860; Sessions, No. 810; Lautenberg, No. 836; Brown of Ohio, No. 874; Merkley, No. 879; Bingaman, No. 771; Gillibrand, No. 869; Feinstein, No. 855; and Menendez, No. 857; further, that a motion to recommit from Senator LEE be in order; that, if offered, the motion be set aside and the Senate return to the consideration of the pending amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Ms. MIKULSKI. Mr. President, this means this is now the order in which we will proceed. These are the amendments that both sides have agreed should be offered in this tranche or cluster.

We are saying to the Senators who now have these amendments, get ready to come to the floor. As I understand it, KELLY AYOTTE will be here to offer her amendment, which will be important, and then what we would like to do is alternate on both sides of the aisle. The Senator from New Hampshire will offer her amendment. We hope then that there would be a Democrat, and we will go back and forth. If a Senator is not here, we will move on to the people who are here.

We have 16 amendments. We would like to finish these amendments this evening. The more that can come and be ready to offer their amendments and debate—and Senators will be able to present their amendments and debate them, but we would like to do that.

That is the way we are going to proceed. These are the amendments. We will alternate on both sides of the aisle. We encourage Senators who have these amendments to come over and we will call them up.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BLUNT. Mr. President, I join my good friend in suggesting we would like to see our colleagues come over here. These three appropriations bills are being handled on the floor and they are open to amendment. We haven't had appropriations bills on the floor of the Senate in this way in quite a while. We would like to get these bills done. Hopefully, we can get these bills done maybe even this week and send them on over to the House to talk about these bills and their bills—3 bills, 16 amendments, and those aren't all the amendments we expect to be offered. But we hope these amendments are offered today—a significant number—and as the Senator from Maryland said earlier, we expect votes on some of these amendments around 6 o'clock. Between now and then, we look forward to a vigorous debate on as many of these as the sponsors can come and debate. But the Agriculture bill that I am the ranking member of; the Transportation, Housing and Urban Development bill, which the Senator represents so well; and the Commerce-State-Justice bill are all bills that are moving forward in as close to a regular process as we have had in a while.

We look forward to seeing these amendments debated this afternoon and some of them—as many of them as possible—voted on this afternoon and this evening.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, the Senator from Missouri is right. We haven't had a regular order for some time. Leadership on both sides of the aisle has created this fantastic opportunity. We are actually following a regular order on our appropriations. We are actually following a regular order. This is our opportunity to show we can have a regular order, that we can move our annual appropriations together in a well-measured, well-paced, well-debated, and well-scrutinized way.

I hope our colleagues who have amendments will come over. We know Senators have lots of opinions, and opinions sometimes get translated into amendments. But we ask our colleagues now to show we can govern. Come down, come to the floor and offer these amendments and show we can move three very important bills. The one affecting transportation and housing is important to our economy. This is a jobs bill, putting people to work building highways, roads, and housing. Agriculture is an important part of our economy, and also Commerce, Justice, and Science is the innovation committee, the trade committee, and the advocacy for justice committee. We look forward to these amendments and debating them.

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. INHOFE. 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. INHOFE. Mr. President, in a few minutes, I want an opportunity to, for clarification, talk about the LRA, troops who have gone over to northern Uganda, including Rwanda and south Sudan. I will wait now because a lot will want to speak subject to these amendments.

I wish to mention something I think is significant because nobody is talking about it. People have heard me talking over the years about the overregulation being pursued by this administration in every area and what it is costing in terms of jobs.

I know I talk about this quite often, but this time I am talking about a different area of overregulation. Most of the time I am talking about what the EPA is doing to destroy businesses in this country. I do that because I am the ranking member on the Environment and Public Works Committee, which has jurisdiction over the environmental regulations and the EPA.

When we see what they are doing, it is something that is more serious—or at least as serious as all the deficits that are coming out of this administration because it is chasing jobs overseas. We will talk about that. This is a different area altogether.

We talk about the overregulation that comes from the EPA in the EPW Committee, where we have jurisdiction. Today, I want to mention what is going on in the USDA. In the 2008 farm bill, the USDA was instructed to revisit and update the marketing regulations authorized to the Packers and Stockyards Act of 1921. That particular act is governed by the Grain Inspection, Packers, and Stockyards Administration, or GIPSA, as it is referred to. That is all within the USDA.

The agency is supposed to regulate and deal with the marketing practices within the livestock industry. I am from Oklahoma, and it is a huge industry in Oklahoma. This provision of the farm bill was heavily debated and amended when it was considered and, ultimately, the USDA was instructed to provide regulations for a few explicit objectives. Among them were broader contract cancellation rights for livestock growers; the disclosure of foreseeable future necessary capital investment required for contract growers within their growing contracts; and criteria for GIPSA to determine whether producers are treated with unreasonable preference or advantage. The House already considered this. In fact, they have done their Agriculture appropriations bill.

Several months after the farm bill was enacted—the one I referred to—GIPSA released its preliminary rule,

and the rule they published went far beyond the requirements that were explicitly stated in the law.

One of the biggest problems with the rule is that it would allow GIPSA and the USDA to punish livestock producers and buyers for engaging in practices it considers unfair or unjust, even when there is no proof that their practices are actually harming competition within the industry. They want to do this in the name of leveling the playing field, which we hear a lot about around here, and that playing field would be between the packers and livestock producers, but what they are doing is regulating this industry in a way that would prohibit any real innovation or differentiation among companies in the industry. It forces a one-size-fits-all approach to running the livestock industry.

For one, the new rule would require packers and stockyards to keep written documentation justifying any differentiation in price that one pays to different livestock producers. Can you believe this? The USDA wants stockyards to justify every pricing decision they make. If that isn't big government, I don't know what is. The USDA wouldn't require this if they didn't intend to review these documents to determine whether the stockyards provided this justification. When doing this, the USDA bureaucrats will have the power to punish and fine stockyards that it believes are behaving unfairly. This is government determining whether they are behaving unfairly.

My question is this: In what other industry would this be considered acceptable or even appropriate? Can we imagine Walmart being forced to send the Federal Government justification for every price it negotiates with its suppliers? No. That would be ridiculous, and we all understand that.

The livestock industry is no different. This is American business, capitalism, and the individuals participating are doing so voluntarily. No one is forcing anyone to be in the livestock business. Negotiating prices—where some folks get higher and some folks get lower prices—is part of the deal. Some get advantages and some disadvantages, but it isn't government making that determination. That is the way it should be.

Another problem with this rule is that it would ban packer-to-packer sale of livestock. I don't know why the USDA wants to do this. Who cares if one stockyard sells or buys from another? It is none of their business. It seems perfectly American to me. But this will have a particularly negative impact in Oklahoma.

Right now, we only have one pork packing plant of any size in my State of Oklahoma, and the next closest plants are in Iowa, Missouri or probably Nebraska—I am not sure—maybe hundreds of miles away. If packers or entities owned by packers are no longer allowed to sell hogs to other packers, it will force Oklahoma producers to ship hogs out of the State to get them to market. This would increase operating costs, it would be prohibitive, and it would take them out of the market. Even if Oklahoma pork producers chose to ship hogs out of State, the prohibition of packers to sell animals to other packers would force producers to incorporate a middleman to eliminate the direct sale between packers. All this would do is increase the cost of production. That would make us in Oklahoma less competitive.

Let's keep in mind that the Oklahoma pork industry only took off after the construction of a pork processing plant. In 1987, before this plant was constructed, the annual cash receipts for pork producers were $33 million. That was it. The pork processing plant was constructed in the mid-1990s, provided necessary infrastructure to our State to do this. However, since then, the pork industry's annual cash receipts have risen more than tenfold to $555 million in 2007. So making this processing plant less capable of serving the needs of Oklahomans and our pork producers will undoubtedly hurt our industry and our consumers.

Unfortunately, these are only a few examples of the bad provisions of the new GIPSA rule I have heard about extensively from my livestock producers, and I am sure everyone else from agricultural States has heard about the concerns their States have. They believe that if this rule is finalized, it will force them to completely change the way they conduct business, and no government rule should force private businesses to do this, especially when the industry practices they have developed have been very effective at safely bringing meat products to the market.

Another problem with this rule is that the USDA has not publicly released the study it did to determine its economic impact. And we know why they haven't. It is very expensive. Several private studies have been done, and one of them estimated that the rule would reduce U.S. economic activity by $14 billion and would result in the loss of over 100,000 jobs. The USDA needs to release the economic impact analysis it did. There is no justification for their not doing this. So we have made that request, and we are waiting for that to happen.

There is a nominee for Secretary of Commerce—a very nice person, a fine person named John Bryson—whom I oppose. The reason I oppose John Bryson is he has been very active in this whole movement on cap and trade. We all know what that is. We have talked about it for 10 years. We had the Kyoto Convention that we did not become a part of, and there have been several efforts to have bills on the floor to have cap and trade, supposedly to stop catastrophic greenhouse or global warming. Now people know the science has been debunked. It is not real. Yet they are going ahead and doing it. But if the President is able to pass these regulations, it will cost the American people between $300 billion and $400 billion a year.

Now, I would say this. There are a lot of people out there saying: Well, it doesn't hurt to pass a tax increase of $300 billion if it is going to do something about global warming. Even President Obama's EPA nominee and choice, Lisa Jackson—now confirmed—has gone on record. In response to the question, if we were to pass any of these bills, whether it would be the McCain-Lieberman bill or the Waxman-Markey bill, any of these cap-and-trade bills that would be passing on a $300 billion to $400 billion tax increase, if that happened, would that reduce emissions, her answer was no.

Just logically look at that. If we do that in the United States, it will not change the emissions because this isn't where the problem is. The problem is in China and India and in Mexico.

So the cost of these regulations is unbearable for our economy, and here we are with over 9 percent unemployment. We are very fortunate in my State of Oklahoma because we have diversified, and our unemployment rate is down to 5½ percent. But nationally it is a disaster. So regulations are a very important part of this.

I want to make sure we make it very clear that it is not just the regulations that come from the Environmental Protection Agency because these regulations we are talking about are going to be from the USDA.

With that, Mr. President, I yield the floor, unless there is no one waiting.

Ms. MIKULSKI. Mr. President, I would advise the Senator that we are waiting for one of the Senators to come and offer an amendment, if he wishes to speak on another subject.

Mr. INHOFE. I would like to, and I would be happy to yield the floor to anyone else who comes to offer an amendment, if the Senator would alert me to that.

Ms. MIKULSKI. Why don't you proceed.

Mr. INHOFE. All right, I will.

U.S. TROOPS IN NORTHERN UGANDA

Mr. INHOFE. Mr. President, I know there is a lot of confusion, and a lot of people are blaming President Obama for sending 100 troops into northern Uganda.

First, I want to make sure everyone knows I am not a fan of President Obama. He is responsible for all these regulations that are driving out American businesses. He is responsible for the deficit. Actually, his three budgets have had deficits each year of $1½ trillion, and he is up to almost $5 trillion in deficits. It is coming not from the Democrats, not the Republicans, not the House or the Senate, it is coming from President Obama. And I disagreed with his position with Libya, sending our troops in there the way he did.

I am on the Armed Services Committee, the second ranking member, and I am very much concerned about what is happening right now and what this President has done to our military

in reducing our capability to the extent he has. But having said that, let me say that the criticism he has received for sending 100 American troops into northern Uganda is not justified, and let me explain what I am talking about.

This picture here is of a guy whose name is Joseph Kony. Joseph Kony is a monster. For 25 years, he has been in northern Uganda, but he has been in other countries too—Rwanda, now the new country of South Sudan, the Central African Republic, and the Congo. Those five countries are where he has been.

This is what he does. Many people don't know about him. In fact, 3 or 4 days ago Rush Limbaugh was commenting that nobody knows what the LRA is; that is, the Lord's Resistance Army, and so I am here to tell you and tell you why these troops were sent over. It was not President Obama; it was I who did this. We passed a law requiring that to be done. Let me explain why.

I have been active in Africa for many years. Fifteen years ago, I was in northern Uganda, in an area called Gulu, and I found out there is a guy up there by the name of Joseph Kony.

This is Joseph Kony. He is a spiritual leader. What he does is he goes into the villages and he abducts hundreds and thousands of young kids, usually between the ages of 11 and 14, and then he takes the girls and sends them into prostitution, but he trains the boys to be soldiers. We are talking about kids 11 to 14 years old. So he teaches them how to use AK–47s, and when they graduate, these kids have to go back to the villages from where they were abducted and kill their siblings and kill their parents. If they do not do it, they come back—and this is significant—and they are then mutilated.

These are all kids. See, they are holding their AK–47s and all that.

This next chart shows what happens if one of these kids comes back and he doesn't kill his parents or do as Joseph Kony says. He mutilates the kids, and the way he does it is he cuts off their ears, cuts off their noses, their lips, or cuts off their hands. This guy here, John Ochola, his hands were cut off and his nose and ears were cut off. This one just went through it, and he is still bleeding.

These are kids. These are kids, 12 and 14 years old. This is what he has been doing to thousands of kids for 25 years now. So having sympathy for that, I came back and talked to some of my colleagues here, and I said: We have to do something about this. At that time, we were not allowed to send troops in. This has nothing to do with sending combat troops into an area. Certainly this has nothing to do with what the President did in Libya. But we passed a law that said that we are sending assistance into northern Uganda and the other four countries, but they are specifically precluded from entering into combat. In other words, the 100 troops who went in cannot even carry a weapon. They cannot be involved by law. I put that in the law. Those words are there. So what we are doing is we are able to go in and assist them in intelligence, maybe loan them a helicopter or whatever they need to take this guy out or to bring him to the international court. That would probably be better.

But this is what this guy has been doing for 25 years, and you have to go see it to really appreciate it—these mutilated little kids.

Well, anyway, I will say this. Those who are critical of me for supporting sending our troops over are ill-founded in their criticism for two reasons. First of all, we already have troops all over the world in places such as Africa. In the continent of Africa, we have several thousand American troops in a program called Train and Equip. It is specifically called 1206 and 1208 funding. That means we go into these countries and we help train the African nations to prepare for when the squeeze takes place in the Middle East and the terrorists come down through Djibouti and the Horn of Africa and spread out through the African Continent. We are building five African brigades. We are training them so that when something happens, as it did happen in the countries where we are currently in battle, we don't have to send our troops in because we are training them so they can take care of their own problems. That is essentially what is happening.

I was in this brandnew country the other day, South Sudan. We have all heard about Sudan and Khartoum and heard and been told about all the atrocities that are committed there, and it just makes you cry when you see what is happening. Well, they now have split off, so South Sudan has a separate country. I was there last week. I was the first one there in terms of Members of the Senate just to cheer them on.

I had 25 members of the Parliament of this new country called South Sudan with me for a period of 2 hours. Do you know what they said, Mr. President. They said: If you really want to do something about terrorism, get this growing force that Joseph Kony has and help us take him out.

This question was asked of me today on a talk radio show: Why is it we can't get Uganda or Congo or Rwanda to do this?

I would suggest that the Presidents of these three countries came from the bush. President Museveni was a warrior in the bush, and he doesn't like to admit he can't take care of one monster named Joseph Kony by himself. The same is true with Paul Kagame, who is President of Rwanda. Remember 1994 when they had the genocide? And he came from the bush. He is a tough warrior, but he doesn't want to admit he would have to have help to take care of that. Joe Kabila, from the Congo, the same thing.

Well, I was able to get the three of them together, and they agreed they would work together with each other, and they asked if they could have some support from the United States in the way of intelligence and maybe a helicopter or two, and I said yes. So we passed the law. This law we passed was right here in the Senate. There was not one Senator who voted against it. I had 64 cosponsors—the largest number of cosponsors on any bill addressing a problem in Africa in the history of this Senate. So we are all in accord.

A lot of Members are not courageous enough to tell the truth about this. A lot join in saying: Oh, we are not going to send more troops over. Let me assure you, these troops are going to go over and save lives. And they could very well be saving American lives because if this terrorist movement is allowed to continue, then we will have another terrorist movement in that part of the world that should be getting a lot of our attention.

So with that, just to repeat two things, first of all, we already have troops over there in Training and Equip. These same troops will be doing that while there. Secondly, there won't be one American troop in harm's way in northern Uganda, the Central African Republic, South Sudan, Rwanda, or any of the other places where Joseph Kony might be leading his reign of terror.

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.

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

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

AMENDMENT NO. 753 TO AMENDMENT NO. 738

Ms. AYOTTE. Mr. President, I ask unanimous consent to temporarily set aside the pending amendment, and I call up my amendment No. 753.

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

The clerk will report.

The bill clerk read as follows:

The Senator from New Hampshire [Ms. AYOTTE] proposes an amendment numbered 753 to Amendment No. 738.

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

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

The amendment is as follows:

(Purpose: To prohibit the use of funds for the prosecution of enemy combatants in Article III courts of the United States)

After section 217 of title II of division B, insert the following:

SEC. 218. (a) PROHIBITION ON USE OF FUNDS FOR PROSECUTION OF ENEMY COMBATANTS IN ARTICLE III COURTS.—None of the funds appropriated or otherwise made available for the Department of Justice by this Act may be obligated or expended to commence the prosecution in an Article III court of the United States of an individual determined to be—

(1) a member of, or part of, al-Qaeda or an affiliated entity; and

(2) a participant in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.

(b) DEFINITIONS.—In this section:

(1) The term ''Article III court of the United States'' means a court of the United States established under Article III of the Constitution of the United States.

(2) The term ''individual'' does not include a citizen of the United States.

Ms. AYOTTE. Mr. President, I filed amendment No. 753 to H.R. 2012, the appropriations minibus. My amendment would prohibit the use of funds for fiscal year 2012 for the prosecution of enemy combatants in our article III courts. This prohibition would apply to individuals who are members of al-Qaida or affiliated terrorist groups and who have participated in the course of planning or carrying out attacks against our country, the United States of America, or our coalition partners.

In no other conflict have we treated our enemies as criminals and tried them in our civilian court system. I believe we need to stop criminalizing this war, and that is why I have brought forward this amendment. These individuals should be treated with military custody and tried in military commissions, and that is why I have brought forward this amendment at this time.

Mr. President, 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.

The PRESIDING OFFICER. The Senator from New Hampshire.

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

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

Mrs. SHAHEEN. I am here to speak in favor of the entire appropriations legislation that is before us, but particularly the Commerce, Justice, and Science appropriations bill. I thank Senator MIKULSKI for her leadership, and all of the members of that subcommittee who have worked on this portion of the appropriations legislation before us.

Given the current financial constraints we are facing, I know this has been an especially difficult time to be trying to address the needs in the critical areas of our Federal budget, particularly with respect to Commerce, Science, and Justice, but I am here to speak to the section of the bill that deals with the Federal Bureau of Prisons.

I am here on behalf of New Hampshire, because we have a particular interest in this section of the legislation because it directs the Bureau of Prisons to activate three Federal prisons which are currently built but are not yet opened. One of those prisons is in Berlin, NH, in the northernmost part of our State.

I came to the floor last spring when we were debating the 2011 continuing resolution to talk about this issue of opening the Berlin prison because it was completed and not yet opened. The prison is a medium-security prison. It was completed last November at a cost of $276 million. Since November, when the project was completed, it has been costing us $4 million to maintain security at the prison to make sure that damage is not done to this new facility. We have had a warden on board since about that time, but she has not been able to hire any of the staff she needs to activate this prison.

Since that time, when I last came to the floor, our Federal prison system has gotten even more overcrowded. Last spring, I talked about the fact that our prison system was 35 percent overcrowded, and that for medium-security facilities it was 39 percent overcrowded. Since that time, we have had a net increase of 7,541 Federal prisoners in our system, so now our entire prison system is 39 percent overcrowded and medium-security prisons are 51 percent over capacity. If we are going to ensure safety, we need to begin to open some of these new facilities, and I am very pleased that we have language in the Commerce, Justice, and Science bill that would address opening these new facilities, including the Berlin prison.

This is a project that has bipartisan support. The new prison in Berlin was started under President Bush. It was continued under President Obama. The congressional delegation in New Hampshire supports the facility. It will create about 340 jobs in a region of the State that is very much in need of new jobs because it has lost a lot of its manufacturing base because the paper industry has moved offshore. It would have an impact of about $40 million to the region of the State where it is located which is, again, very important for a region that economically is in need of jobs and economic activity.

The community of Berlin has already spent $3 million for water and sewer upgrades. Since 2008, the residents of Berlin, local businesses, and State workforce development officers have been preparing for the prison to open. The community and local government officials have partnered with the business community to coordinate their resources. They have been waiting for these jobs.

When the New Hampshire Department of Employment Security first began reaching out to people in the North Country about the opportunities in the prison, the workshops were full of job seekers. We have been talking a lot about job creation here in this Congress, and now we have an opportunity to act on this bill to get people back to work in northern New Hampshire.

Families in New Hampshire and across the country are struggling. We need the jobs this legislation is going to create. At a time when we should be focused on reining in wasteful spending, we can't continue to spend millions of taxpayer dollars to maintain an empty building. So this funding is good economic policy, it is good fiscal policy, and I certainly intend to support this piece of the appropriations legislation before us, and I hope all of my colleagues will do the same.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Maryland.

Ms. MIKULSKI. Does the Senator from Idaho wish to offer an amendment?

Mr. VITTER. And if I could address the Senator through the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. I have a modification to my amendment which will take about 1½ minutes.

Ms. MIKULSKI. Madam President, what I wish to suggest as a way of proceeding, with the concurrence of the other side, is the Senator modify his amendment, because that is quick. Then we will go to the Senator from Idaho. Then I have some rebuttals to some of the amendments offered.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 769, AS MODIFIED

Mr. VITTER. Madam President, I call for regular order with respect to amendment No. 769 and that the amendment be modified with the changes that are at the desk.

The PRESIDING OFFICER. The amendment is pending. The amendment will be so modified.

The amendment, as modified, is as follows:

On page 83, between lines 20 and 21, insert the following:

SEC. ____. None of the funds made available in this Act for the Food and Drug Administration shall be used to prevent an individual not in the business of importing a prescription drug (within the meaning of section 801(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(g))) from importing a prescription drug from Canada that complies with the Federal Food, Drug, and Cosmetic Act: *Provided*, That the prescription drug may not be (1) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); or (2) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262). None of the funds made available in this Act for the Food and Drug Administration shall be used to change the practices and policies of the Food and Drug Administration, in effect on October 1, 2011, with respect to the importation of prescription drugs into the United States by an individual, on the person of such individual, for personal use, with respect to such importation by individuals from countries other than Canada.

Mr. VITTER. Madam President, I ask unanimous consent that Senators STABENOW and BINGAMAN be added as cosponsors to the amendment.

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

Mr. VITTER. In closing, let me state that this again very tightly narrows the amendment to a very specific purpose, to allow safe FDA-approved prescription drugs to be reimported for individual consumer use from Canada, and Canada only.

In doing so, this makes it a nearly identical amendment to that which

was approved in the last Senate on a strong bipartisan vote. I urge and look forward to that same strong support for this Vitter amendment No. 769.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 814 TO AMENDMENT NO. 738

Mr. CRAPO. Madam President, I ask unanimous consent to set aside the pending amendment, and I call up my amendment No. 814.

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

The clerk will report.

The bill clerk read as follows:

The Senator from Idaho [Mr. CRAPO], for himself, Mr. JOHANNS, Mr. SHELBY, Mr. TOOMEY, Mr. MORAN, and Mr. VITTER, proposes an amendment numbered 814 to amendment No. 738.

Mr. CRAPO. 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 for the orderly implementation of the provisions of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and for other purposes)

On page 83, between lines 20 and 21, insert the following:

SEC. ____. None of the funds made available by this Act may be used by the Commodity Futures Trading Commission—

(1) to promulgate any final rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376) (including under any law amended by that Act) or the Commodity Exchange Act (7 U.S.C. 1 et seq.), until the Commodity Futures Trading Commission, jointly with the Securities and Exchange Commission and the prudential regulators (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a))—

(A) has, pursuant to the notice and comment provisions of section 553 of title 5, United States Code, adopted an implementation schedule for title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8301 et seq.) (including amendments made by that title) (referred to this section as ''the title'') that sets forth a schedule for the publication of final rules required by the title that—

(i) begins with the publication of the rules required under section 712(d)(1) of that Act (15 U.S.C. 8302); and

(ii) includes provisions that require a rulemaking and provisions that do not require a rulemaking; and

(B) has completed and submitted to Congress an analysis that includes—

(i) a quantitative analysis of the effects of the title on United States economic growth and job creation;

(ii) an assessment of the implications of the title for cross-border activity by, and international competitiveness of, United States financial institutions, companies, and investors;

(iii) an assessment of whether and how the definitional, clearing, trading, reporting, recordkeeping, real-time reporting, registration, capital, margin, business conduct, position limits, and other requirements of the title work together, and how those requirements affect market depth and liquidity;

(iv) an assessment of the implications of any lack of harmonization by the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the prudential regulators with respect to the timing and the substance of the rules of those entities; and

(v) an analysis of the progress of members of the Group of 20 and other countries toward implementing derivatives regulatory reform, including material differences in the schedule for implementation (as well as material differences in definitions, clearing, trading, reporting, registration, capital, margin, business conduct, and position limits) and the possible and likely effects on United States competitiveness, market liquidity, and financial stability; or

(2) to further define the terms—

(A) ''swap'' and ''security-based swap'' to include—

(i) for purposes of section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)) and section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), an agreement, contract, or transaction that would otherwise be a swap or security-based swap, in which 1 of the counterparties is not—

(I) a swap dealer or major swap participant;

(II) an investment fund that—

(aa) has issued securities (other than debt securities) to more than 5 unaffiliated persons;

(bb) would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) but for paragraph (1) or (7) of subsection (c) of that section; and

(cc) is not primarily invested in physical assets (including commercial real estate) directly or through an interest in an affiliate that owns the physical assets;

(III) a regulated entity, as defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502); or

(IV) a commodity pool that is predominantly invested in any combination of commodities, commodity swaps, commodity options, or commodity futures;

(ii) an agreement, contract, or transaction that would otherwise be a swap or security-based swap, and that is entered into by a party that is controlling, controlled by, or under common control with its counterparty; or

(iii) except with respect to any law (including rules and regulations) prohibiting fraud or manipulation, an agreement, contract, or transaction that would otherwise be a swap or security-based swap and—

(I) is entered into outside of the United States between counterparties established under the laws of any jurisdiction outside of the United States (including a non-United States branch of a United States entity licensed and recognized under local law outside of the United States);

(II) has a valid business purpose;

(III) is not structured with the sole purpose of evading the requirements of the title; and

(IV) is not reasonably expected to have a serious adverse effect on the stability of the United States financial system; and

(B) ''major swap participant'' and ''major security-based swap participant'' in a manner that does not distinguish between—

(i) net and gross exposures; and

(ii) collateralized and uncollateralized positions.

Mr. CRAPO. I wish to note that as cosponsors of the amendment, Senators JOHANNS, SHELBY, TOOMEY, MORAN, VITTER, and KIRK are also supportive.

The unprecedented scope and pace of agency rulemaking in the United States today is posing incredible uncertainty and threat to our economy. Americans today know that jobs are the No. 1 issue we face, and consistently across the country Americans are also recognizing that the explosion of government regulatory action is one of the huge impediments to our job creation efforts in America.

Unfortunately, under the Dodd-Frank Act, we are seeing one of the most significant rulemaking levels of activity in every part of our economy. Many of the proposed rules do not give sufficient consideration to how they will affect Main Street or our economy as a whole, how they will interact with one another or, frankly, how they will impact our global competitiveness.

Through this amendment, I focus on the CFTC to send a strong message to all regulators involved in the rulemaking process that we cannot afford regulations that unnecessarily burden our businesses, our economy, and our competitive position in the global marketplace.

This amendment does three basic things:

It prohibits funds from being used by the CFTC to promulgate any final rules until the agency substantiates that those rules are economically beneficial; secondly, it adheres to congressional intent to provide end users with a clear exemption from margin requirements; and, third, it sets clear bounds on the overseas applications of the derivatives requirements.

With regard to the process portion of the amendment, in February, when many members of the banking committee wrote to our financial regulators, we strongly urged them to employ fundamental principles of good regulation in their statutory mandate and not to sacrifice quality and fairness in exchange for speed. We had two main concerns: that the regulators are not allowing adequate time for meaningful public comment on their proposed rules; and that the regulators are not conducting rigorous quantitative analysis of the costs and benefits of their rules and the effects those rules can have on our economy and our competitive position in a global marketplace.

On April 15, 2011, the Office of Inspector General for the CFTC issued a report of an investigation entitled ''An Investigation Regarding the Cost Benefit Analyses Performed by the Commodity Futures Trading Commission in Connection with Rulemakings Undertaken Pursuant to the Dodd-Frank Act.'' Unfortunately, the IG report demonstrated that the CFTC is not using rigorous economic analysis to shape its rulemaking.

In April, Harvard Law Prof. Hal Scott testified on urgently needed fixes in the Dodd-Frank rulemaking process. We also began hearing from CFTC Commissioners Scott O'Malia and Jill Sommers about problems with the rulemaking process, specifically with economic analysis.

In August, CFTC Commissioner Scott O'Malia stated that the current process

of enacting rules under the Dodd-Frank Wall Street Reform Act is inadequate, and excoriated the regulatory body for not putting together a clear rulemaking order and implementation schedule for public comment.

Again, in August, CFTC Commissioner Jill Sommers stated:

I believe it is a mistake for us to begin the process without a plan to logically sequence our consideration of final rules along with a transparent implementation plan.

In July, the SEC's proxy access rule became the first Dodd-Frank rule to be successfully challenged in court for failing to adequately analyze its economic costs and benefits. In the unanimous decision to vacate the rule, U.S. Circuit Court Judge Douglas Ginsburg wrote:

The Commission inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified; neglected to support its predictive judgments, contradicted itself; and failed to respond to the substantial problems raised by commenters.

In this amendment, we require the CFTC to fix its rulemaking process by prohibiting funding for any final CFTC rules until the Commission, jointly with the SEC and other prudential regulators, publishes a schedule outlining the order in which the agencies will consider and implement the final rules. Affected market participants will be able to weigh in and be heard about how rules should be adopted and implemented. Agencies will have to work together to come up with coordinated schedules for proceeding with rulemaking and implementation. The agencies will have to take into consideration economic impacts, international competitiveness, the interaction of their rules one with another, and the implications of inconsistencies in the approaches taken by different regulators.

It is more important that the CFTC and other agencies allow for meaningful public comment and economic analysis than it is to rush through these rules and risk undermining the integrity of the process and diminishing the utility of this important market.

Secondly, we protect end users from the burdensome margin requirements of the statute. When the Dodd-Frank conference was reopened to deal with the scoring issue, Senators Dodd and Lincoln acknowledged that the language for end users was not perfect, and tried to clarify the intent of the language with a joint letter, stating:

The legislation does not authorize the regulators to impose margins on end users, those exempt entities that use swaps to hedge or mitigate commercial risk.

However, regulators have interpreted the actual Dodd-Frank legislative language as providing authority to require end users to post margin. This amendment provides certainty for Main Street businesses that played no role in the financial crisis by establishing a clear exemption from excessive margin requirements.

End users have emphasized the critical importance of addressing this problem. In its letter, the Coalition for Derivatives End-Users highlighted the stakes of getting this issue right. They said:

While the Dodd-Frank Act and implementing regulations do much to increase transparency and reduce systemic risk in the derivatives market, they include provisions that, if implemented as proposed or otherwise expected, would impose unnecessary burdens on end-user companies. While we believe it is important to reduce risk within our financial markets, transactions with end users have not been found to pose systemic risk. Our companies and our economy cannot afford to unnecessarily tie up capital that would otherwise be used to promote growth and create jobs.

MillerCoors echoed these sentiments when it said:

This amendment protects our ability to efficiently buy malting barley, hops and other ingredients used to brew our beers.

FMC and the National Association of Corporate Treasurers noted:

This legislation addresses concerns that are of critical importance to end-users—companies using derivatives to reduce business and financial risk and not to speculate. FMC and the other members of the NACT support legislation enabling end-users to continue their cost-effective use of derivatives to manage the commercial risks that they face when they make investments to expand plant and equipment, conduct research and development, build inventories to support higher sales, and to sustain and ultimately grow jobs.

The third thing the amendment does is to limit the extraterritorial reach of Dodd-Frank—of the CFTC rulemaking to streamline regulation and protect American competitiveness. Chairman JOHNSON and Congressman FRANK recently sent a letter to the regulators that brought up the concern that the extraterritorial imposition of margin requirements raises questions about the consistency with Congressional intent regarding title VII.

They pointed out that Congress generally limited the territorial scope of title VII activities to within the United States. Extraterritorial application of one nation's laws to another nation's markets and firms is especially problematic in a global market such as derivatives, where it is common for counterparties based in different parts of the world to engage in transactions with each other.

The historical practice of U.S. regulators is to recognize and defer to foreign regulators when registered entities engaged in activities outside the United States are subject to comparable foreign regulation.

Given recent statements and actions by U.S. regulatory agencies, there is concern that proposals could create uncertainty as to how additional regulations could apply across borders and alter regulatory precedent. While there is bipartisan support from Members of Congress to encourage our regulators to work with their international counterparts to seek broad harmonization, there is a growing list of noteworthy and critical items that we are seeing related to the lack of progress on international harmonization.

The CFTC and the SEC are taking divergent approaches on some derivatives rules, raising questions about whether we can harmonize even within our own borders, let alone with foreign regulators. Foreign jurisdictions in Europe, not to mention Asia and Latin America, have outright rejected many reforms—such as the section 716 swap pushout provisions. It remains unclear as to what foreign jurisdictions will impose a margin requirement such as proposed by our prudential regulators. Simply put, the rest of the world is not following us in a number of critical areas.

Third parties, including market analysts and economists and academics, have also indicated that these rules will negatively impact U.S. competitiveness and growth. Our Fed Chairman Bernanke recently warned that the extraterritorial application of margin rules could create a significant competitive disadvantage for U.S. companies. We can't force Europe or Asia or Latin America to follow, and if our rules are finalized in the United States before other jurisdictions' rules, we risk substantially harming U.S. competitiveness, growth, and financial stability. That is why this amendment sets clear bounds on the overseas applications of the derivatives requirements, while allowing regulators to stop systemically dangerous transactions intended to evade U.S. requirements.

In conclusion, there can be no doubt about our resolve to address the root causes of the financial crisis. But equally, there can be no doubt about our resolve to ensure that we do this with great care. Failing to do so will threaten our businesses, our economy, and our competitiveness globally. I urge my colleagues to support this amendment as an important step to ensuring that while working together for the former, we do not neglect the latter.

I yield the floor.

AMENDMENT NO. 879 TO AMENDMENT NO. 738

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Madam President, as provided under the previous unanimous consent order, I ask the pending amendment be set aside so I may call up my amendment No. 879.

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

The bill clerk read as follows:

The Senator from Oregon [Mr. MERKLEY] proposes an amendment numbered 879 to amendment No. 738.

Mr. MERKLEY. I ask unanimous consent further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit amounts appropriated under this Act to carry out parts A and B of subtitle V of title 49, United States Code, from being expended unless all the steel, iron, and manufactured products used in the project are produced in the United States)

On page 264, between lines 9 and 10, insert the following:

SEC. 153. BUYING GOODS PRODUCED IN THE UNITED STATES.

(a) COMPLIANCE.—None of the funds made available under this title to carry out parts A and B of subtitle V of title 49, United States Code, may be expended by any entity unless the entity agrees that such expenditures will comply with the requirements under this section.

(b) PREFERENCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation may not obligate any funds appropriated under this title to carry out parts A and B of subtitle V of title 49, United States Code, unless all the steel, iron, and manufactured products used in the project are produced in the United States.

(2) WAIVER.—The Secretary of Transportation may waive the application of paragraph (1) in circumstances in which the Secretary determines that—

(A) such application would be inconsistent with the public interest;

(B) such materials and products produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality; or

(C) inclusion of domestic material would increase the cost of the overall project by more than 25 percent.

(c) LABOR COSTS.—For purposes of this subsection (b)(2)(C), labor costs involved in final assembly shall not be included in calculating the cost of components.

(d) MANUFACTURING PLAN.—The Secretary of Transportation shall prepare, in conjunction the Secretary of Commerce, a manufacturing plan that—

(1) promotes the production of products in the United States that are the subject of waivers granted under subsection (b)(2)(B);

(2) addresses how such products may be produced in a sufficient and reasonably available amount, and in a satisfactory quality, in the United States; and

(3) addresses the creation of a public database for the waivers granted under subsection (b)(2)(B).

(e) WAIVER NOTICE AND COMMENT.—If the Secretary of Transportation determines that a waiver of subsection (b)(1) is warranted, the Secretary, before the date on which such determination takes effect, shall—

(1) post the waiver request and a detailed written justification of the need for such waiver on the Department of Transportation's public website;

(2) publish a detailed written justification of the need for such waiver in the Federal Register; and

(3) provide notice of such determination and an opportunity for public comment for a reasonable period of time not to exceed 15 days.

(f) STATE REQUIREMENTS.—The Secretary of Transportation may not impose any limitation on amounts made available under this title to carry out parts A and B of subtitle V of title 49, United States Code, which—

(1) restricts a State from imposing requirements that are more stringent than the requirements under this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries, in projects carried out with such assistance; or

(2) prohibits any recipient of such amounts from complying with State requirements authorized under paragraph (1).

(g) CERTIFICATION.—The Secretary of Transportation may authorize a manufacturer or supplier of steel, iron, or manufactured goods to correct, after bid opening, any certification of noncompliance or failure to properly complete the certification (except for failure to sign the certification) under this section if such manufacturer or supplier attests, under penalty of perjury, and establishes, by a preponderance of the evidence, that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error.

(h) REVIEW.—Any entity adversely affected by an action by the Department of Transportation under this section is entitled to seek judicial review of such action in accordance with section 702 of title 5, United States Code.

(i) MINIMUM COST.—The requirements under this section shall only apply to contracts for which the costs exceed $100,000.

(j) INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.

(k) FRAUDULENT USE OF ''MADE IN AMERICA'' LABEL.—An entity is ineligible to receive a contract or subcontract made with amounts appropriated under this title to carry out parts A and B of subtitle V of title 49, United States Code, if a court or department, agency, or instrumentality of the Government determines that the person intentionally—

(1) affixed a ''Made in America'' label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this section applies, but were not produced in the United States; or

(2) represented that goods described in paragraph (1) were produced in the United States.

Mr. MERKLEY. Madam President, I rise to offer this amendment for the consideration of this body because it is important to boosting American jobs and manufacturing and ensuring that more of our American dollars are spent here at home. When the Federal Government spends tax dollars, it should be looking to American companies to provide goods and services. Recently, an issue came to light that gave me substantial concern.

A few months ago, a bid was awarded to a Chinese company to provide steel for a freight rail bridge in Alaska, the Tanana Bridge. There was strong American competition. However, the award went to the Chinese company.

If there were a level playing field, that would be one thing. But, in fact, China is employing a three-tiered strategy that provides enormous subsidies to its own manufacturing, tilting the playing field considerably. The first part of that strategy is to peg its currency so its products have a 25- to 40-percent subsidy—equivalent to that subsidy—because of the pegging of the currency.

The second piece is it provides all kinds of subsidies that are not actually permitted under WTO, but China is doing it anyway. These go directly to the heart of manufacturing competition. Recently, a bipartisan amendment was put forward. I applaud my colleagues from Wyoming, Senator ENZI and Senator BARRASSO. We said China is required under the WTO to post its subsidies, to notify the parties of its subsidies. It has done so only once since 2006. It is in violation. Also, under the WTO, the American Trade Representative is authorized to counternotify if China fails to do so—and we had not done so. So we called upon our Trade Representative to counternotify. Very interestingly, the next week we get this list of 200 subsidies that China is utilizing outside the framework of WTO to subsidize its manufacturers and compete unfairly against the United States.

The third part of the strategy is that China is using its central bank as the only authorized bank to control the interest rate on deposits and thereby also being able to control the interest rates on loans in a fashion that provides enormous subsidies to our competitors in China. Until recently, America had stood on the sidelines and not confronted any of these three Chinese strategies other than to say in some cases that are relevant to our national defense and our national transportation system there needs to be a provision to buy products inside America.

But this particular project fell between the cracks. Although the funds came from the Defense Department, it was not a straight Defense Department program, and although it was a rail program, it was not a passenger rail program. This amendment closes this loophole.

At a time when Americans everywhere are searching for jobs, we should be supporting American companies that employ and hire Americans, especially to make sure American companies are not disadvantaged by this three-tier Chinese strategy that tilts the playing field against our companies and thereby destroys jobs in America. Under this amendment, freight rail transportation contracts exceeding $100,000, funded in the appropriations bill, would use steel, iron, and manufactured products produced in America.

There is flexibility provided to the Secretary of Transportation to waive this requirement under one of three scenarios—if the application is inconsistent with the public interest, if the materials and products are not available in sufficient quantity or quality or that the inclusion of domestic material would increase the price by more than 25 percent.

I am not sure 25 percent is high enough, given that just pegging its currency creates a 25-to 40-percent subsidy for Chinese products, so this may not go far enough. This may only go a small portion of the way to leveling the playing field. I lay it down as a marker that we should create fairness so American manufacturers can compete. This amendment may not go as far as it should, but it is certainly a stride in the right direction. For that reason, I urge my colleagues to support

it. If we do not make things in America, we will not have a middle class in America.

The PRESIDING OFFICER. The Senator from Kansas.

AMENDMENT NO. 815 TO AMENDMENT NO. 738

Mr. MORAN. Madam President, I ask unanimous consent the pending amendment be set aside and the Moran amendment No. 815 be made the order of the day in the Senate.

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

The bill clerk read as follows:

The Senator from Kansas [Mr. MORAN] proposes an amendment numbered 815 to amendment No. 738.

Mr. MORAN. 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:

On page 6, line 17, insert ": *Provided further*, That $8,000,000 of the amount made available by this heading shall be transferred to carry out the program authorized under section 14 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012)" before the period at the end.

Mr. MORAN. Madam President, the amendment I am offering today was one I discussed in the agricultural appropriations subcommittee. I am a Member of that subcommittee and am very interested in the topic of the appropriations for the Department of Agriculture. This amendment would transfer $8 million from the Department's administrative account to the Watershed Rehabilitation Program. The Watershed Rehabilitation Program is a bit broader than this, but basically what we are talking about are PL–566 watershed structures. Across our country, more than 1,000 structures have been built over a long period of time. Many of them are up to 50 years old. These structures are built for purposes of flood control, for nutrient management, for conservation, wildlife habitat, for recreation. Clearly, these structures have been an important component of the economy and well-being of communities and people across America for a long time.

In fact, according to the Natural Resources Conservation Service of the Department of Agriculture, these PL–566 structures provide agricultural benefits at their estimate of $404 million. These benefits are things such as erosion control, animal waste management, water conservation, water quality improvement, irrigation efficiency, changes in land use—things such as that.

There are also nonagricultural benefits which the NRCS estimates at $877 million in benefits. These are associated with recreation, fish and wildlife, rural water supply, water quality, municipal and industrial water supply, incidental recreation uses. Then, of course, what is particularly important as we look at what has happened in our country during this season, during this year: flood control. Agricultural flood control by NRCS estimates is a value of $320 million; nonagricultural flood protection, $425 million. We are talking about flood control structures that have benefited, for a number of reasons, about $2 billion. This amendment does not create the opportunity to construct more of those structures. The problem this amendment addresses is that those structures are aging. As I said earlier, many of them are nearly 50 years old.

In my view, it is very much like the analogy we have with bridges. We focused some attention over the last several years on deteriorating bridges and infrastructure in our highway system. We know if we don't provide the maintenance, the deterioration occurs, and ultimately we could have a catastrophe. That is what I am trying to address here, is my fear that in the absence of paying attention to the maintenance of these flood control structures, we run the potential of having a disaster. Not only do the benefits accrue to agriculture and to communities and water supply and recreation, but the real thing here is about the loss of property values and, more importantly, the loss of life. In the absence of maintaining these structures, we run the risk that the investment we have made over decades begins to disappear. Not only do we lose the value of the asset, we potentially lose life by those who would be harmed by the flooding that will occur in the absence of these flood control measures.

Therefore, a watershed rehabilitation program was created years ago. The problem in the funding we have today in the appropriation bill before us is there is no money, zero money in the bill, to maintain these structures. So ours is a very modest proposal to keep the program ongoing of transferring $8 million into that rehabilitation program to maintain those structures and prevent bad things from happening. This is probably woefully inadequate in regard to the amount of resources that should be devoted to this. Looking at the bill and looking at the structure of the bill and how we tried try to find the right priorities and the balance within the agriculture appropriations subcommittee and at the full Appropriations Committee, we concluded that we had the opportunity to at least put $8 million into the program.

The watershed rehabilitation program is administered by the Natural Resource and Conservation Service, and here is what it is described to do. It assists project sponsors with rehabilitation of aging project dams. Only dams installed under PL–566 and a couple of other programs are eligible. The purpose of this program is to extend the service life of dams and meet applicable safety and performance standards. Priority is given by NRCS to those structures that pose the highest risk to life and property. Projects are eligible when hazard to life and property increases due to downstream development and where there is a need for rehabilitation to extend the planned life of the structure.

What that is saying is in many of these instances where the structure has been built, almost 50 years ago, communities have been built downstream and the dam becomes even more important to protect property and life for that development. So we are here trying make certain there is a level of funding for repairing and replacing deteriorated components, repairing damage from catastrophic events, such as the floods we have experienced this year, and upgrading the structures to meet new dam safety laws or to even decommission a structure.

I would guess we are not going to fund new structures here in this Congress in this fiscal environment. We ought to at least take the responsibility of providing money to maintain the structures that are there. In my view, it is important that we do so. Unlike in past years, we can be assured that the money we put into this bill will go to the highest priority projects, the dams that are in the most need of repair and maintenance. There is no opportunity for Members of Congress, under our rules here in the Senate, to earmark these dollars, and so the USDA, the Department of Agriculture, through the Natural Resource and Conservation Service, will make those decisions.

We are not one of the States that has the most dam structures, although it is an important aspect of maintaining water in its proper place and to provide wildlife habitat and conservation practices and improve the agricultural environment. Those structures are important to us, and we see this each and every day.

In fact, for most of the time I have been in Congress, we do an annual what I call conservation tour. We look at the role of the Department of Agriculture, the private sector, wildlife and habitat organizations, and how they partner and come together to make good things happen to improve our environment. This year we focused on water quality and water quantity. Clearly this program of PL–566 structures is critical.

When I talk about that partnership, it would be important for Members of the Senate to know that this program requires a 35-percent local match. There is local money. The sponsors of these projects, these dams across our country, will have to find local resources in order to make that match.

I would ask the Senate to approve the amendment I am offering today. Again, it is something I raised in our subcommittee and raised in our full committee with the hopes we would be able to find a satisfactory offset, and from my view, the priority we place on this program is one that is deserving of Senate support.

I offer the amendment as I described.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

AMENDMENT NO. 771, AS MODIFIED, TO AMENDMENT NO. 738

Mr. BINGAMAN. Madam President, I call up amendment No. 771, and ask that it be modified with the changes that are already at the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report the amendment, as modified.

The Senator from New Mexico [Mr. BINGAMAN], for himself and Ms. STABENOW, proposes an amendment No. 771, as modified, to amendment No. 738.

Mr. BINGAMAN. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment (No. 771), as modified, is as follows:

(Purpose: To provide an additional $4,476,000, with an offset, for the Office of the United States Trade Representative to investigate trade violations committed by other countries and to enforce the trade laws of the United States and international trade agreements, which will fund the Office at the level requested in the President's budget and in H.R. 2596, as reported by the Committee on Appropriations of the House of Representatives)

On page 209, between lines 2 and 3, insert the following:

SEC. 542. (a) The matter under the heading ''SALARIES AND EXPENSES'' under the heading ''OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE'' in title IV of this division is amended by striking ''$46,775,000'' and inserting ''$51,251,000''.

(b) Of the unobligated balance of amounts made available to the Department of Justice for a fiscal year before fiscal year 2012 for the ''Legal Activities, Assets Forfeiture Fund'' account, there are permanently rescinded $8,000,000, in addition to the amount rescinded pursuant to section 529(c)(2).

Mr. BINGAMAN. Madam President, this is an amendment to increase funding for the U.S. Trade Representative so that the Trade Representative can conduct trade enforcement activities.

The amendment is cosponsored by Senator STABENOW, and I ask unanimous consent to add Senator COONS and Senator BROWN from Ohio as cosponsors as well.

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

Mr. BINGAMAN. This amendment would provide an additional $4,476,000 to the Trade Representative's Office above the level that is provided for in the bill. That amount is fully offset. It would fund the USTR at $51,251,000 this year. That is the same level of funding that the President has in his budget request, and also the same level of funding that has been arrived at in the House Appropriations Committee in their legislation. Clearly, there is bipartisan support for this level of funding for the Trade Representative's office.

Last week, as all of us will remember, we sent to the President three new free-trade agreements. I supported those free-trade agreements because they promised to open new markets for American businesses so we can sell more goods that are produced here in the United States. However, if American businesses and workers are to benefit from trade agreements, the United States needs to do more to ensure our trading partners are competing fairly. This means we have to enforce the trade agreements and the U.S. trade laws. Right now, in my view, we are not providing enough resources to the Trade Representative's Office for enforcement activities.

The USTR's general counsel's office has 30 attorneys. Of that 30, 22 are staff attorneys actually involved in day-to-day litigation. These two dozen or so people are responsible for preparing and prosecuting trade dispute cases at the World Trade Organization or under the dispute resolution mechanisms in our free-trade agreements. They are also responsible for defending the United States when other countries file complaints against us. In my view, this is not enough staff to respond in a timely manner to the numerous allegations about unfair trade practices that are being committed by our trading partners.

For example, the U.S. Trade Representative's investigation into China's export restraints on rare earth minerals has been underway for more than 2 years. There are many other concerns about China's trade practices. In fact, many have been discussed here on the Senate floor today. Does China provide subsidies to its companies that are inconsistent with the World Trade Organization? Is China unfairly closing its markets to U.S. goods or unfairly requiring U.S. companies to transfer technology and intellectual property to Chinese companies as a condition of doing business in China? These are serious questions that American businesses have raised informally. In fact, the United Steel Workers formally raised these issues in a section 301 petition last year. Many of these allegations are not fully investigated because we simply have not committed the resources in the U.S. Trade Representative's Office to do the investigations.

Only two attorneys in the U.S. Trade Representative's general counsel's office work on the rare earths and raw materials cases. USTR needs the resources to act quickly to combat unfair trade practices before U.S. industries are irreparably harmed.

The Senate also recently demonstrated bipartisan support for trade enforcement when it passed the Currency Exchange Rate Oversight Reform Act. That was on October 11. The vote there was 63 to 35. I voted for that bill as well. This amendment I am offering today would help provide the U.S. Trade Representative with additional resources to enforce the provisions in that bill as well. I urge my colleagues to support the amendment.

Let me say a few words about the offset. The amendment would propose to rescind $8 million from the Department of Justice asset forfeiture fund. This fund contains the funds that DOJ obtains from seizing and selling assets, for example, speedboats that are seized from drug dealers. The Department of Justice uses some of these funds for law enforcement, but most of the funds are not used. The fund had a balance of more than $841 million at the end of fiscal year 2009; $974 million at the end of 2010; $701 million at the end of fiscal year 2011. The Department of Justice projects it will collect more than $1.7 billion from seized assets this year.

Because of the excess funds in this fund, this asset forfeiture fund, the President's budget suggested that we rescind 620 million of those dollars. The proposal I am making in this as an offset is that we add an additional $8 million so that the total amount rescinded from that fund would be $628 million rather than $620 million. This would leave in the fund $474 million, which I believe is an adequate amount to ensure that the Department of Justice has the resources it needs for its law enforcement activities.

I believe this is a very meritorious amendment. I think it improves the very good legislation that has been brought to the Senate floor by the Appropriations Committee, but I hope that this amendment can be approved and added to the legislation when the issue is raised for a vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Madam President, I want to thank the Senator from New Mexico for his comments regarding the U.S. Trade Representative and the work of the U.S. Trade Representative's Office.

We do have to fight unfair and even predatory trade practices. In his cogent comments, he spoke about steel. We have been trying to look out for steel in my State for some time against these unfair practices. Sometimes we win, most of the time we lose ground. The amendment that is offered by the Senator from New Mexico would, as he said, increase the funding by $4.5 million for a new total of $51 billion. That is identical to what the House has. The amendment does rescind money from the forfeiture fund which has been used for law enforcement task forces, including drugs, human trafficking, and other things. I am inclined to support the amendment. I certainly support the philosophical thrust of the amendment. We have some questions about the offset. We have to get the concurrence of CBO to make sure it is budget neutral, and we are consulting with my ranking member to get her thoughts and views on it.

Again, I wish to say to the Senator from New Mexico that I support the thrust of the amendment, and I need to consult. We are waiting for a comment from our ranking member who is tied up on other legislative matters and we expect to hear from her shortly. When we do, we will be able to talk about how we will dispose of this amendment.

I thank the Senator from New Mexico for his advocacy.

AMENDMENT NO. 753

I wish to speak on another matter, which is an amendment that was raised, amendment No. 753, on terrorists and prosecutions, which was offered by the Senator from New Hampshire earlier. In order to expedite proceedings, I withheld my rebuttal, and now I choose to take this time to rebut the amendment of the Senator from New Hampshire.

I rise in opposition to her amendment. Although well intentioned, there are serious objections to it. Her amendment would prohibit the Department of Justice from trying anyone charged with terrorism-related concerns in an article III court in the United States.

I oppose the amendment for three reasons. First, the amendment is unnecessary. The Department of Justice has a strong track record of successfully prosecuting terrorists in criminal courts.

Second, it goes beyond the law that already prohibits certain terrorist suspects from even coming into the United States, even for prosecution. This was language included in the 2011 continuing resolution, and our fiscal year 2012 CJS bill does carry that same language. For example, we have already dealt with someone such as Khalid Shaikh Mohammed. This amendment also would reach beyond that and it wouldn't allow prosecutions on any new non-U.S. citizen on terrorism-related charges.

Third, this amendment is opposed by the Departments of Justice and Defense. I don't mean just the Departments. Attorney General Eric Holder and Secretary of Defense Leon Panetta object to this amendment. They feel they have a working agreement on how best to try terrorists.

I say to my colleagues, I hope they would reject the amendment of the Senator from New Hampshire when it comes up.

The Department of Justice has a strong record of successfully convicting terrorists in their criminal courts. One can look at the 1993 bombing of the World Trade Center, the attack on the U.S. Embassies in East Africa, and the trial and conviction of the Blind Sheik. Over 400 terrorists have been tried and convicted since 2001. Just last week, another success, the so-called underwear bomber, Umar Farouk Abdulmutallab, pled guilty in Federal court in Michigan. There were and are major cases resulting in criminal convictions of terrorists. So I would suggest the Senator from New Hampshire's concern that the Department of Justice is not equipped to try terrorist suspects does not have traction because the record shows otherwise.

I think we have to be careful because this amendment goes beyond current law. In 2011, we passed the Defense Authorization Act and then the 2011 continuing resolution, both of which prohibit the administration from bringing Guantanamo Bay detainees into the United States even for prosecution. Congress will have to change restrictions in law before Gitmo detainees are transferred to the United States for prosecution or detention. Senator AYOTTE's amendment would go beyond these restrictions to say that anyone indicted on a terrorism-related charge who isn't a U.S. citizen couldn't be prosecuted in Federal courts, unnecessarily court-stripping.

I have no sympathy for terrorists, and I am going to make sure we honor international law but that we prosecute to the fullest extent possible. What we want to be able to show is that the Department of Justice has successfully prosecuted them, and this amendment would prohibit—this amendment would not be about prosecuting terrorists, it would be about choking the Department of Justice.

Let me go to my third reason, which is the opposition by Secretary Leon Panetta and Attorney General Holder. Defense and Justice share responsibility for prosecuting terrorists. Justice prosecutes in criminal courts and the Defense Department prosecutes in military commissions. Defense and Justice have a joint protocol where they work together to evaluate terrorist cases to decide where best, where most effectively to prosecute them. In light of the restrictions Congress has already made on these trials, the Defense Department decided earlier this year to resume new charges in the military commissions. But Congress shouldn't restrict the ability of the executive branch to decide where best to prosecute terrorists—understanding some of the dynamics of international law, criminal codes, codes of military conduct, to decide where best to prosecute terrorists.

We don't want to set a dangerous precedent, if Defense or Justice are restricted from using every tool available to bring the terrorists to justice.

I hope, when we vote on this amendment, we defeat it, recognizing that the Senator from New Hampshire wants to be sure justice is served, and we want it too. The best way to serve justice is to let the Defense Department and Justice Department decide what court or tribunal is the best way to proceed—to ensure the fairness of a trial but to make sure we have the best, most effective, most efficient way to do it. I must say, when one looks at the record of the Justice Department in prosecuting these terrorists in civilian courts, prosecutions were achieved, convictions were obtained, and as the world watched it, justice was served. I am pretty proud of that.

I hope we will defeat the amendment of the Senator from New Hampshire but that we be united as a Congress and the Senate in making sure we prosecute those who engage in any predatory activity directed to the United States of America and its citizens.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 860 TO AMENDMENT NO. 738

Mr. BLUNT. Madam President, I ask unanimous consent to temporarily set aside the pending amendment to offer the Grassley amendment No. 860.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. BLUNT], for Mr. GRASSLEY, proposes an amendment numbered 860 to amendment No. 738.

Mr. BLUNT. 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 ensure accountability in Federal grant programs administered by the Department of Justice)

After section 217 of title II of division B, insert the following:

SEC. 218. (a) OVERSIGHT OF DEPARTMENT OF JUSTICE PROGRAMS.—All grants awarded by the Attorney General using funds made available under this Act shall be subject to the following accountability provisions:

(1) AUDIT REQUIREMENT.—Beginning in fiscal year 2012, and in each fiscal year thereafter, the Inspector General of the Department of Justice shall conduct an audit of not fewer than 10 percent of all recipients of grants using funds made available under this Act to prevent waste, fraud, and abuse of funds by grantees.

(2) MANDATORY EXCLUSION.—A recipient of a grant awarded by the Attorney General using funds made available under this Act that is found to have an unresolved audit finding shall not be eligible to receive any grant funds under a grant program administered by the Attorney General during the 2 fiscal years beginning after the 6-month period described in paragraph (5).

(3) PRIORITY.—In awarding grants using funds made available under this Act, the Attorney General shall give priority to eligible entities that, during the 3 fiscal years before submitting an application for a grant, did not have an unresolved audit finding showing a violation in the terms or conditions of a Department of Justice grant program.

(4) REIMBURSEMENT.—If an entity is awarded grant funds by the Attorney General using funds made available under this Act during the 2-fiscal-year period in which the entity is barred from receiving grants under paragraph (2), the Attorney General shall—

(A) deposit an amount equal to the grant funds that were improperly awarded to the grantee into the General Fund of the Treasury; and

(B) seek to recoup the costs of the repayment to the fund from the grant recipient that was erroneously awarded grant funds.

(5) DEFINED TERM.—In this subsection, the term ''unresolved audit finding'' means an audit report finding, statement, or recommendation that the grantee has utilized grant funds for an unauthorized expenditure or otherwise unallowable cost that is not closed or resolved within a 6-month period beginning on the date of an initial notification of the finding or recommendation.

(6) MATCHING REQUIREMENT.—

(A) IN GENERAL.—Unless otherwise explicitly provided in authorizing legislation, no funds may be expended for grants to non-federal entities until a 25 percent non-Federal match has been secured by the grantee to carry out this subsection.

(B) CASH REQUIREMENT.—Not less than 60 percent of the matching requirement described in subparagraph (A) shall be in cash.

(C) IN-KIND CONTRIBUTIONS.—No more than 40 percent of the matching requirement described in subparagraph (A) may be in-kind contributions. In this subparagraph, the term ''in-kind contributions'' means legal or other related professional services and office space that directly relate to the purpose for which the grant was awarded.

(7) NONPROFIT ORGANIZATION REQUIREMENTS.—

(A) DEFINITION.—For purposes of this section and the grant programs described in this Act, the term ''nonprofit organization'' means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Code.

(B) PROHIBITION.—The Attorney General may not award a grant using funds made available under this Act to a nonprofit organization that holds money in offshore accounts for the purpose of avoiding paying the tax described in section 511(a) of the Internal Revenue Code of 1986.

(C) DISCLOSURE.—Each nonprofit organization that is awarded a grant using funds made available under this Act and uses the procedures prescribed in regulations to create a rebuttable presumption of reasonableness for the compensation of its officers, directors, trustees and key employees, shall disclose to the Attorney General, in the application for the grant, the process for determining such compensation, including the independent persons involved in reviewing and approving such compensation, the comparability data used, and contemporaneous substantiation of the deliberation and decision. Upon request, the Attorney General shall make the information disclosed under this subsection available for public inspection.

(8) ADMINISTRATIVE EXPENSES.—Unless otherwise explicitly provided in authorizing legislation, not more than 8 percent of the amounts appropriated under this Act may be used by the Attorney General for salaries and administrative expenses of the Department of Justice.

(9) CONFERENCE EXPENDITURES.—

(A) LIMITATION.—No amounts appropriated to the Department of Justice under title II of division B of this Act may be used by the Attorney General, or by any individual or organization awarded funds under this Act, to host or support any expenditure for conferences, unless the Deputy Attorney General or the appropriate Assistant Attorney General provides prior written authorization that the funds may be expended to host a conference.

(B) WRITTEN APPROVAL.—Written approval under subparagraph (A) may not be delegated and shall include a written estimate of all costs associated with the conference, including the cost of all food and beverages, audio/visual equipment, honoraria for speakers, and any entertainment.

(C) REPORT.—The Deputy Attorney General shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on all conference expenditures approved and denied.

(10) PROHIBITION ON LOBBYING ACTIVITY.—

(A) IN GENERAL.—Amounts appropriated under this Act may not be utilized by any grant recipient to—

(i) lobby any representative of the Department of Justice regarding the award of grant funding; or

(ii) lobby any representative of the Federal Government or a State, local, or tribal government regarding the award of grant funding.

(B) PENALTY.—If the Attorney General determines that any recipient of a grant under this Act has violated subparagraph (A), the Attorney General shall—

(i) require the grant recipient to repay the grant in full; and

(ii) prohibit the grant recipient from receiving another grant under this Act for not less than 5 years.

(11) ANNUAL CERTIFICATION.—Beginning in the first fiscal year beginning after the date of the enactment of this Act, the Assistant Attorney General for the Office of Justice Programs, the Director of the Office on Violence Against Women, and the Director of the Office of Community Oriented Policing Services shall submit, to Committee on the Judiciary of the Senate , the Committee on Appropriations of the Senate, the Committee on the Judiciary of the House of Representatives, and the Committee on Appropriations of the House of Representatives, an annual certification that—

(A) all audits issued by the Office of the Inspector General under paragraph (1) have been completed and reviewed by the Assistant Attorney General for the Office of Justice Programs;

(B) all mandatory exclusions required under paragraph (2) have been issued;

(C) all reimbursements required under paragraph (4) have been made; and

(D) includes a list of any grant recipients excluded under paragraph (2) from the previous year.

(b) USE OF FUNDS.—The Office of the Inspector General shall conduct the audits described in subsection (a) using the funds appropriated to the Office of the Inspector General under this Act.

Mr. BLUNT. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 753

Mr. DURBIN. Madam President, I wish to stand and second the remarks made by the Senator from Maryland, Ms. MIKULSKI, related to the Ayotte amendment. I think it is important for us to reflect on recent history.

It was last week that Umar Farouk Abdulmutallab pled guilty in Federal court to trying to explode a bomb in his underwear on a flight to Detroit, MI, on Christmas Day, 2009. Mr. Abdulmutallab, who will be sentenced in January, is expected to serve a life sentence. I wish to commend the fine men and women at the Justice Department and the Federal Bureau of Investigation for their extraordinary work on this case. America is safer because the Obama administration chose the right investigative agency, the Federal Bureau of Investigation, as well as our article III court system, to try Mr. Abdulmutallab.

One would never know this from the speeches on the floor and from the amendment which has been offered by the Senator from New Hampshire because the suggestion is, it was a big mistake—a mistake for us to consider trying a terrorist in our criminal courts. She suggests, and others have joined her in this suggestion, that all these cases should be tried before military tribunals, military commissions.

I wish to put on the RECORD, in support of what Senator MIKULSKI said earlier, the facts in this case. I can recall when Senator MCCONNELL, the minority leader, came to the floor and spoke in reference to Abdulmutallab:

> He was given a 50 minute interrogation, probably Larry King has interrogated people longer and better than that. After which he was assigned a lawyer who told him to shut up.

That was from Senator MCCONNELL.

Unfortunately, as colorful as that depiction of the facts might have been, it just wasn't accurate. It turns out that experienced counterterrorism agencies from the FBI interrogated Abdulmutallab when he arrived in Detroit. According to the Justice Department, during the initial interrogation, the FBI ''obtained intelligence that proved useful in the fight against al-Qaida.''

I say to my colleagues, watch this Ayotte amendment carefully, because it says that if there is a reference to a terrorist associated with al-Qaida, we can't turn him over to the FBI or to the court system. He has to go to military tribunals.

After this initial interrogation, Abdulmutallab refused to cooperate further with the FBI. Only then, after he stopped talking, did the FBI give him his Miranda warnings, which are required, of course, under criminal law in the United States. What the FBI did in this case was absolutely nothing new. During the Bush administration, the previous Republican President's administration, the FBI also gave Miranda warnings to terrorists when they were detained in the United States. Here is what Attorney General Holder said:

> Across many Administrations, both before and after 9/11, the consistent, well-known, lawful, and publicly-stated policy of the FBI has been to provide Miranda warnings prior to any custodial interrogation conducted inside the United States.

In fact, the Bush administration adopted new policies for the FBI that say: ''Within the United States, Miranda warnings are required to be given prior to custodial interviews.''

Let's take one example from the Bush administration: Richard Reid, the so-called shoe bomber. Reid tried to detonate an explosive in his shoe on a flight from Paris to Miami in December of 2001, very similar to what Abdulmutallab tried on that flight to Detroit. So how does the Bush administration's handling of the shoe bomber compare with the Obama administration's handling of the underwear bomber? The Bush administration detained and charged Richard Reid as a criminal. They gave Reid a Miranda warning within 5 minutes of being removed from the airplane and they reminded him of his Miranda rights four times within the first 48 hours he was detained.

If we listen to the Republican Senators who come to the floor, they would suggest to us that giving Miranda warnings is the end of the interrogation. Once a potential criminal defendant is advised that they have the right to remain silent, the Republican

Senators who support this amendment would argue: That is it. We just gave it away. They are going to lawyer up and shut up, and we won't learn anything.

Listen to what happened in the Abdulmutallab case: He was stopped. He was interrogated by the FBI. He spoke to them for awhile. He stopped talking. He was given his Miranda warnings. Let me tell my colleagues what happened next. He began talking again to FBI interrogators and provided valuable intelligence. There was no torture, coercion or waterboarding involved.

FBI Director Robert Mueller described it this way:

> Over a period of time, we have been successful in obtaining intelligence, not just on day one, but on day two, day three, day four, day five, down the road.

Let me remind my colleagues: Mr. Abdulmutallab is associated with al-Qaida, the very type of terrorist that would be precluded from an FBI investigation and an article III court prosecution by the Ayotte amendment.

How did this happen? Do you know how it happened? Instead of using coercive techniques, the Obama administration convinced Abdulmutallab's family to come to the United States, and his family sat down with him and told him: Why don't you cooperate with the FBI? And he did. That is a very different approach from what we saw in a previous administration when coercive techniques were used.

But real life is not like the TV Show ''24,'' when old Jack Bauer tortures somebody and they cannot wait to spill the beans. Here is what we learned during the Bush administration: In real life, when people are tortured, they will say anything to make the pain stop. They will lie and fabricate and go on and babble as long as necessary to stop the pain of the torture. They often provide false information instead of valuable intelligence.

Richard Clarke was the senior counterterrorism advisor to President Clinton and President George W. Bush. Here is what he said about the Obama administration's approach:

> The FBI is good at getting people to talk . . . they have been much more successful than the previous attempts of torturing people and trying to convince them to give information that way.

So what is the record here? The record is worth recounting. I will tell you, I am not sure of the exact number, but I have been told that anywhere from 200 to 300 accused terrorists have been successfully prosecuted in the article III criminal courts of America. The Ayotte amendment would stop the President of the United States from using that option—an option that has been used repeatedly over the last 10 years to stop terrorists in their tracks, prosecute them, incarcerate them, and make them pay a heavy punishment for what they tried to do to the United States.

This Ayotte amendment would tie the hands of this President and future Presidents where they could no longer make a decision about whether a case should be tried in the article III criminal courts or in a military commission or tribunal.

Look at the facts. Since 9/11, more than 200 terrorists have been successfully prosecuted, among them, Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing; Omar Abdel Rahman, the so-called Blind Sheikh; the twentieth 9/11 hijacker Zacarias Moussaoui; Richard Reid, the ''Shoebomber;'' Ted Kaczynski, the Unabomber; Terry Nichols, the Oklahoma City coconspirator; and now Abdulmutallab.

The Ayotte amendment would stop the President of the United States and the Attorney General and the Secretary of Defense from picking the right place to investigate, to gather information, and to prosecute an individual who is suspected of terrorism in the United States.

During that same period of time, how many individuals have been successfully tried by the military commissions, which Senator AYOTTE believes should be the exclusive place to try a would-be terrorist? Three. So the record is, if you are keeping score, over 200 in the criminal courts; 3 in military commissions. Senator AYOTTE says: Convincing evidence for me. It is pretty clear to me, everybody should go to a military commission. Really? And of the three who were prosecuted in military commissions, two of them spent less than a year in prison and are now living freely in their home countries of Australia and Yemen.

Let's go to GEN Colin Powell, a known member of a former Republican administration and former Secretary of State and former head of the Joint Chiefs of Staff. You would think this man, with his special life experience and responsibilities to fight terrorism, would be a good place to turn. What does GEN Colin Powell think about the notion behind the Ayotte amendment, that we should not try people in criminal courts, only in military commissions? Well, GEN Colin Powell is quite a military man. Here is what he said:

> The suggestion that somehow a military commission is the way to go isn't borne out by the history of the military commissions.

It is a very honest statement. It should be honest enough and direct enough to guide Members of the Senate to defeat the Ayotte amendment. Whether it is a Democratic President or a Republican President, they should have every tool at their disposal to keep America safe. They should pick the forum they believe they can most effectively use to gather information and prosecute terrorists. Time and time and time again, under Republican President Bush and Democratic President Obama, they have turned to our court system, and they have successfully prosecuted terrorists.

One point made by Senator MIKULSKI that I think is worth repeating: What we are saying to the world is, come to America's court system, the same court system where we prosecute people accused of crimes and misconduct in America, and the would-be terrorists are going to be held to the same standards of trial. It will not be a military commission. It will be a court setting which can be followed by the public, not only in the United States but across the world. It says to them that our system of justice is fair and open, and whether a person is a citizen of this country or a suspected terrorist, they can be subjected to the same standards of justice.

I urge my colleagues, do not tie the hands of this President or any President in protecting America against terrorists. Leave to those Presidents the tools they need to effectively protect the United States of America.

Defeat the Ayotte amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from New Jersey.

AMENDMENT NO. 857 TO AMENDMENT NO. 738

Mr. MENENDEZ. Mr. President, I believe we have cleared with the two distinguished Senators who are managing the bill this unanimous consent request, which is to set aside the pending amendment to call up my amendment No. 857.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

> The Senator from New Jersey [Mr. MENENDEZ], for himself, Mr. ISAKSON, and Mrs. FEINSTEIN, proposes an amendment numbered 857 to amendment No. 738.

Mr. MENENDEZ. 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 extend loan limits for programs of the government-sponsored enterprises, the Federal Housing Administration, and the Veterans Affairs Administration, and for other purposes)
>
> At the appropriate place, insert the following:
>
> **SEC. __. HOUSING LOAN LIMIT EXTENSIONS.**
>
> (a) FEDERAL HOUSING ADMINISTRATION.—Notwithstanding any other provision of law, for mortgages for which a Federal Housing Administration case number has been assigned during the period beginning on the date of enactment of this Act and ending on December 31, 2013, the dollar amount limitation on the principal obligation for purposes of section 203 of the National Housing Act (12 U.S.C. 1709) shall be considered to be, except for purposes of section 255(g) of such Act (12 U.S.C. 1715z-20(g)), the greater of—
>
> (1) the dollar amount limitation on the principal obligation of a mortgage determined under section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)); or
>
> (2) the dollar amount limitation that was prescribed for such size residence for such area for 2008 pursuant to section 202 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 620).
>
> (b) FANNIE MAE AND FREDDIE MAC LOAN LIMIT EXTENSION.—
>
> (1) IN GENERAL.—Notwithstanding any other provision of law, for mortgage loans

originated during the period beginning on the date of enactment of this Act and ending on December 31, 2013, the limitation on the maximum original principal obligation of a mortgage that may be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall be the greater of—

(A) the limitation in effect at the time of the purchase of the mortgage loan, as determined pursuant to section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) or section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), respectively; or

(B) the limitation that was prescribed for loans originated during the period beginning on July 1, 2007 and ending on December 31, 2008, pursuant to section 201 of the Economic Stimulus Act of 2008 (Public Law 110-185, 122 Stat. 619).

(2) PREMIUM LOAN FEE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Federal Housing Finance Agency shall, by rule or order, impose a premium loan fee to be charged by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation with respect to mortgage loans made eligible for purchase by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation by a higher limitation provided under paragraph (1)(B), annually during the life of the loan, of 15 basis points of the unpaid principal balance of the mortgage, to achieve an estimated $300,000,000 from the revenue raised from such fees.

(B) PREMIUM LOAN FEE STRUCTURE.—The premium loan fee is independent of any guarantee fees, upfront or ongoing, charged to the borrower, and the premium loan fee shall not be affected by changes in guarantee fees.

(3) USE OF FEES.—

(A) IN GENERAL.—The fees imposed under paragraph (2) by the Federal Housing Finance Agency shall be deposited in the fund established under subparagraph (C), and shall be used to pay for costs associated with maintaining loan limits established under this section.

(B) SUBJECT TO APPROPRIATIONS.—Amounts in the fund established under subparagraph (C) shall be available only to the extent provided in a subsequent appropriations Act.

(C) FUND.—There is established in the United States Treasury a fund, for the deposit of fees imposed under paragraph (2), to be used to pay for costs associated with maintaining loan limits established under this section.

(4) FHFA REPORT ON FEES.—The Federal Housing Finance Agency shall include in each annual report required by section 1601 of the Housing and Economic Recovery Act of 2008 related to the period described in paragraph (2)(B) a section that provides the basis for and an analysis of the premium loan fee charged in each year covered by the report.

(c) DEPARTMENT OF VETERANS AFFAIRS LOAN LIMIT EXTENSION.—Section 501 of the Veterans' Benefits Improvement Act of 2008 (Public Law 110–389; 122 Stat. 4175; 38 U.S.C. 3703 note) is amended, in the matter before paragraph (1), by striking ''December 31, 2011'' and inserting ''December 31, 2013''.

Mr. MENENDEZ. Mr. President, let me speak to this amendment. I offer this amendment along with my distinguished colleague from Georgia, Senator ISAKSON, to temporarily restore the conforming loan limits that expired—the loan limits we had under the law that created the opportunity to loan at these levels—on September 30 of this year. In past years, extending these loan limits has usually occurred on the THUD appropriations bills.

As the chair of the Subcommittee on Housing, I can tell you that getting our housing market moving again is one of the most important tasks facing our country today because if we do not get that weak housing market moving again, we will not get the kind of robust economic recovery that the American people deserve. Historically, whenever we have been in the midst of an economic challenge or a recession, housing has been part of what has led us out of that recession.

Congress could be doing a great deal to get the housing market moving again. But perhaps the first rule we should follow is: Do no harm. Do no harm. But at this point, Congress, in my view, is doing harm to the housing market and to our economic recovery by allowing the higher loan limits to expire. With this bipartisan amendment, we could easily correct this problem.

The lower loan limits of the Federal Housing Administration, government-sponsored enterprises, and Veterans Administration have already resulted in a reduction of consumer credit in 669 counties across 42 States in our country. The expiration is making a weak housing market even weaker. It also makes it harder for middle-class home buyers to get mortgages when credit is already tight. And every day that passes is another day in which creditworthy borrowers are not getting loans or are having to pay much higher rates that could price them out of the market, and those loans are not going to come back.

I recently chaired a Housing Subcommittee hearing on a different topic, where the witnesses were not chosen for their views on a particular issue. They represented an entire cross section of all of the interested stakeholders in the housing field, including those who were submitted to us by our Republican colleagues to consider as witnesses. And there were several. Eight of the nine bipartisan witnesses who testified in the hearing agreed that the conforming loan limits should be temporarily extended to boost the housing market, and that now is not the right time to let them expire.

One of the witnesses, Dr. Mark Zandi, chief economist of Moody's Analytics, urged that the limits be extended for ''at least'' another year. That is a reversal of Dr. Zandi's position from earlier this year, when he had supported the expiration. He said at the hearing that the markets remain too fragile and that allowing the limits to expire would be ''an error.''

A recent report by the nonpartisan Congressional Research Service found that ''virtually no''—no—''jumbo mortgages are being securitized'' today. In other words, in an ideal world, the private sector would fill this gap in home mortgages, but the reality is that economic conditions right now are not allowing for that. It certainly has not taken place.

And in terms of cost, our amendment will actually save $11 million over the next 10 years, and $2 million in fiscal year 2012 according to CBO. It is more than fully paid for in a fair way by creating a ''premium loan fee'' of 15 basis points per year that would apply only—only—to the affected loans. This makes sense because the people benefiting from the loans would be directly responsible for paying the costs of those loans so taxpayers are made whole and no other home buyers would pay. And, as I say, it saves $11 million over the next 10 years.

Additionally, the amendment will likely help increase returns to taxpayers because FHA audits for the past decade have stated that the larger loans actually perform better and default at significantly lower rates than smaller loans, so allowing the larger loans could actually improve returns to taxpayers.

Finally, I thank the cosponsors of a very similar bipartisan bill—similar to the very essence of what we are trying to do in this amendment—that Senator ISAKSON and I have introduced, the Homeownership Affordability Act: Senators AKAKA, BEGICH, BLUMENTHAL, BOXER, SCOTT BROWN, CARDIN, CHAMBLISS, COONS, FEINSTEIN, INOUYE, LAUTENBERG, LIEBERMAN, MERKLEY, MIKULSKI, BILL NELSON, and SCHUMER. I wish to thank the National Association of Realtors, the National Association of Homebuilders, the Mortgage Bankers Association, and all the other groups that have advocated support for this effort. This is an important tool that we can use to boost our housing market and economic recovery at no cost to the taxpayers.

I see my distinguished colleague Senator ISAKSON on the floor, and I certainly would invite him, as a cosponsor of this amendment—someone who has a long history in the private sector, before he came to the Congress, on the whole question of real estate—I would be happy to yield to him at this time.

Mr. ISAKSON. I thank the distinguished Senator from New Jersey, Mr. MENENDEZ, for his leadership on this issue.

I ask to be recognized.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Thank you, Mr. President.

Let me try to dispel what concern there may be and the concern I heard right before we adjourned in August as to why not to extend the loan limits. People were afraid—and I understand the fear—that it might cause some additional liability in cost to the government and the taxpayers.

Let me make something crystal clear: We are going through a terrible foreclosure problem right now in this country, not because of loan limits but because of underwriting. Underwriting today, because of the ramifications of

the real estate collapse, is the most pristine underwriting I have ever seen.

I was in the business for 33 years—since 1966. I have seen a lot of housing recessions go by. I have seen a lot of difficulties. This one is the worst I have ever seen, but it was not caused by the amount of loans made. It was caused by underwriting.

As Senator MENENDEZ has said, this will pay the government back because of the fee associated with the loan, in the first place. In the second place, it will answer the big objective we need to start applying in this country, and that is doing no more harm. A lot of the problems that have been manifested in the real estate industry have been manifested by our doing the harm, either in what we imposed on Freddie and Fannie or what we did not allow to have happen.

The restrictions now on mortgage underwriting under Dodd-Frank and the requirements that are now true in all of our underwriting agencies are so strict that the underwriting of loans is so pristine that only the best of the best is being made. The unintended consequence of not extending these increases in August caused a number of real estate transactions that were made to never close. Because the limit went down, therefore, the loan went down.

No one in this body should confuse the amount of a loan with its ability to be repaid. They need to understand, it is the underwriting of the loan that ensures the repayment.

This, as the Senator said, will add an income to the U.S. Government. It will not add additional pressure on the U.S. taxpayers. It will at least give us breathing room in a housing industry that is still struggling terribly.

So I would ask any of our Members who were objecting back in August to these loan limits being restored, please come see me. I do not know a lot about many things. I know a whole lot about this because I made my living in this all of my life. I have no interest anymore, so there is no self-interest, except to know we are in deep trouble in our economy.

You are never going to get 9 percent unemployment down until you bring construction back. You are never going to get the American consumer to have more confidence until they feel as though the value of their homes is secured. Those things are not going to happen if a reluctant Congress continues to pass suppressing legislation or keep these loan limits down rather than doing things that will do no harm and help the housing market.

So I lend my full support to Senator MENENDEZ and what he has done. I ask for favorable consideration by our colleagues in the Senate.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I would like to compliment the Senator from New Jersey for this amendment. I think it is common sense. I think it accomplishes so many objectives. No. 1, it helps people with real problems be able to get back on their feet, maintain home ownership, and get our economy going and put people to work.

I know the Senator from New Jersey and others here support an infrastructure bank. Yes, we want to build roads and bridges. I would like to take broadband to every part of America. But we also need to look at home building, and Maryland's has come to a screeching halt, even in a robust State such as Maryland. Everybody I talk to in the Maryland business community says: Unless you crack the housing situation, you cannot crack the economic situation.

By having access to the American dream, which has now become an American nightmare, this American dream created jobs, whether it was people who built them, the real estate developers who developed them, or the people like Senator ISAKSON who made a career of selling them. This was about building a home, and in many instances it was about building community.

I think that where we are, if we agree to the Menendez amendment, that will go a long way in being able to help people. We have to really deal with this. Quite frankly, I have been disappointed. Just about every darn thing we have done to ''help with the housing mortgage situation'' has been a bust. It has been an absolute bust. We spent millions and so on. We had this program. We had catchy little titles. But nothing catches on to solve the mortgage crisis.

I believe the Menendez amendment, supported by someone who really understands business and housing and community—I think this amendment is a winner. I am happy to put my name on it. I will look forward to voting for it when the time comes.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, just very briefly, I thank my colleague from Maryland and the bill manager. I hope we will get to a point where we can cast a vote on this. I appreciate Senator ISAKSON joining me and others in this effort, and particularly his expertise. If we listen to voices of reason as well as experience here, then Senator ISAKSON's arguments should be a winner. I look forward to hopefully having a vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

MOTION TO RECOMMIT

Mr. LEE. Mr. President, I have a motion to recommit with instructions with respect to H.R. 2112.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. LEE] moves to recommit the bill H.R. 2112 to the Committee on Appropriations with instructions to report the same back to the Senate with reductions in spending in each division required to bring the overall spending for the division to fiscal year 2011 levels which shall not exceed $130,559,669,000 for division A (Ag), $58,786,478,000 for division B (CJS), and $55,368,096,000 for division C (THUD).

Mr. LEE. Mr. President, I stand to speak on behalf of this motion to recommit. What we are looking at here with H.R. 2112 is a measure that actually spends more in each of those areas than what we spent in fiscal year 2011. We are in dire economic circumstances in this country. We are currently spending at a rate of roughly $1.5 trillion annually in excess of what we are bringing in.

We have gone to great lengths through a number of accounting mechanisms to demonstrate to the American people that we are doing our best to spend less. In many circumstances, the message that has been sent has been a message of austerity. It becomes increasingly difficult to manage and to maintain that necessary message of austerity, one that is accompanied by hundreds of millions of Americans making sacrifices every day in response to this economic downturn.

It becomes absolutely essential that we actually make cuts. To make actual cuts, I think that means necessarily that we have to spend less in fiscal year 2012 than we spent in fiscal year 2011. We will continue, I fear, to lack credibility if we persist in using whatever techniques we use, accounting-wise or otherwise, to claim we are reducing spending when, in fact, this appropriations package—this minibus spending package, as we sometimes refer to it—actually spends more money than was spent in 2011.

This is why I have submitted this motion. I hope my colleagues will share this concern I have expressed, which has caused me to submit this motion. The idea of the motion is that we bring our spending levels back down in each of these areas to what we spent in fiscal year 2011.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the motion to recommit is set aside.

The Senator from Maryland is recognized.

Ms. MIKULSKI. We have set aside the motion to recommit offered by the Senator from Utah; however, I wish to rise in opposition to his motion. This is all about budget-speak. It is really hard to follow between budget authority and expenditures, et cetera. But let me just say this in plain English.

This bill is $500 million less than we spent in 2011—$500 million less than we spent in 2011. Now, this is not the chairperson of the CJS bill kind of making up numbers. This is confirmed by the Congressional Budget Office. It has been certified by the chairman of the Budget Committee. The CJS bill is nearly $500 million less than last year.

Now, am I doing fuzzy math? No. I do not do fuzzy math. The CJS bill is consistent with something called the

Budget Control Act. The Budget Control Act requires appropriations to cut $7 billion for our fiscal year 2012. When we got our allocation, the CJS subcommittee allocation was $500 million below 2011. I am going to say it again—$500 million below what we spent in 2011.

This allocation required the CJS subcommittee to take stern and even drastic measures. I eliminated 30 programs. Yes, Senator BARBARA MIKULSKI, a Democratic, a liberal, I cut and eliminated 30 programs: 4 in Commerce—I think you objected to 1; 20 in Justice; 1 in Space; 4 in the National Science Foundation. I could not believe it, but that is what we had to do.

We cut the Deep Underground Science and Engineering Lab by $1 billion. That was a $1 billion project the National Science Foundation wanted. We said we would like it too but not in these austere times. There were other programs that we were able to do. And we were not happy about it. We absolutely were not happy about it. We cut the Baldridge Program. We cut the public telecommunications facility planning and communications. I mean, we did what we had to do.

So while the Senator looks at I am not sure what, I can tell you we are $500 million below 2011. The Congressional Budget Office says it. The numbers were reviewed by the Budget Committee itself. The chairman signed off that we were $500 million below, to help the overall Appropriations Committee reduce its expenditures by $7 billion.

So that is for 2011. Now let's look at 2012. I mean, the President came to Congress and gave a dynamic State of the Union speech. It touched America deeply when he said: I want to outbuild, outeducate, outinnovate anyone in the world. And he proposed his budget.

When you look at what we are doing here, my appropriations, my Commerce-Justice appropriations, is $5 billion—that is ''b'' as in ''Barb''—not $5 million, like ''m'' in ''Mikulski.'' We are $5 billion below what the President said he needed in Commerce-Justice-Science, technology, the innovation subcommittee, to help outeducate and out-innovate anybody else in the world. So I am $5 billion less than what the President of the United States said he needed to have to accomplish national goals.

Now, we talk a lot about that we want America to be exceptional. Well, you have to spend money to be exceptional, and when you put your money in science, technology, and education, we can come up with new ideas, new products that we can make and sell around the world, and our children know they have a future in this new global economy.

I do not want to be nickel-and-dimed here. I have already been nickel-and-dimed to be able to comply with this bill. You know, I am back to where Obama was in January, that cold day, and now here we are. So when we talk about cutting, we have cut. We have absolutely cut. We cut discretionary spending at an incredible level. And do you think it is has helped create one job? Do you think the market is going ''hoorah, hoorah, look at what they are doing''? No. Do you know why? Because the private sector knows that if we are going to be a 21st-century nation, if we are going to be America the exceptional, we must educate.

We also must invest in scientific research so that the private sector can take that basic research we do, value add to it, and with the genius that is America, the ability—that intellectual property you can own and be protected, that you are going to develop a product, and you have the National Institute of Standards to come and help you develop the standards so that you will be able to sell it in America in every State and sell it around the world in every nation.

So come on. If we want to be America the exceptional, stop nickel-and-diming. One of the ways you deal with debt is a growing economy, restoring consumer confidence, restoring citizen confidence, No. 1, that we can govern ourselves and that we can govern ourselves in a smart fashion. Yes, we do need to be frugal, but we sure do not need to be stupid.

I am going to oppose this amendment, and I sure hope the people pass my bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 815

Mr. PRYOR. I see that I have other colleagues on the floor. I will only be a couple of minutes.

Today I rise to oppose an amendment offered by Senator MORAN, amendment No. 815. I really do appreciate the intent of Senator MORAN's amendment. I actually support the intent of what he is trying to do because he is trying to support the Watershed Rehabilitation Program.

While I am not opposed to that program, and I recognize that difficult decisions had to be made in order to meet our statutory spending caps outlined in the Budget Control Act, I regret to say I cannot support the Senator's amendment as it is written because its offset comes from departmental administration which provides numerous essential services to the USDA.

These cuts would force USDA to reduce their number of employees, which would have a detrimental effect on the Department and its operation. In fact, Secretary Vilsack reached out to the Agriculture Appropriations subcommittee staff to relay his serious concerns.

These USDA employees provide essential services to some of the most rural areas in the country, so I cannot support the amendment that would, in effect, reduce services to rural America.

On top of that, it is important for my colleagues to understand that the level for departmental administration is already over $13 million below the fiscal year 2010 level and $7 million below the President's request.

Although I definitely support the watershed rehabilitation program, I certainly hope Senator KOHL and Senator MORAN can find a good offset that is agreeable to the majority of us. Still, I must oppose this amendment and urge other Senators to oppose it as well.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I see my colleague from Colorado. I was going to call up an amendment and make some remarks. Is there a procedural matter or something the Senator would be interested in doing before that? If not, I will go forward. I thought maybe the Senator wanted to comment on Senator PRYOR's comments.

Mr. UDALL of Colorado. I have another set of comments I want to make on a pending amendment. I don't know where we are in the order here.

Ms. MIKULSKI. Does the Senator wish to offer an amendment?

Mr. UDALL of Colorado. I will rise in opposition to an amendment already offered.

Mr. SESSIONS. Then I guess I have the floor, Mr. President.

Ms. MIKULSKI. I am seeking clarification.

Mr. SESSIONS. I yield to the Senator for that purpose.

Ms. MIKULSKI. Does the Senator wish to comment on the Moran amendment?

Mr. UDALL of Colorado. Amendment No. 753 offered by the junior Senator from New Hampshire.

Ms. MIKULSKI. We are alternating back and forth, so we will go to Senator SESSIONS and then Senator UDALL.

Mr. UDALL of Colorado. Thank you. I look forward to hearing from the Senator from Alabama.

Ms. MIKULSKI. Then we will go to the Senator from Colorado for his comments.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senator from Colorado be recognized after I complete my remarks.

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

AMENDMENT NO. 810 TO AMENDMENT NO. 738

Mr. SESSIONS. Mr. President, pursuant to the unanimous consent agreement, I call up Sessions amendment No. 810.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS] proposes an amendment numbered 810 to amendment No. 738.

Mr. SESSIONS. 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 prohibit the use of funds to allow categorical eligibility for the supplemental nutrition assistance program)

At the end of title VII of division A, add the following:

SEC. __. None of the funds appropriated or otherwise made available by this Act shall be used to pay the salaries and expenses of personnel to carry out the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) in any manner that permits a household or individual to qualify for benefits under that program without qualifying under the specific eligibility standards (including income and assets requirements) of the program, regardless of the participation of the household or individual in any other Federal or State program.

Mr. SESSIONS. Mr. President, the purpose of amendment No. 810 is to eliminate the categorical eligibility for the Supplemental Nutrition Assistance Program, called SNAP, or the Food Stamp Program. A categorical eligibility standard has been imposed, and it has been causing a substantial increase in unjustified expenditures in the Food Stamp Program.

Let me share briefly the history over the last decade of the Food Stamp Program. Of course, we in America strongly believe that persons ought not to go to bed hungry, if we have the food and the ability to take care of them. We have had a very generous Food Stamp Program for a number of years. But in the last decade, it has shown incredible, amazing increases in spending. As a matter of fact, I think it has increased faster than probably any other significant item in the entire Federal budget. It is probably increasing more even than the interest on the debt, which is one of the most surging expenditures this Nation has.

In 2001, we expended $20 billion on the Food Stamp Program. This year, we are projected, under this bill, to spend $80 billion. In 10 years, spending on food stamps would have quadrupled. This year's proposal calls for an increase of 14 percent over last year. This is a stunning amount of money.

This country is headed to financial crisis. Erskine Bowles and Alan Simpson, who headed President Obama's debt task force, told us in the Budget Committee that the country has never faced a more serious financial crisis than the debt crisis we are now in. One of the reasons is that we have had these incredible surges of expenditures in programs over a period of years. We have not watched them or contained them and, indeed, we have done things to make them less accountable and efficient and more subject to fraud, abuse, and waste.

Again, this year proposes another 14-percent increase in the Food Stamp Program. That is $80 billion. The House proposed only a $1 billion increase; theirs comes in at roughly $71 billion for food stamps. So theirs is more level. But it still has an increase. Certainly, it is far less than this.

To give some perspective on what we are talking about when we say $80 billion, let me share a few facts. The Federal prison system costs $7 billion. The Department of Justice—the entire Department of Justice, which Senator WHITEHOUSE and I served in—and were proud to do so—gets $31 billion. Federal highway funding for the entire year is $40 billion. Food stamps is twice that of the Federal highway bill. Customs and Border Patrol get $12 billion. The Federal Education Department is $30 billion. $80 billion dwarfs the budgets of, I think, most any State in the country, except for maybe New York or California. Alabama's general fund budget and education budget is less than $10 billion. This is $80 billion and is increased $9 billion this year under this bill.

We have to get real. We don't have the money. We are borrowing 40 cents of every dollar we spend. No wonder Congress is in such disrepute. How can we defend ourselves against the charge of irresponsibility to good and decent American citizens when we are spending at this rate and continuing to show increased spending at this rate? I am still amazed at the budget the President submitted to us earlier this year, calling for a 10-percent increase in the Education Department, 10 percent for the Energy Department, and 10 percent for the State Department, at a time we are borrowing money at a rate we never borrowed before, when we have never, ever systemically faced such a substantial threat to our country's financial welfare—as every expert has so told.

I know we want to help poor people. I don't want to see people hungry. But do we need to be spending four times as much on food stamps as we were in 2001? Can we not look at this program and think we can make it better and more efficient? We need to get focused on what we are doing here and try to bring this matter under control. We can do better.

Federal regulations allow States to make households ''categorically eligible'' under the Food Stamp Program. By the way, States administer the program. They don't get money to enforce it and supervise it. They pay that out of their own budgets. But the food stamps benefit is a 100-percent Federally funded program. So there is a little bit of a conflict of interest. States are benefitting when more food stamps come into their State, right? They are receiving more Federal dollars. They are not paying any money into it. Why spend their money to catch fraud, waste, and abuse and crack down on problems? Why not utilize every possible action that would bring more food stamps to the State? That is what is happening.

I know a little bit about that because, unless the Presiding Officer is one, I am probably the only person in this body who actually prosecuted food stamp fraud. They were using it as currency in drug dealing. A lot of fraud is going on, and we need to do better about it. The States aren't stepping up because they don't have an incentive to do so.

Again, Federal regulations now allow States to make households ''categorically eligible'' for SNAP—the Food Stamp Program—simply because the household also receives certain other benefits or assistance from Federal programs. ''Categorical eligibility'' is a fancy way of saying ''automatically qualified.'' For example, if you qualify for one, you qualify for the other. Households that receive Temporary Assistance for Needy Families, TANF, or Supplemental Social Security income benefits or assistance are automatically eligible for SNAP benefits in some states.

These other programs, however, have looser eligibility standards than the Food Stamp Program. To be eligible for SNAP benefits, a household must meet specific income and asset tests. Households with income above a certain threshold, or savings above a certain amount, cannot qualify for food stamps. If you have a substantial savings, even if you don't have any income, you are not entitled for somebody else to pay for your food. I don't know what the number is, but if you have a savings amount, and if you are above that, you don't get food stamps. Is that irrational?

But in 42 States there is no limit on the amount of assets certain households may have to qualify for TANF. As a result, households with substantial assets but low income would be deemed eligible for SNAP benefits even if they have substantial assets.

Astonishingly, households can be categorically eligible for SNAP even if they receive no TANF-funded service other than a toll-free telephone number or informational brochure. I kid you not. Receiving the information about TANF or other applicable information can qualify a household to be categorically eligible for SNAP benefits.

A 2010 GAO report revealed that one State included information about a pregnancy prevention hotline on the SNAP application, and that was used as a basis to grant categorical eligibility. Other States reported providing household brochures with information about marriage classes in order to confer categorical eligibility for food stamps.

According to officials with the Food and Nutrition Service, increased use of ''categorical eligibility'' by States has increased approval of SNAP benefits to households that would not otherwise be eligible for the program due to SNAP income or asset limits. The Food and Nutrition Service, which supervises this, acknowledged that more people are eligible if you use this ''categorical eligibility'' rather than requiring them to comply with explicit requirements of the Food Stamp Program.

So my amendment would eliminate categorical eligibility for SNAP benefits, meaning that only those who meet the income and asset requirements

under the program would be eligible for benefits. They would have to apply just like anyone else.

Is it too much to ask someone who is going to receive thousands of dollars in food benefits from the Federal Government to fill out a form and to honestly state whether they are in need, to the degree they qualify for the program? Automatic eligibility through other income support programs would end under my amendment.

Last Friday, the Treasury Department closed the books on fiscal year 2011 and declared the Federal Government ended the year with $1.23 trillion in additional debt. That makes our gross debt now $15 trillion. Our appropriations for the SNAP program have gone from $20 billion in 2001 to $71 billion in 2011 and are projected now to go to $80 billion. From 2001 through 2011, there is a huge increase in funding for the program.

The percentage of people using food stamps has increased sevenfold since the program's national expansion in the 1970s, with nearly one in seven Americans now receiving the benefit. Meanwhile, food stamp funds have been mishandled and misused, and there are many examples of this. I have seen it in my personal practice as a Federal prosecutor. One recent notorious case was a defendant in Operation Fast and Furious. One of the people who came in, bought a whole host of illegal weapons in Arizona to take back across into Mexico, was a food stamp recipient. According to the report, he spent thousands of dollars on these guns, maybe tens of thousands of dollars on these expensive weapons. He bought 300 high-powered assault rifles. He had money for that. Yet we are buying his food for him.

In another case, a Michigan man was able to continue receiving foods stamps after winning $2 million in the lottery—$2 million. He even asked about it. He said: Can I continue to receive food stamps? Guess what they told him. Yes. The lottery winnings are an asset, and we are not checking assets now. It is not income, it is an asset. So he got to keep having food stamps while American working people were paying for it.

Categorical eligibility—that flawed practice—allows SNAP recipients to avoid the asset test required to determine need. This is a policy we cannot afford at a time this country is having a huge debt crisis.

President Obama has coined a somewhat disingenuous term called the Buffet rule in his push to raise taxes on millions of Americans who have zero in common with Mr. Buffet. Of course, he is one of the President's big allies. I would like to suggest something called the Solyndra rule. Under this rule, before any proposals are offered to raise any taxes, we first put an end to the wasteful, inappropriate spending in Washington.

Shouldn't we first clean up our act before we demand the American people send more money up here? Until we do that, raising tax rates will only be funding the continued abuse of the American taxpayer. Raising taxes to bail out Congress is akin to giving money to an alcoholic on the way to the liquor store. It doesn't help matters if the money comes from a wealthy person, if the money is going to be used for an unwise or unhealthy result. It is time for the President and this Senate to get their spending habits under control. These bills before us, I am afraid—and the ones we will be seeing in the future—don't reduce spending but increase spending, and I thank the Chair for the opportunity to express my concerns about it.

Finally, I would just say we are told: We can't do anything about it. We are told we can't fix the food stamps. Food stamps don't count like other appropriations. One might say: Why is that? They say it is an entitlement. What is an entitlement? An entitlement is when there is a law that says if a person's income is a certain level, they go in to the government and they have to give them money whether the government has any money or not; whether it has been appropriated or not. It is an entitlement program.

This makes it very hard for those of us in Congress to be able to make the kind of proposals that are appropriate to fix this program, one of which simply would be, in my opinion, to reduce spending back to the level of the House, which is showing a modest increase this year, after surging the spending level for the SNAP program over the last decade. All of us have to grasp something. I don't think the American people are happy hearing excuses. I don't think they are happy hearing us say: We would like to have done something about food stamps, but this is not germane. This somehow, technically, is an entitlement program, it is part of a legislative act and, therefore, we can't do anything about it on an appropriations bill, which we are here to debate. We can't change it. There have been some changes in the food stamp program, so we believe this amendment is clearly germane.

But I wish to say, as we wrestle with how to bring spending in America under control—as the person who is now the ranking Republican on the Budget Committee—I wish to say we have to quit using excuses. Every program has to be rigorously analyzed, and if there is waste, fraud, and abuse, we need to crack down on it. We don't have the money. We don't have the money. We can't do what we would like to do. We can't increase spending on program after program. This one is perhaps one of the most dramatic examples in the government, and it can be improved upon if we focus on it.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Colorado has the floor.

Mr. UDALL of Colorado. Mr. President, I welcome this spirited debate we have been having in the Senate on these important appropriations bills. Before I begin my remarks, I wish to yield to the chair of the Agriculture Committee who has some comments to make in response to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, I thank my colleague and, if I might, take a moment to respond.

Ms. MIKULSKI. We have an order that has been established. I can understand the Senator from Michigan wanting to rebut. How long does the Senator from Michigan wish to talk?

Ms. STABENOW. Just 2 minutes to respond to the previous Senator.

Ms. MIKULSKI. OK.

The PRESIDING OFFICER. Is there objection?

Ms. MIKULSKI. No objection.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. I appreciate the courtesy very much. I wanted to take a brief moment to indicate to my friend from Alabama I couldn't agree more that we need to make sure the food assistance programs—every farm program and every program in the Federal Government—have rigorous review and that we are holding taxpayer dollars accountable. We have held accountability hearings in the Senate, in the Agriculture Committee. The good news is, there is only a 4-percent error rate in the entire SNAP program through the supplemental nutrition program being talked about, but there is more we can do.

The case of the lottery winner in Michigan the Senator talked about was outrageous, and it has been fixed. They can't do that anymore. We are going to fix it in the next farm bill as well. I could not agree more. We are going to go through and fix those things that don't make sense.

But I would also say that what the Senator is suggesting is, first of all, policy that needs to be done in the context of the farm bill negotiations. We have an extraordinary agreement we have reached between myself and our ranking member in the Senate and the chair and ranking member of the House Agriculture Committee, and we are putting together language to give to the supercommittee that will address nutrition as well as other areas. I would ask my colleagues to support our effort that we will be putting forward. We will have that language by November 1 that will address those egregious areas which, by the way, are very small, but we do need to address them and we need to do it in a way that also recognizes more people than ever before need food help.

I have people in Michigan who have never needed help in their entire life. They have paid taxes all their lives, and they are mortified they can't keep food on the table for their children throughout the month. So they are getting temporary help, and that is what

is it is designed for—people who need temporary help. Because of that, we want every single dollar to go where it ought to go, and we are going to do everything possible to see that happens. We are going to be putting forward policies that I am sure the Senate will support that will guarantee there is not $1 that is going to somebody who doesn't deserve it or to someone who is cheating or where there is fraud or abuse. We are going to make sure that happens. But this debate needs to be done in the context, as it always has been, of our farm bill policy on food and nutrition.

I ask my colleagues to oppose this amendment and to work with us as we put forward policies that will be coming very soon. I thank the Senator from Colorado for his graciousness.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 753

Mr. UDALL of Colorado. Mr. President, I appreciate the patience of the Senator from Maryland. This is a spirited debate about an important set of amendments being offered, and I wish to rise in opposition to amendment No. 753, which has been offered by the Senator from New Hampshire, Ms. AYOTTE.

While I enjoy working with Senator AYOTTE on the Armed Services Committee, and I appreciate her contributions to the committee, I have to say I strongly disagree with her amendment. Senator AYOTTE's amendment would prohibit the United States from trying enemy combatants in article III civilian courts. These courts refer to article III of our U.S. Constitution.

Our article III courts, as the Presiding Officer knows, are the envy of the world. While there is a role for military tribunals, they are certainly not the only solution. Frankly, by prohibiting the use of article III courts, we may actually hinder our efforts to bring terrorists to justice.

The Ayotte amendment would put the military smack in the middle of our domestic law enforcement efforts in our fight against extremists and terrorists. My friend from New Hampshire argues this is a war that should be prosecuted by our military. But the reality is, in many cases, the best course of action is for our domestic law enforcement, the FBI, and others, to take the lead. This amendment would prevent the Department of Justice from questioning or prosecuting terrorists caught on U.S. soil engaged in the criminal act of terrorism, and it would prevent Federal prosecutors from bringing these terrorists to justice in so-called article III courts. Federal prosecutors have tried, convicted, and imprisoned hundreds of terrorists in article III courts. The Department of Defense has obtained only six convictions in military tribunals.

DOD's job is to track down, kill or capture those who would harm America or our citizens. They do an incredible job of that. We all stand in awe of the work they do to keep us safe. But it is not the job of the Department of Defense to try each and every one of those individuals. It is a mission they do not want, and they would have to radically change their entire system to accommodate prisoners who are already handled by civilian courts.

Article III courts have kept Americans safe for over 200 years. I have to say I don't believe it is prudent to build a new judicial system from scratch in order to meet objectives that are already being met. For example, Umar Farouk Abdulmutallab, also known as the Underwear Bomber, was arrested in Detroit after trying to set off an explosive on an airplane. He was read his rights, questioned, prosecuted, and he recently pled guilty. Under this amendment, the FBI would have had to call in the military to detain Abdulmutallab without any resolution in his case. In fact—and I think this is an extremely important point—under this amendment, Abdulmutallab would have been given complete immunity from criminal Federal prosecution.

Further, if this amendment passes, our allies may well refuse to extradite terror suspects to the United States. If military commissions are determined as someday not having jurisdiction over these terrorists or invalidated by the Supreme Court—which, by the way, has happened in other settings in the Supreme Court—there would be no way ever to prosecute these high-value foreign terrorism suspects because of this amendment. What would that mean? It would mean no conviction of the Blind Sheik, who planned the first World Trade Center attack; no conviction of Moussaoui, the 20th hijacker on 9/11, and no conviction of the east Africa Embassy bombers, all of whom were convicted in article III courts.

Again, the Ayotte amendment, however well intended, would provide 100 percent immunity from Federal prosecution to suspected terrorists and eviscerate a very effective tool in our counterterrorism portfolio. That doesn't strike me as being as tough as we possibly could be on terrorists.

The fact is, the prosecutors at the Department of Justice have numerous Federal criminal laws at their disposal with which to charge suspected terrorists. The Federal courts have more than 200 years of precedent to guide them, while tribunals have almost none. As I have said, our Federal prosecutors have had great success so far.

In summary, I urge my colleagues to vote against amendment 753. It is simply not necessary, and I believe it will do more harm than good, while subverting the finest justice system in the world in the process.

As I yield, let me be clear that I wholeheartedly support the underlying bill, as it has been very ably authored by Senator MIKULSKI and others, but I have to oppose this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Ms. AYOTTE. Mr. President, I rise in response to the comments by my esteemed colleague from Colorado about my amendment No. 753. And I would say this first. My amendment does not provide immunity to terrorists. What my amendment does is treat terrorists as they should be treated.

We are at war, and under the laws of war, traditionally we have tried enemy combatants in military commissions. And those individuals my colleague from Colorado cited, including Umar Farouk Abdulmutallab, could be held accountable in a military commission because our priority has to be, when we are at war, to gather intelligence, to protect our country, and not whether we should prosecute in our article III courts, in which I have great confidence. I served as attorney general of our State and believe very much in our article III court system. But our article III court system is not where terrorists with whom we are at war should be tried.

In light of the recent comments here on the floor, I feel compelled to point out some of the facts that I think are important for the American people to know about some of the cases that have been cited in support of saying terrorists should be tried in article III courts.

On October 12, Umar Farouk Abdulmutallab pleaded guilty in the U.S. district court in Detroit. That case has been cited not only by the Senator from Colorado but by the Senator from Maryland and the Senator from Illinois, and our Attorney General has cited it as well as the ultimate and final vindication of the use of our civilian courts for the trial of enemy combatants. The senior Senator from Illinois and the Obama administration were so confident that the so-called Underwear Bomber, as he has been named, guilty plea would settle the dispute once and for all, that on October 13, the Senator from Illinois came to the floor and essentially declared the controversy over. We have heard those same arguments today.

I think we need to review who exactly Abdulmutallab is. He is no common criminal. We are not talking about people who have robbed liquor stores or who are Americans who have committed criminal acts in this country. He is the Nigerian man who tried to detonate plastic explosives hidden in his underwear while onboard Northwest Airline's flight 253 to Detroit on December 25, 2009. Al-Qaida in the Arabian Peninsula claimed to have organized the attack with the Underwear Bomber claiming that AQAP supplied him with the bomb and trained him.

He was subsequently charged in Federal court with eight counts, including the attempted use of a weapon of mass destruction and attempted murder of 290 Americans. The Underwear Bomber pleaded guilty at trial, telling a surprised courtroom on the second day of his trial that the failed attack was in retaliation for the killing of Muslims worldwide.

This case has been cited as the final vindication for civilian trials, and I

think it is important to mention three points about this case.

First of all, the presumption seems to be that the civilian court system should have the primary responsibility for questioning, trying, and ultimately detaining foreign enemy combatants with whom the United States is in a declared war. That has not been the rule in prior conflicts. We are treating this conflict differently than we have treated other conflicts, where enemy combatants have been tried in military commissions.

Secondly, in my view, the administration's eagerness to appease the ACLU by trying enemy combatants in civilian courts misses the whole point about detention in a time of war. When we are at war, we detain and interrogate enemy combatants according to the laws of war to glean valuable intelligence that will help prevent future attacks, save American lives, and help us capture other enemy combatants.

Al-Qaida was at war with the United States long before our country recognized or strongly reacted to this threat. We remain at war with al-Qaida. When we put enemy combatants in our civilian court system, we are focusing on prosecution, and we potentially miss important opportunities to gather information to prevent future attacks by doing so.

In Abdulmutallab's case, the administration read him his Miranda rights after 50 minutes of questioning. In my view, this jeopardized valuable intelligence. And I know my colleagues on the other side of the aisle have said: Well, eventually he spoke, and he gave us lots of information. But why would we put information in jeopardy? Why would we read terrorists Miranda rights? I, as a prosecutor, have never heard a law enforcement official tell me that Miranda rights are a helpful information-gathering tool, but that seems to be the position I am hearing today.

Jeopardizing this intelligence was clearly unnecessary. And in this case, the fact that we didn't have to rely on a confession—this was a case where we caught the Underwear Bomber redhanded. So even if we were to have tried him in a military commission and had not given him Miranda rights, had gathered intelligence for as long as we could have, we still would have had him redhanded because the passengers on that flight saw him. He was caught with the explosives on his body. This was never a case about a guilty plea and whether we got some information about him. The essential question is whether we got the most information possible from a terrorist who was trying to attack Americans and our allies, to prevent future attacks, not whether we gave him Miranda rights.

With a case that was as open and shut as Abdulmutallab's, without any need to use confessional evidence or classified information, it doesn't prove the civilian court system is superior to military commissions. His conviction was never realistically in doubt.

Defenders of bringing our enemy combatants to the U.S. civilian trial often cite a number of cases and convictions related to military commissions. Again, I want to reiterate, I am a strong believer in our civilian court system, but I want to point out some of the downsides to using our civilian court system for enemy combatants: the costs of security; the cause of civic disruption in the area; the risk of compromising classified information; and the risk of eventual release of these combatants not to some other country but into American society, regardless of whether they are convicted in civilian court. And these concerns aren't academic.

I have heard some of my colleagues cite the case of Zacarias Moussaoui, who was a member of al-Qaida who was involved in the 9/11 attacks. The civilian proceedings spanned nearly a decade, and his case was finally resolved only last year. These proceedings cost millions of dollars and caused substantial civic disruption. For example, the Federal courthouse in Alexandria, VA, was described as ''an armed camp, with the courthouse complex and surrounding neighborhood becoming a virtual encampment, with heavily armed guards, rooftop snipers, bomb-sniffing dogs, blocked streets and identification checks.'' If we had tried him at Guantanamo Bay, in the military commission there, these security concerns would have been accounted for, and we wouldn't have had to disrupt Virginia to do that. It is not a problem we would confront in our military commission system.

In addition, in the civilian trial of 9/11 terrorist Zacarias Moussaoui, sensitive material was inadvertently leaked because our civilian court system, as wonderful as it is, is not set up as well to deal with cases involving sensitive information during a time of war.

Moussaoui also mocked 9/11 victims and used the civilian trial as a platform to spew terrorist propaganda.

All of these negative side effects of trying a terrorist in a civilian court would have been eliminated or significantly mitigated if he had been detained in military custody and tried before a military commission.

In the case of Omar Abdel Rahman, commonly known as the Blind Sheik, which has also been cited here today, the civilian trial provided intelligence to Osama bin Laden. So when I hear that case cited as a success, the first thing that comes to my mind is, if intelligence was provided to Osama bin Laden, how is that a success when our No. 1 focus should be on protecting the American people? And that has to be the distinction between trying enemy combatants in a time of war and the very important purpose of our civilian court system.

In the case of the Blind Sheik, according to Michael Mukasey, the former Attorney General, ''in the course of prosecuting Omar Abdel Rahman, the government was compelled—as it is in all cases that charge a coconspiracy charge—to turn over a list of unindicted coconspirators to the defendants. Within 10 days, a copy of that list of unindicted coconspirators reached bin Laden in Khartoum.''

The notion that a list—because you had to do it, according to our civilian court system where notice requirements are very important, where generally our court systems are open—would be provided to Osama bin Laden, in my view, is unacceptable, a risk we could have avoided if we treated the Blind Sheik as he should have been treated, which is as an enemy combatant and tried in a military commission.

Civilian trials of enemy combatants have provided a treasure trove of information to terrorists, and I think those risks have been very discounted by my esteemed colleagues who have come to the floor to oppose my amendment.

According to open source reporting, the cost of disclosing information unwisely became clear after the New York trials of bin Laden associates for the 1998 bombings of U.S. Embassies in Africa. Some of the evidence indicated that the National Security Agency, the U.S. foreign eavesdrop organization, had intercepted cell phone conversations. Shortly thereafter, bin Laden's organization stopped using cell phones to discuss sensitive operational details.

It is also important to note that the record of trying enemy combatants in civilian courts is not as good as it has been made out to be. Opponents of my amendment don't often speak about Ahmed Ghailani.

Ghailani is a Tanzanian who was charged with a total of 284 counts, including 200-plus counts of murder and 1 count of conspiracy in the 1998 bombings of the U.S. Embassies in Tanzania and Kenya. The bombings killed 224 people, including 12 Americans. He also spent time as Osama bin Laden's bodyguard.

He was tried in the U.S. District Court for the Southern District of New York. The Department of Justice directed the U.S. attorney not to seek the death penalty. At trial, the presiding justice excluded from evidence the testimony of a key witness—a Tanzanian, who may have issued statements implicating him in the bombings. And on November 17, 2010, a jury, after this evidence was excluded, found Ghailani only guilty of 1 count of a conspiracy and acquitted him of all 284 other charges, including the murder charges. He murdered 284 people—12 Americans—and he was acquitted of murder charges. I think that is a case that shows our civilian court system is not always the best way to deal with enemy combatants and is very contrary to what I have heard on the cases cited from my opponents of this amendment.

Proponents of civilian trial, such as Attorney General Holder, want to criminalize the war, but they fail to cite these cases where the civilian

court system leaked classified information to terrorists or, because of excluded evidence, where terrorists are not held fully accountable.

Military detention for enemy combatants has always been the rule, not the exception. Why are we treating this war any differently? Civilian courts rightly focus on prosecution, but in detaining enemy combatants when at war, they miss the most important goal we have to have; that is, gathering intelligence and protecting the American people against future attacks.

Civilian trials for enemy combatants incur tremendous costs and cause civic disruption. That is why the administration itself has reversed its position on trying Khalid Shaikh Mohammed in New York City. They wanted to try the mastermind behind 9/11 in the middle of New York City, but the American people were so outraged by trying someone who is the mastermind of 9/11 in the middle of New York City and the millions of dollars it would have cost to protect the citizens of New York from this horrible individual, giving him a forum in the middle of New York City.

Again, the costs associated with protecting the American people in these civilian trials alone is enough to treat them as they should be—in military commissions.

We risk compromising classified information, and we risk the eventual release of these combatants into American society.

For these reasons, consistent with a longstanding precedent, we should not be bringing enemy combatants to the United States for civilian trials. If the Obama administration is willing to kill enemy combatants without due process, and I applaud them for doing so, why is the administration so against placing these same enemy combatants in military custody and detaining them under the law of war, and when appropriate trying them in military commissions?

I think the answer is clear. Unfortunately, I am concerned that it is a political decision rather than putting intelligence gathering first in order to protect the American people and treat these enemy combatants as what they are—enemies of our country. I urge my colleagues to support my amendment. In my view, beyond the policy reasons for not trying enemy combatants in civilian courts, we should ask ourselves why should we bring foreign terrorists to the United States and give them the legal protections reserved for U.S. citizens and secured by those Americans who have fought and died for those rights? Why do these people deserve access to our American court system? They are our enemies. In the civilian court systems there are rights guaranteed, such as Miranda rights and speedy presentment, that should not be extended to enemy combatants. We need to prioritize protecting our country. I think the American people will agree with me when I say that no terrorist should ever hear the words ''you have the right to remain silent.''

I urge my colleagues to support my amendment No. 753.

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 792, AS MODIFIED

Mr. COBURN. Mr. President, I ask the pending amendment be set aside and my previous pending amendment No. 792 be brought up.

I have a modification to that amendment that I sent to the desk. I thank the Senator from California for giving me this privilege.

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

The amendment, as modified, is as follows:

At the appropriate place, insert the following:

SEC. ____. The Secretary of Housing and Urban Development may not make a payment to any person or entity with respect to a property assisted or insured under a program of the Department of Housing and Urban Development that—

(a) on the date of enactment of this Act, is designated as ''troubled'' on the Online Property Integrated Information System for ''life threatening deficiencies'' or ''poor'' physical condition; and

(b) has been designated as ''troubled'' for ''life threatening conditions'' or ''poor'' physical condition on the Online Property Integrated Information System at least once during the 5-year period ending on the date of enactment of this Act.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 753

Mrs. FEINSTEIN. Mr. President, I rise as chairman of the Intelligence Committee to speak against amendment 753 to this appropriations bill. In sum, this amendment will require members of al-Qaida to be prosecuted only by military commissions. It will cripple executive authority and flexibility to go after terrorists. Of all things in this area where we should be agreed and the President should have maximum flexibility, it is with the disposition of people who commit acts of terror in this country. I feel very strongly about this.

The military commission system has been in effect since 2006. It has had six convictions. By comparison, terrorists have been tried by previous administrations, including the Bush administration, in article III courts, and more than 400 of them have been convicted and are serving time in Federal prisons.

One case may be brought up where somebody disagrees with a verdict. You can disagree with a Federal jury, but you cannot disagree with the record of conviction and the strong sentences imposed. I will go into this in a little more detail in a few minutes.

Just to say again, I have never seen a time when Congress has tried so much to constrain the power of the president and our professionals in law enforcement in their efforts to defeat terrorism.

As has been the policy of Republican and Democratic Presidents, the decision about how to prosecute a suspected terrorist should be based on the facts and the circumstances of each case and our national security interests, not politics.

Some of the most well-known terrorists of the past decade—''Shoe Bomber'' Richard Reid, ''Blind Sheik'' Omar Abdel Rahman and the ''20th Hijacker'' Zacarias Moussaoui—are serving life sentences after being tried in Article III criminal courts.

Prosecuting terrorists in military commissions makes sense in some cases, but requiring it for all AI-Qaeda terrorists in each and every case is not in the national security of the U.S.

In fact, that would severely limit our ability to handle some of the biggest threats.

To understand why this proposed amendment would be such bad policy, consider the two recent cases where al-Qaida tried to use operatives to attack our Homeland, but we captured and arrested the terrorists instead.

First, Najibullah Zazi, a legal permanent resident of the U.S., was arrested in September 2009 as part of an al-Qaida conspiracy to carry out suicide bombings on the New York City subway system.

Then on Christmas 2009, Umar Farouk Abdulmutallab attempted to detonate plastic explosives hidden in his underwear while on board Northwest Airlines Flight 253 before it landed in Detroit, Michigan. Al-Qaida in the Arabian Peninsula—AQAP—claimed responsibility for the attempted attack and said that Abdulmutallab had trained with and been tasked to carry out the plot for AQAP.

In both cases, the FBI arrested each Al Qaeda operative in the midst of the unfolding terrorist plot, and was able to obtain useful intelligence through interrogation.

Most recently the DEA and the FBI, through shared intelligence, were able to interrupt an Iranian plot to kill the Saudi Ambassador right here in Washington, DC. That man will be tried in Federal court. That man was successfully interrogated by the FBI. That man spilled his guts to the FBI, as they say in the vernacular.

Umar Farouk Abdulmutallab pleaded guilty last week to all counts of an eight-count criminal indictment charging him for his role in the attempted Christmas Day 2009 bombing of Northwest Airlines flight 253. He cooperated, provided intelligence, and will probably spend the rest of his life behind bars when he is sentenced in January.

By comparison, two of six of the individuals convicted in military commissions are already out of prison living freely in their home countries of Yemen and Australia. Consider all of the following relatively light sentences handed down by military commissions since 9/11:

Bin Laden's driver, Salim Hamdan—acquitted of conspiracy and only convicted of material support for terrorism—received a five-month sentence

and was sent back to his home in Yemen to serve the time before being released in January 2009.

Australian David Hicks—the first person convicted in a military commission when he entered into a plea agreement on material support for terrorism charges in March 2007—was given a 9-month sentence, which he mostly served back at home in Australia.

Omar Khadr pleaded guilty in a military commission in exchange for an 8-year sentence, but he will likely be transferred to a Canadian prison after 1 year.

Ibrahim Ahmed Mahmoud al-Qosi pleaded guilty to conspiracy and material support to terrorism in July 2010. In August 2010, a jury delivered a 14-year sentence, but the final sentence handed down in February 2011 was 2 years pursuant to his plea agreement.

Noor Uthman Muhammed pleaded guilty to conspiracy and material support to terrorism in February 2011. A jury delivered a 14-year sentence, but the final sentence will be less than 3 years pursuant to his plea agreement. These are military commission trials.

Ali Hamza al-Bahlul received a life sentence after he boycotted the entire military commission process and was convicted of soliciting murder and material support for terrorism without mounting a defense.

In the Zazi case, what the Senator from New Hampshire was suggesting would actually require the government to split up co-defendants even where they would otherwise be prosecuted as part of the same conspiracy.

For example, Zazi's alleged co-conspirators Zarein Ahmedzay and Adis Medunjanin would be prosecuted on terrorist charges in criminal court, but Zazi himself would have to be transferred to a military commission.

Splitting up co-conspirators into two different detention and prosecution systems might prevent prosecutors from achieving the guilty pleas and likely long prison sentences that will be secured in the Zazi conspiracy case. Prosecutors have already obtained convictions against six individuals, including Zazi and Ahmedzay, who face life in Federal prison without parole.

Importantly, we have heard from intelligence officials and others that a mandatory military commission policy will reduce our allies' willingness to extradite terror suspects to the United States for interrogation or prosecution, or even provide evidence about suspected terrorists if they will be shipped off to military commissions in all cases.

You might say why would our allies do that? I will tell you why: Because our allies—who know about the past five years and know about the opposition to military commissions in their countries—are very reluctant to give evidence to a judicial process that does not adhere to the rule of law as much as our tried and tested Federal court system does.

Take the 9/11 commission report, which recommends the following on page 380:

> [t]he United States should engage its friends to develop a common coalition approach toward the detention and humane treatment of captured terrorists.

If Congress rejects the views of our allies and mandates military commission prosecutions for al-Qaida terrorists, it will also be a rejection of a recommendation from the 9/11 commission. Moreover, we will be undermining international law enforcement cooperation and dangerous terrorists could be set free as a result.

Every single suspected terrorist captured on American soil, before and after September 11, has been taken into custody by law enforcement—not the U.S. military. This should never change. If somebody commits an act on our soil, they should be prosecuted in an article III court. This doesn't mean that we are soft on terrorism in any way, but it does mean that terrorists should be brought to justice, forced to stand trial and given a very serious sentence.

As John Brennan, the Assistant to the President for Homeland Security and Counterterrorism, stated in a March speech:

> Terrorists arrested inside the United States will, as always, be processed exclusively through our criminal justice system. As they should be. The alternative would be inconsistent with our values and our adherence to the rule of law. Our military does not patrol our streets or enforce our law in this country. Nor should it.

I could not agree more.

In summary, amendment No. 753, authored by the Senator from New Hampshire, will severely and seriously undermine our ability to incapacitate dangerous individuals and protect the American people. I believe this is something we cannot afford and I hope this body will do everything it can to protect the executive branch's flexibility.

I ask unanimous consent to have printed in the RECORD a letter from the Department of Justice, dated March of 2010 which describes the more than 400 terrorist convictions in article III courts.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, March 26, 2010.

Hon. DIANNE FEINSTEIN,
Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

Hon. CHRISTOPHER S. BOND,
Vice Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR CHAIRMAN FEINSTEIN AND VICE CHAIRMAN BOND: I am writing in response to requests by a number of Members of the Committee for information about statistics maintained by the Department of Justice relating to prosecution of terrorism and terrorism-related crimes, as well as the incarceration of terrorists by the Bureau of Prisons.

The Counterterrorism Section of the National Security Division (NSD) (and its predecessor section in the Criminal Division) has maintained a chart of international terrorism and terrorism-related prosecutions since September 11, 2001. A copy of that chart, which currently includes just over 400 defendants, and a brief introduction describing its contents, is enclosed with this letter. This chart was initially developed and has since been maintained and regularly updated on a rolling basis by career federal prosecutors. The bulk of the data included in the chart was generated, and relates to prosecutions that occurred, during the prior Administration. In fact, the data was cited publicly by the prior Administration on repeated occasions, including:

In a book entitled ''Preserving Life & Liberty: The Record of the U.S. Department of Justice 2001–2005,'' released in February 2005, the Department said, ''Altogether, the Department has brought charges against 375 individuals in terrorism-related investigations, and has convicted 195 to date.''

In its February 2008 budget request for Fiscal Year 2009, the Department of Justice said, ''Since 2001, the Department has increased its capacity to investigate terrorism and has identified, disrupted, and dismantled terrorist cells operating in the United States. These efforts have resulted in the securing of 319 convictions or guilty pleas in terrorism or terrorism-related cases arising from investigations conducted primarily after September 11, 2001, and zero terrorist attacks on American soil by foreign nationals from 2003 through 2007.''

Please note that the chart includes only convictions from September 11, 2001 to March 18, 2010. It does not include defendants whose convictions remain under seal, nor does it include defendants who have been charged with a terrorism or terrorism-related offense but have not been convicted either at trial or by guilty plea. Finally, it does not include convictions related solely to domestic terrorism.

The NSD chart includes the defendant's name, district, charging date, charges brought, classification category, conviction date, and conviction charges, as well as the sentence and the date it was imposed, if the defendant has been sentenced. As the introduction to the NSD chart explains, the data includes convictions resulting from investigations of terrorist acts planned or committed outside the territorial jurisdiction of the United States over which Federal criminal jurisdiction exists and those within the United States involving international terrorists and terrorist groups. NSD further divides these cases into two categories. The first includes violations of federal statutes that are directly related to international terrorism and that are utilized regularly in international terrorism matters, such as terrorist acts abroad against U.S. nationals and providing material support to a foreign terrorist organization. There have been more than 150 defendants classified in this category since September 11, 2001. The second category includes a variety of other statutes (like fraud, firearms offenses, false statements, or obstruction of justice) where the investigation involved an identified link to international terrorism. There have been more than 240 individuals charged in such cases since September 11, 2001. Examples of the international terrorism nexus identified in some of these cases have also been provided for your review.

Prosecuting terror-related targets using these latter offenses is often an effective method—and sometimes the only available method—of deterring and disrupting potential terrorist planning and support activities. Indeed, one of the great strengths of the criminal justice system is the broad range of offenses that are available to arrest and convict individuals believed to be linked to terrorism, even if a terrorism offense cannot be established. Of course, an aggressive and

wide-ranging terrorism investigation will net individuals with varying degrees of culpability and involvement in terrorist activity, as the NSD chart reflects. Arresting and convicting both major and minor operatives, supporters, and facilitators can have crippling effects on terrorists' ability to carry out their plans.

You will also note that the sentences obtained in these cases range from a few months to life. Life sentences have been imposed by our courts in 12 international terrorism or terrorism-related cases since 9/11, and sentences of more than 10 years have been imposed in an additional 59 cases, including 25 cases in which the sentence exceeded 20 years. We believe the long sentences often imposed by our courts in these cases reflect the gravity of the threat posed by these individuals to our nation. However, it is important to note that while a long sentence is an important measure of success in a terrorism-related prosecution, it is not the only measure. Convicting an individual of an available offense and incarcerating him even for a relatively short period of time may be an effective way to disrupt ongoing terrorist activity, deter future activity, collect important intelligence, secure valuable cooperation, or facilitate rapid deportation of an individual.

This vital work continues. In the past year, thanks to the hard work of dedicated career professionals—FBI agents, other federal and state law enforcement officials, and career federal prosecutors—we have been able to disrupt terrorist plots, convict and imprison terrorists and their supporters, and collect intelligence we need to protect the country. We detected and disrupted a plot to attack the subway system in Manhattan with explosive bombs that could have killed many Americans. We conducted successful undercover operations to arrest individuals who separately attempted to blow up buildings in Dallas, Texas, and Springfield, Illinois. And we arrested individuals in Chicago who assisted in the deadly November 2008 terror attacks in Mumbai and were plotting other attacks.

Finally, the Bureau of Prisons (BOP) maintains a separate chart that identifies inmates in BOP custody who have a history of or nexus to international or domestic terrorism. There are currently more than 300 individuals on this chart, which is used to identify those inmates who may warrant increased supervision and monitoring of their communications, among other things. BOP's designation of these inmates may be based upon information from a variety of sources, including sensitive law enforcement or intelligence information that is not publicly available, regarding the inmate's past behavior and associations. BOP does not publicly disclose which inmates have been designated in this fashion. The disclosure of this information could interfere with BOP's monitoring and law enforcement investigative efforts. Moreover, disclosure of the identities of these inmates could pose risks to the security of the inmates and prison staff.

Should you or your staff wish to review the BOP chart, BOP is prepared to provide the Committee with access to the chart under conditions designed to protect security and operational equities.

Sincerely,

RONALD WEICH,
Assistant Attorney General.

Enclosure.

INTRODUCTION TO NATIONAL SECURITY DIVISION STATISTICS ON UNSEALED INTERNATIONAL TERRORISM AND TERRORISM-RELATED CONVICTIONS

The National Security Division's International Terrorism and Terrorism-Related Statistics Chart tracks convictions resulting from international terrorism investigations conducted since September 11, 2001, including investigations of terrorist acts planned or committed outside the territorial jurisdiction of the United States over which Federal criminal jurisdiction exists and those within the United States involving international terrorists and terrorist groups. Convictions listed on the chart involve the use of a variety of Federal criminal statutes available to prevent, disrupt, and punish international terrorism and related criminal activity. The convictions are the product of the Department's aggressive, consistent, and coordinated national enforcement effort with respect to international terrorism that was undertaken after the September 11, 2001 terrorist attacks.

Criminal cases arising from international terrorism investigations are divided into two categories, according to the requisite level of coordination and monitoring required by the Counterterrorism Section of the National Security Division (or its predecessor section in the Criminal Division). This coordination and monitoring exists in response to the expanded Federal criminal jurisdiction over and importance of international terrorism matters and the need to ensure coherent, consistent, and effective Federal prosecutions related to such matters. Typically, multiple defendants in a case are classified in the same category.

Category I cases involve violations of federal statutes that are directly related to international terrorism and that are utilized regularly in international terrorism matters. These statutes prohibit, for example, terrorist acts abroad against United States nationals, the use of weapons of mass destruction, conspiracy to murder persons overseas, providing material support to terrorists or foreign terrorist organizations, receiving military style training from foreign terrorist organizations, and bombings of public places or government facilities. A complete list of Category I offenses is found in Appendix A.

Category II cases include defendants charged with violating a variety of other statutes where the investigation involved an identified link to international terrorism. These Category II cases include offenses such as those involving fraud, immigration, firearms, drugs, false statements, perjury, and obstruction of justice, as well as general conspiracy charges under 18 U.S.C. §371. Prosecuting terror-related targets using Category II offenses and others is often an effective method—and sometimes the only available method—of deterring and disrupting potential terrorist planning and support activities. This approach underscores the wide variety of tools available in the U.S. criminal justice system for disrupting terror activity. Examples of Category II offenses are listed in Appendix B, and examples of Category II cases are described in Appendix C to illustrate the kinds of connections to international terrorism that are not apparent from the nature of the offenses of conviction themselves.

The chart includes the defendant's name, district, charging date, charges brought, classification category, conviction date and conviction charges. If a convicted defendant has been sentenced, the relevant date and sentence imposed is included. The chart is constantly being updated with new convictions, but currently includes only unsealed convictions from September 11, 2001 to March 18, 2010. The chart does not include defendants whose convictions remain under seal, nor does it include defendants who have been charged with a terrorism or terrorism-related offense but have not been convicted either at trial or by guilty plea. This chart does not include convictions related solely to domestic terrorism. Note that the chart maintained by the National Security Division is distinct from statistics maintained by the Bureau of Prisons to track inmates with terrorist connections. The chart lists more than 150 defendants classified in Category I and more than 240 defendants classified in Category II.

The chart is organized by conviction date, with the most recent convictions first. The earliest defendants included on the chart were identified and detained in the course of the nationwide investigation conducted after September 11, 2001, and were subsequently charged with a criminal offense. Since then, additional defendants have been added who, at the time of charging, appeared to have a connection to international terrorism, even if they were not charged with a terrorism offense. The decision to add defendants to the chart is made on a case-by-case basis by career prosecutors in the National Security Division's Counterterrorism Section, whose primary responsibility is investigating and prosecuting international and domestic terrorism cases to prevent and disrupt acts of terrorism anywhere in the world that impact on significant United States interests and persons.

APPENDIX A

Category I Offenses

Aircraft Sabotage (18 U.S.C. §32)
Animal Enterprise Terrorism (18 U.S.C. §43)
Crimes Against Internationally Protected Persons (18 U.S.C. §§112, 878, 1116, 1201(a)(4))
Use of Biological, Nuclear, Chemical or Other Weapons of Mass Destruction (18 U.S.C. §§175, 175b, 229, 831, 2332a)
Production, Transfer, or Possession of Variola Virus (Smallpox) (18 U.S.C. §175c)
Participation in Nuclear and WMD Threats to the United States (18 U.S.C. §832)
Conspiracy Within the United States to Murder, Kidnap, or Maim Persons or to Damage Certain Property Overseas (18 U.S.C. §956)
Hostage Taking (18 U.S.C. §1203)
Terrorist Attacks Against Mass Transportation Systems (18 U.S.C. §1993)
Terrorist Acts Abroad Against United States Nationals (18 U.S.C. §2332)
Terrorism Transcending National Boundaries (18 U.S.C. §2332b)
Bombings of places of public use, Government facilities, public transportation systems and infrastructure facilities (18 U.S.C. §2332f)
Missile Systems designed to Destroy Aircraft (18 U.S.C. §2332g)
Production, Transfer, or Possession of Radiological Dispersal Devices (18 U.S.C. §2332h)
Harboring Terrorists (18 U.S.C. §2339)
Providing Material Support to Terrorists (18 U.S.C. §2339A)
Providing Material Support to Designated Terrorist Organizations (18 U.S.C. §2339B)
Prohibition Against Financing of Terrorism (18 U.S.C. §2339C)
Receiving Military-Type Training from an FTO (18 U.S.C. §2339D)
Narco-Terrorism (21 U.S.C. §1010A)
Sabotage of Nuclear Facilities or Fuel (42 U.S.C. §2284)
Aircraft Piracy (49 U.S.C. §46502)
Violations of IEEPA (50 U.S.C. §1705(b)) involving E.O. 12947 (Terrorists Who Threaten to Disrupt the Middle East Peace Process); E.O. 13224 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism or Global Terrorism List); and E.O. 13129 (Blocking Property and Prohibiting Transactions With the Taliban)

APPENDIX B

Examples of Category II Offenses

Crimes Committed Within the Special Maritime and Territorial Jurisdiction of the United States (18 U.S.C. §§7, 113, 114, 115, 1111, 1112, 1201, 2111)
Violence at International Airports (18 U.S.C. §37)
Arsons and Bombings (18 U.S.C. §§842(m), 842(n), 844(f), 844(I))
Killings in the Course of Attack on a Federal Facility (18 U.S.C. §930(c))
False Statements (18 U.S.C. §1001)
Protection of Computers (18 U.S.C. §1030)
False Information and Hoaxes (18 U.S.C. §1038)
Genocide (18 U.S.C. §1091)
Destruction of Communication Lines (18 U.S.C. §1362)
Sea Piracy (18 U.S.C. §1651)
Unlicensed Money Remitter Charges (18 U.S.C. §1960)
Wrecking Trains (18 U.S.C. §1992)
Destruction of National Defense Materials, Premises, or Utilities (18 U.S.C. §2155)
Violence against Maritime Navigation and Maritime Fixed Platforms (18 U.S.C. §§2280, 2281)
Torture (18 U.S.C. §2340A)
War Crimes (18 U.S.C. §2441)
International Traffic in Arms Regulations (22 U.S.C. §2778, and the rules and regulations promulgated thereunder, 22 C.F.R. §121–130)
Crimes in the Special Aircraft Jurisdiction other than Aircraft Piracy (49 U.S.C. §§46503–46507)
Destruction of Interstate Gas or Hazardous Liquid Pipeline Facilities (49 U.S.C. §60123(b))

APPENDIX C

Examples of Category II Terrorism-Related Convictions

Fort Dix Plot (conspiracy to murder members of the U.S. military). In 2008, following a jury trial in the United States District Court for the District of New Jersey, Ibrahim Shnewer, Dritan Duka, Shain Duka, Eljvir Duka and Serdar Tatar were convicted of violating 18 U.S.C. §1117, in connection with a plot to kill members of the U.S. military in an armed attack on the military base at Fort Dix, New Jersey. The defendants were also convicted of various weapons charges. The government's evidence revealed that one member of the group conducted surveillance at Fort Dix and Fort Monmouth in New Jersey, Dover Air Force Base in Delaware, and the U.S. Coast Guard in Philadelphia. The group obtained a detailed map of Fort Dix, where they hoped to use assault rifles to kill as many soldiers as possible. During the trial, the jury viewed secretly recorded videotapes of the defendants performing small-arms training at a shooting range in the Poconos Mountains in Pennsylvania and of the defendants watching training videos that included depictions of American soldiers being killed and of known Islamic radicals urging jihad against the United States.

Fawaz Damrah (citizenship fraud). In 2004, following a jury trial in the United States District Court for the Northern District of Ohio, Fawaz Damrah was convicted of violating 18 U.S.C. §1425 for concealing material facts in his citizenship application. The government's evidence showed that in his citizenship application, Damrah concealed from the U.S. government his membership in or affiliation with the Palestinian Islamic Jihad (PIJ), a.k.a. the Islamic Jihad Movement in Palestine; the Afghan Refugees Services, Inc., a.k.a. Al-Kifah Refugee Center; and the Islamic Committee for Palestine. Damrah further concealed the fact that he had, prior to his application for U.S. citizenship, ''incited, assisted, or otherwise participated in the persecution'' of Jews and others by advocating violent terrorist attacks against Jews and others. During the trial, the government's evidence included footage of a 1991 speech in which Damrah called Jews ''the sons of monkeys and pigs,'' and a 1989 speech in which he declared that ''terrorism and terrorism alone is the path to liberation.''

Soliman Biheiri (false statements and passport fraud). In 2003 and 2004, following two jury trials in the United States District Court for the Eastern District of Virginia, Soliman Biheiri was convicted of violating 18 U.S.C. §§1425 and 1546 for fraudulently procuring a passport, as well as 18 U.S.C. §§1001 and 1015 for making false statements to federal agents. Biheiri was the president of BMI, Inc., a New Jersey-based investment firm. The government's evidence showed that Biheiri had deliberately deceived federal agents during a June 2003 interview in which he denied having business or personal ties to Mousa Abu Marzook, a Specially Designated Global Terrorist and a leader of Hamas. In fact, the government's evidence showed that Biheiri had managed funds for Marzook both before and after Marzook was designated as a terrorist by the U.S. government in 1995. Specifically, the government presented files seized from Biheiri's computer showing that Marzook had invested $1 million in U.S. business ventures managed by Biheiri and his investment firm.

Mohammad Salman Farooq Qureshi (false statements). In 2005, following the entry of a guilty plea in the United States District Court for the Western District of Louisiana, Qureshi was convicted of violating 18 U.S.C. §1001 for making false statements to the FBI regarding the nature and extent of his involvement with al-Qaeda member Wadih El Hage, and the non-governmental organization Help Africa People. Qureshi was interviewed by the FBI in 1997, 1998, 2000, and 2004 in relation to terrorism crimes and during those interviews lied about his knowledge of El Hage, Help Africa People, and other al Qaeda members. The proffer filed in support of the plea agreement established Qureshi's connections to and contacts with El Hage, his contact with a subject under investigation in Oregon, and his activities and financial support of Help Africa People, a non-governmental organization believed to have been used by El Hage and others to provide cover identities and funds in connection with the 1998 attacks on the United States Embassies in Kenya and Tanzania. By Qureshi's admissions, at least $30,000 in Qureshi's funds were given to El Hage in Nairobi, Kenya. El Hage is serving a life sentence for his role in the East Africa Embassy bombings.

Sabri Benkahla (perjury, obstruction, false statements). In 2007, following a jury trial in the United States District Court for the Eastern District of Virginia, Sabri Benkahla was convicted on two counts of violating 18 U.S.C. §1623, for perjury, one count of violating 18 U.S.C. §1503 for obstructing justice, and one count of violating 18 U.S.C. §1001 for making false statements to the FBI. These false statements included denial of his involvement with an overseas jihad training camp in 1999, as well as his asserted lack of knowledge about individuals with whom he was in contact. The government's evidence revealed that the grand jury and FBI in 2004 sought to question Benkahla about his contacts with Ibrahim Buisir of Ireland, and Manaf Kasmuri of Malaysia, both of whom are Specially Designated Global Terrorists, as well as those with Ahmed Abu Ali, his friend and fellow student at the University of Medina, until both were arrested by Saudi authorities in June 2003. Further, the government's evidence revealed that the grand jury and FBI sought to question Benkahla about his contacts with an individual suspected of being Malik al-Tunisi, a facilitator for the al-Zarqawi terrorist network in Iraq.

Akram Musa Abdallah (false statements). In 2009, following the entry of a guilty plea in the United States District Court for the District of Arizona, Akram Musa Abdallah was convicted of violating 18 U.S.C. §1001 for making false statements to the FBI. In January 2007, Abdallah knowingly made a false material statement to special agents of the FBI during an interview in connection with the federal investigation and prosecution of the Holy Land Foundation for Relief & Development (HLF) and its officers. At the time of the interviews, Abdallah knew the HLF was a Specially Designated Global Terrorist organization. Abdallah also knew that when he was interviewed, the HLF and its officers were pending trial in the United States District Court for the Northern District of Texas, for crimes including providing material support to a foreign terrorist organization. During the interviews, Abdallah told FBI agents he was not involved in fundraising activities for the HLF, when, in fact, between approximately 1994 and 1997, Abdallah was involved in numerous fundraising activities, including collecting donations, organizing, facilitating and coordinating fund raising events on behalf of the HLF in the Phoenix metropolitan area. In July 2004, the HLF and seven of its principals were indicted on a variety of charges stemming from its financial support of Hamas, and in November 2008, after a two-month trial, those defendants were convicted on all charges.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

AMENDMENT NO. 769

Mr. ROBERTS. Mr. President, I rise to raise significant concerns with the pending modified amendment offered by my good friend and colleague, Senator DAVID VITTER. His amendment allows for the importation of prescription drugs from Canada. I am going to reiterate some of the same concerns that are voiced every time we discuss drug importation.

Let me also say that I think we all want more inexpensive drugs for our constituents. We all want broader access to drugs and therapies. That is a given. I know that is precisely the intent of my colleague. However, we want to ensure our constituents are safe when they are taking these drugs no matter what the expense—not only that, but Americans expect to be kept safe.

I must raise concerns that nothing in the Vitter amendment ensures the safety of drugs that would be imported from Canada. That is the lone country that is involved in regard to his pending amendment. Some say only the FDA-approved drugs would be imported and only safe drugs will be imported. But the reality is that the last four Secretaries of Health and Human Services—from Shalala, to Thompson, to Leavitt, and now Sebelius—have been unable to guarantee that these imported drugs are safe, not from Canada and not from any other country.

While my friend from Louisiana claims he has narrowed the scope of his

amendment, the modified Vitter amendment remains so broad in scope that it could potentially tie the hands of the FDA in limiting counterfeit drugs reaching the United States, which is something we desperately do not want. The FDA has found on several occasions that drugs promoted and sold as Canadian actually come from many other countries with very little oversight on safety and efficacy.

Finally, a New York Times investigation found that counterfeit drugs were sold through Canadian Internet pharmacies. It is easy to conclude that because these drugs were sourced from many other countries, it would be impossible to guarantee their safety.

The bottom line is the FDA cannot—not a little, not a lot; absolutely cannot—ensure that any drug coming from outside the United States is safe or effective. Until we can ensure that the drugs our constituents are taking are effective and, most importantly, safe, I must oppose the Vitter amendment today or whenever it is brought up and would encourage my colleagues to join me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENTS NOS. 814 AND 815

Ms. MIKULSKI. Mr. President, this is a very interesting bill on the floor. It is really three bills. It is the Agriculture appropriations, Commerce-Justice-Science, and the Transportation-Housing bill.

Our colleague, Senator HERB KOHL of Wisconsin, spent a good part of yesterday managing the bill. He chairs the agriculture subcommittee. I am doing it today. Senator KOHL is tied up on other matters.

He is adamant in his opposition to the Moran amendment providing $8 million for the Watershed Rehabilitation Program. While he is not opposed to the Watershed Rehabilitation Program, he wanted to make it clear that we had to make very difficult decisions. He does not support Senator MORAN's amendment as it would offset funding in the departmental administration providing numerous essential services to USDA. These cuts would force USDA to impose a reduction in force and would have a detrimental effect on the Department and its operation.

USDA has initiated buyouts to several thousand employees across many agricultural agencies. The level for the Department administration is over $13 million and $7 million below the request. Secretary Vilsack has reached out to the agricultural subcommittee and has concerns with overall staff reductions at the Department. Senator KOHL echoes Secretary Vilsack's concern.

Senator KOHL opposes this amendment, and on his behalf, I urge other Senators to oppose it as well.

He also opposed the Crapo amendment because, in a nutshell, says that dictating that funds cannot be used unless the rulemaking agenda and implementation schedule meet with congressional approval or constraining the regulatory process of defining terms just goes too far and is a veiled attempt to roll back critical Dodd-Frank reforms, particularly in the derivative area.

Again, on behalf of Senator KOHL, he urges all Senators to reject Crapo amendment No. 814.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 791

Ms. STABENOW. Mr. President, I rise to speak in opposition to the Coburn amendment No. 791, and I am pleased to be joined on the floor by my good friend and colleague and ranking member, Senator ROBERTS.

Let me start by saying that in the context of addressing a very large deficit we know needs to be addressed and in the context of the work being done by colleagues in what has been called the supercommittee, I am very proud of the fact that Senator ROBERTS and I and our colleagues, the chair and ranking member of the House Agriculture Committee, have come together and worked very hard, for different regions of the country, on different issues that we bring to the table. We have agreed on an overall reduction number that we have recommended as agriculture's portion of the deficit reduction.

We have already done deficit reduction, I have to say. We have already seen cuts in crop insurance, we have already seen cuts in the current year's budget that were substantial. But we know we need to do our part, and we are doing that. We are recommending $23 billion in deficit reduction.

Part of that, though, the critical part of that is we have asked the committee to allow us, as the leadership in the House and Senate, to propose the policy that goes with the cuts. We are working with all of those who are affected, from production agriculture, to conservation groups, the nutrition community, rural development, everyone who is involved and impacted by the 16 million jobs in agriculture. There are 16 million jobs. That is one out of four jobs in Michigan. This is incredibly important to our economy.

We are taking very seriously the need for us to come together and create changes, reforms in agricultural policy that streamline the system and the bureaucracy, do a better job with dollars, accountability, and reform what we are doing as it relates to the agricultural payment structure. It is in the context of that that I rise to oppose Senator COBURN's amendment. I appreciate his well-intended amendment, but I would say two things.

First of all, I understand he is proposing caps of $1 million on direct payments. We are in the process of changing that and recommending positive reforms in that whole system.

So we would ask that the Senate, our colleagues, to support us and the recommendations that we have been asked to put together by November 1, which is extremely fast-tracked, but we are working diligently, and our staffs are working diligently. There is not a lot of sleep right now so we can get this all done and put forward this new policy. So it is the wrong time and place to be suggesting this change, first of all, on an appropriations bill and, secondly in the context of this bipartisan, bicameral, good-faith effort to put forward changes in our system, which we are committed to doing, which will, frankly, usurp what this amendment is really all about.

Let me also say that it is important to talk about the fact that we have made changes in the last two farm bills. In 2002, there was a cap put on payments of $2.5 million, and we then lowered that in the 2008 farm bill to $500,000 for nonfarm income and $750,000 for farm income. We made a number of changes and a number of reforms in the last farm bill that moved us in the right direction, listening to the criticisms and concerns of the public and of colleagues. I think there were some very important steps that were made and positive changes in the last farm bill.

Understanding the world we are in now and the dynamics around deficit reduction and the economy and all of the other issues we are involved in, we are taking another major step, and I think it is a step being done in a way that says to colleagues and says to the public that we can work together. These are challenging policies, economic issues.

We have come together and worked very hard on a bipartisan basis with the House and the Senate, and I think this speaks well to the fact that if we sit down together and listen to each other and are willing to compromise, we can come together on something that is good for the country. We are in the process of doing that right now. I would ask our colleagues to allow us and support us in that effort.

We have put forward a proposal for $23 billion in deficit reduction, which is, frankly, more than would be required under sequestration for agriculture. We have gone above and beyond what the Bowles-Simpson proposal said. We know agriculture will want to do its part. We are asking colleagues to allow us to put together that policy to get there.

We will address the concerns that have been raised. We hear you. We understand. We will be proposing substantial changes that will, in fact, both create new tools for agriculture for our farmers and our ranchers but also address concerns that have been raised. I

ask my colleagues, rather than supporting this amendment, to support what is a good-faith effort that is going on right now in the House and Senate Agriculture Committees and allow us the time in the next week to put together the proposals to be able to make a change.

With that, I yield to my friend—and I do mean my friend—we have become good friends as well as colleagues on the Agriculture Committee. I have to say I loved being in Kansas and having the opportunity to be with Senator ROBERTS and experience the high esteem with which he is held there. At the same time, I saw tremendous devastation as a result of what has happened with the droughts. I understand that when there is bad weather, when there are bad conditions, we need to have support for American agriculture. Food security, national security depends on it. I certainly saw in Kansas what happens when the weather is bad and it has reinforced for me—as well as what happened in Michigan—certainly the importance of having a strong set of tools to manage risk and a safety net that is there when farmers need it.

I yield to my friend, the distinguished ranking member.

Mr. ROBERTS. Mr. President, I thank very much the distinguished chairwoman for yielding. We are talking about amendment No. 791, the pending amendment offered by my friend and colleague from Oklahoma, Senator COBURN.

I must oppose the Coburn amendment which will severely diminish the farm safety net for America's farmers and ranchers. I know that is not the intent of his amendment as he sees it but, unfortunately, that would be the practical effect, as the chairwoman has indicated.

The setting of adjusted gross income caps or what we call AGI caps is a policy issue that should be handled by the authorizing committee, not during the appropriations process. More specifically, this issue is a farm bill issue, if you will, and it is currently being considered in the context of the Joint Debt Committee process—the supercommittee. The chairwoman has described in detail our efforts, both the House principals and the chairwoman and myself, in submitting to the Joint Debt Committee our suggestions on how we can meet our deficit reduction responsibilities.

As people consider this amendment, I think it is important to remember that the 2008 farm bill, as the chairwoman has indicated, included the most comprehensive and far-reaching reform to farm program eligibility requirements in 20 years. That included reform to the AGI caps to which the Coburn amendment refers.

It is also important for my colleagues to understand that the adjusted gross income for a farmer is not pure profit. Personal expenses and the servicing of debt must still be covered. Given the capital-intensive nature of farming and the cost of inputs such as land and machinery, servicing debt alone can cost hundreds of thousands of dollars.

Supporters of these limits also tend to talk about how few farmers would be impacted by these caps. However, the advocates also only tend to look at those farmers who file Schedule F tax forms. This rather simplistic approach fails to reflect the fact that most operations that could be directly impacted by the AGI caps that they are recommending do not file Schedule F tax returns because of how they have chosen to organize their farming operation. Therefore, most advocates of these caps seriously underestimate the number of producers and the share of acres or production that would be left without a safety net.

To make matters worse, because this limit would be implemented using the appropriations legislation instead of authorizing legislation, it would not repeal the already existing AGI limits of $750,000 per on-farm income and $500,000 for off-farm income. In other words, this amendment would simply add another layer—another cap—another layer of bureaucracy to the already existing structure, further complicating USDA's work on this issue at a time when resources are extremely limited and when we are going to be in the process of writing a new farm bill, not to mention meeting our deficit obligations to the supercommittee.

Therefore, I encourage my colleagues to oppose the Coburn amendment and allow the agriculture committees the opportunity to address this issue in the appropriate venue.

I yield the floor.

Careful observation by this Member would indicate that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 741 WITHDRAWN

Mr. BLUNT. Mr. President, I ask unanimous consent to withdraw McCain amendment No. 741.

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

AMENDMENTS NOS. 763 AND 764 EN BLOC

Mr. BLUNT. Mr. President, on behalf of Senator DEMINT, I ask unanimous consent to set aside the pending amendment and offer amendments Nos. 763 and 764 en bloc.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. BLUNT], for Mr. DEMINT, offers amendments numbered 763 and 764, en bloc.

The amendments are as follows:

AMENDMENT NO. 763

(Purpose: To prohibit the use of funds to implement regulations regarding the removal of essential-use designation for epinephrine used in oral pressurized metered-dose inhalers)

At the appropriate place, insert the following:

SEC. ____. None of the funds made available by this Act may be used to implement the final rule entitled ''Use of Ozone-Depleting Substances; Removal of Essential-Use Designation (Epinephrine)'' (73 Fed. Reg. 69532 (November 19, 2008)).

AMENDMENT NO. 764

(Purpose: To eliminate a certain increase in funding)

At the appropriate place, insert the following:

SEC. 7____. Section 101(a)(2) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 120; 124 Stat. 2394; 124 Stat. 3265) is amended by striking ''after October 31, 2013'' and inserting ''on the date of enactment of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012''.

Mr. BLUNT. With that, it appears that there is not a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk 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.

AMENDMENT NO. 753

Mr. LEAHY. Mr. President, I wish to speak to amendment No. 753 to H.R. 2112 by the distinguished Senator from New Hampshire, Senator AYOTTE. This amendment would tie the hands of our national security and law enforcement officers in their efforts to secure our national security.

I am surprised that this amendment is being offered at this time. Just a week ago, we learned of the foiled assassination attempt in the United States of the Saudi Ambassador to the United States. This case involved the Department of Justice, the FBI, and the DEA in a coordinated effort to prevent an act of terrorism on U.S. soil. I commend the agencies involved in the investigation. I was also pleased to see that, in this instance, members of Congress did not re-engage in armchair quarterbacking over whether the suspect should be transferred to military custody or sent to Guantanamo.

Nearly two years ago, when a terrorist attempted to blow up an airplane on Christmas Day, some politicians used the occasion to criticize the Attorney General after the suspect was arrested. They made all kinds of claims about the risks of trying him in a Federal court, none of which came true. In fact, after obtaining useful intelligence from the suspect, that case proceeded without incident in Federal court where, last Wednesday, the defendant pleaded guilty. He now faces a potential life sentence. That successful prosecution adds to the more than 440 terrorism-related convictions since September 11, 2001.

Over the last two and one half years, the President and his national security team have done a tremendous job protecting America and taking the fight to our enemies. Earlier this year, the President ordered a successful strike against Osama bin Laden and has stayed focused on destroying al Qaeda from his first days in office. Last month, the administration was also able to locate Anwar al Awlaki, a terrorist operative in Yemen who was recruiting Americans to attack within the United States. During the past two and one half years, the President and his national security team have developed a counterterrorism framework that has protected the American people while taking on al Qaeda and its affiliates. As the President's assistant for Homeland Security and Counterterrorism John Brennan noted last month: ''[T]he results . . . under this approach are undeniable.'' Al Qaeda has been ''severely crippled'' and the death of Osama bin Laden was a ''strategic milestone'' in that effort.

We must remain vigilant, but no one can deny the progress that has been made. As Mr. Brennan emphasized, the approach is ''a practical, flexible, result-driven approach to counter terrorism that is consistent with our laws, and in line with the very values upon which this nation was founded.'' He noted: ''Where terrorists offer injustice, disorder, and destruction, the United States and its allies stand for freedom, fairness, equality, and hope.''

The Judiciary Committee has held several hearings on the issue of how to best handle terrorism suspects. Experts and judges from across the political spectrum have agreed that our courts and our criminal justice system can play a role in this challenge, and indeed has been effectively involved many times already.

As a former prosecutor, I have absolute faith in the abilities of our Federal courts, prosecutors, and law enforcement to bring terrorists to justice. The Executive Branch must have all options available in handling terrorism cases, including the ability to prosecute terrorists in Federal criminal courts.

I find it deeply troubling that the Senate would prohibit the administration from trying terrorists in our Federal courts. While there may be a place for military commissions in our overall approach to dealing with terrorism suspects, they remain mostly an unproven tool. The federal courts have dramatically more experience with handling these types of cases and have a proven track record of success.

There have been only six convictions in military commissions since September 11. Of the six convictions, five resulted from plea bargains. On average, the sentences given to those six defendants convicted in military commissions have been far shorter than the sentences handed down in Federal criminal courts. There have been more than 443 terrorism-related convictions in Federal courts since September 11, 2001, including at least 78 convictions during the Obama administration.

This amendment would deprive Federal law enforcement of a critical tool in bringing terrorists to justice. It usurps the Attorney General's constitutional responsibilities.

This body does not hold the responsibility of prosecuting any one. We are not the ones who go to court. We are not the ones who bring cases before a jury. The executive branch should make those choices, and it has done a very good job in winning convictions.

It would not be responsible for us to try to second-guess the system and tell a prosecutor what they should do in future cases. We would never do this to a State prosecutor. Why would we do this to our Federal prosecutors who are so well equipped to handle these cases?

We have spent over 200 years developing our criminal justice system, and we have spent over 200 years developing our courts and our Federal prosecution processes. No one should try to pass an amendment that will overturn that. This is not the path forward. I urge all Senators to oppose this amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BEGICH). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 836 TO AMENDMENT NO. 738

Mr. LAUTENBERG. Mr. President, I ask unanimous consent to temporarily set aside the pending amendment and call up my amendment No. 836.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself, Mr. SANDERS, Mr. MENENDEZ, and Mrs. GILLIBRAND, proposes an amendment numbered 836 to amendment No. 738.

The amendment is as follows:

(Purpose: To provide adequate funding for Economic Development Administration disaster relief grants pursuant to the agreement on disaster relief funding included in the Budget Control Act of 2011)

On page 88, between lines 8 and 9, insert the following:

For an additional amount for ''Economic Development Assistance Programs'' for expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas that received a major disaster designation in 2011 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), $365,000,000, to remain available until expended: Provided, That such amount is designated by Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177), as amended.

Mr. LAUTENBERG. Mr. President, this amendment would increase funding for disaster relief grants at the Economic Development Administration.

We all know that this has been a record year for natural disasters. Our country has already experienced a record 10 natural disasters that cost more than $1 billion each time. Hurricane Irene alone caused more than $7 billion in damages on the East Coast. In my home State of New Jersey, 11 people lost their lives as a result of the hurricane.

While President Obama came to my hometown of Paterson, NJ, to see the damage firsthand, I must point out that we are still, almost across the country, in the wake of huge storms that demand attention and will require substantial funding.

In my hometown of Paterson, NJ, we witnessed unforgettable images. The streets and sidewalks were covered in mud. In some homes, the second floor was also covered with mud.

But New Jersey is not alone. As I said, there have been extremely severe storms across the country, and flooding and tornadoes have devastated the Midwest and the South. As a result, FEMA has declared Federal disasters in all but two States this year. In the wake of these disasters, we have seen the American people pulling together, neighbor helping neighbor to put their lives back together; furniture out on the lawn; memorabilia that was so water soaked that it is valueless in terms of recalling memories.

It is painful to witness. When you see families standing together holding hands, wondering what is going to happen to them, we look to our country and they say help us recover from this disaster. Perhaps we will never quite get over it, but we can use the help desperately.

The Federal Government has to do its part, and I am pleased the Commerce, Justice, and Science bill we are considering includes emergency funding for disaster relief grants at the Economic Development Administration. I thank Senator MIKULSKI for her good work as chairman on this bill, but the needs all across the country are overwhelming and more disaster assistance is needed.

This amendment increases the funding for EDA disaster relief grants by $365 million to a total of $500 million of availability. I point out that many of these disasters themselves have $1 billion worth of damage. My amendment is cosponsored by Senator SANDERS, MENENDEZ, GILLIBRAND, BLUMENTHAL, and LEAHY, and I thank them for their support. Any area that received a Federal disaster declaration this year would be eligible to compete for this disaster relief, including areas in 48 States so far this year. I want to be clear. Natural disasters devastate local economies, causing damages that can linger for years. FEMA reimburses local governments' homeowners for repairs in the immediate aftermath of a storm, but EDA grants are needed to

help communities get back on track for recovery and economic revitalization in the wake of a major disaster. Communities use these disaster relief funds to repair damaged public infrastructure, such as sewer and drinking water systems, and States use the EDA grants to create and coordinate efficient disaster response and recovery plans.

Additionally, local governments and nonprofits can lend EDA disaster relief funds to businesses to help our private sector to rebuild and to grow. Congress has recognized the value of this program in the past. During the past 5 years, we have provided more than $550 million in EDA emergency disaster relief funds. This includes $500 million in emergency supplemental funding for EDA in 2008 to respond to the hurricanes that devastated the South and the heavy rains that caused massive flooding throughout the Midwest.

When these areas were in need, Congress came together and extended a helping hand. Unfortunately, we have to do so again now. The funding in my amendment complies with the disaster relief provisions included in the Budget Control Act and is not offset with cuts from other programs in the bill. When disaster strikes, victims don't want us to reach for the budget ax, they want us to help them rebuild and recover.

We all recognize our country faces serious fiscal challenges, but we cannot put a price on human lives. Nothing is more important than protecting our communities, our families, and our economy. Hurricane Irene and many other natural disasters hit our country this year, causing widespread damage that is going to require a massive rebuilding effort. The American people are looking to us, to the Federal Government, to lend a helping hand.

I point again to the picture of what a disaster such as this can do, where water is virtually up to the second floors, and this was repeated across the State of New Jersey and in many other States as a result of hurricane Irene.

With that, I urge my colleagues to support this amendment. Although there are squabbles about funding for various programs, at no time is the help more urgently needed than now—again, right after these storms have hit, leaving terrible devastation and people urging and pleading with us to give them the help. I urge my colleagues to support the amendment.

With that, 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, we have worked long and hard this whole week trying to move forward on the legislation dealing with our appropriations bills. It has been difficult, and one reason it has been difficult is this is kind of a new area we are working in; that is, legislating. I was very impressed to see Senator MIKULSKI talk with great clarity about how nice it was for her to again be legislating.

But we are not there yet. We were hoping to have a number of votes today—tonight—but we haven't been able to do that. We are getting close. Our staffs are working very hard to come up with an agreement we hope we can do tonight, to set up a series of four to six votes in the morning and then, hopefully, a pathway to completing this legislation.

We have other issues. Always we have to do more than one thing at a time. So we will move forward, the Republican leader and I, on filing a couple of cloture motions that we are going to set up for votes either Friday or hopefully we can get them done tomorrow.

Mr. MCCONNELL. If I can make just a couple remarks.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. We do have a number of amendments pending, and we are working our way in the direction of getting back to a normal process. I share the majority leader's hope and his view that we will have a number of votes, hopefully tomorrow, as a result of an agreement we are working on.

TEACHERS AND FIRST RESPONDERS BACK TO WORK ACT OF 2011—MOTION TO PROCEED

Mr. REID. Mr. President, I move to proceed to Calendar No. 204, S. 1723.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 204, S. 1723, a bill to provide for teacher and first responder stabilization.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 the debate on the motion to proceed to Calendar No. 204, S. 1723, Teachers and First Responders Back to Work Act.

Harry Reid, Robert Menendez, Daniel Inouye, Herb Kohl, Sheldon Whitehouse, Jack Reed, Jeff Bingaman, Barbara Mikulski, Patty Murray, Debbie Stabenow, Richard Durbin, Sherrod Brown, Richard Blumenthal, Bernard Sanders, Robert Casey, Jr., Jeff Merkley, Patrick Leahy, Tom Harkin.

Mr. REID. I ask unanimous consent that the mandatory quorum call under rule XXII be waived.

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

Mr. REID. Mr. President, I withdraw my motion to proceed to Calendar No. 204.

The PRESIDING OFFICER. The motion is withdrawn.

The minority leader.

WITHHOLDING TAX RELIEF ACT OF 2011—MOTION TO PROCEED

Mr. MCCONNELL. Mr. President, I ask unanimous consent to proceed to Calendar No. 205, S. 1726, and I send a cloture motion to the desk.

CLOTURE MOTION

The PRESIDING OFFICER. Without objection, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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, do hereby move to bring to a close debate on the motion to proceed to S. 1726, the Withholding Tax Relief Act of 2011.

James Inhofe, David Vitter, Mike Crapo, Kelly Ayotte, Roy Blunt, Johnny Isakson, Jeff Sessions, Mike Lee, Saxby Chambliss, Tom Coburn, Jon Kyl, Susan Collins, Ron Johnson, Pat Roberts, Richard Burr, Lamar Alexander.

Mr. MCCONNELL. I now withdraw my motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

The majority leader.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT OF 2012—Continued

Mr. REID. Mr. President, as I indicated earlier, we have tried most all day to have some votes. We were unable to do that. We are not going to have any more votes tonight. I have spoken with the Republican leader. We have done the best we can for today. There will be more business on the floor this evening; hopefully, we will be able to set up some votes tomorrow. So I apologize to everyone for not being able to have some votes or to have some way of moving forward, but we have done, as I indicated, the best we can.

I guess the good news is some people will be able to watch the World Series.

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 New York.

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

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

AMENDMENT NO. 869

Mrs. GILLIBRAND. As you know, Mr. President, Hurricane Irene and