

None of this would have happened but for the doggedness of the Senator from Connecticut. He simply would not give up when many said it could not be done.

Mr. DODD. Mr. President, I noted earlier the support of House Members who did a tremendous job in getting a bill done. I talked about BOB NEY and STENY HOYER. Obviously, bills do not get done just because they get done in the Senate. They can only finally get to the President's desk if the other body also acts, and without the leadership of BOB NEY of Ohio and STENY HOYER of Maryland, the Chair and ranking Members of the House Administration Committee, we never would have had a negotiation to produce this product.

So I want to extend my appreciation to them and to JOHN CONYERS, who was my coarchitect of this bill going back now a year and a half ago, who wanted to be available in Washington this morning, but he got delayed on a flight and could not be present for this final vote. When I first announced this bill, I stood in the room with two people. One was John Sweeney of the AFL-CIO. The other one was JOHN CONYERS, the dean of the Congressional Black Caucus in the House. JOHN CONYERS was a tremendous supporter of this effort all the way through. I am very grateful to him, again grateful to STENY HOYER, BOB NEY, and a whole host of people who made this possible: The NAACP, the AFL-CIO, disability groups across the country, the National Association of Secretaries of State. There is a long list of organizations that rallied behind this effort, and without their support we would not have been able to arrive at this moment.

So I thank all of those who were involved in this. I thank my colleague from Nevada for his very kind and generous comments.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:42 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CORZINE).

#### DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2003—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the conference report accompanying H.R. 5010, which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5010), making appropriations for the Department of Defense for the fiscal year ending

September 30, 2003, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by all of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The report is printed in the House proceedings of the RECORD of October 9, 2002.)

The PRESIDING OFFICER. Under the previous order, there will now be 15 minutes for debate, 5 minutes each for the Senator from Hawaii, Mr. INOUE, and the Senator from Alaska, Mr. STEVENS, and the Senator from Minnesota, Mr. WELLSTONE.

The Senator from Hawaii.

Mr. INOUE. Mr. President, I am pleased to be here today with my co-chairman Senator STEVENS to present our recommendations to the Senate on the conference report for H.R. 5010, the Department of Defense Appropriations Act for fiscal year 2003.

The conference agreement represents a compromise reached after a month-long series of discussions by the managers.

Our recommendations bring the total in the bill to \$355.1 billion, \$298 million below the Senate passed bill and \$395 million above the House level.

This conference agreement represents a good faith effort to balance the priorities of the House and Senate in meeting our National Security requirements. I am confident it achieves that objective.

Our time is brief today, so I will not detail all of the items in this measure. But I want to make three points.

First, this bill is likely to be one of the two appropriations bills to be completed before the election. As such, there were many items that members sought to have included in this conference report. I am happy to report to the Senate that no extraneous matters were included by the conferees. This is a very clean bill.

Second, last week the Senate passed a resolution authorizing the use of force against Iraq. It is imperative we pass this bill before we recess to ensure our forces have the support they require to carry out whatever missions our Nation asks them.

Third, I commend my co chairman, Senator STEVENS, for his work on this bill. He was instrumental in defending many of the priorities of the Senate, including our efforts to support strong financial management in DoD: Fully funding the C-17 program and paying off our unfunded liability on shipbuilding programs.

As always, my friend was assisted in this by his very capable staff led by Steve Cortese, and including Sid Ashworth, Kraig Siracuse, Jennifer Chartrand, Alicia Farrell, and Nicole Royal. I also want to note the fine work of my staff: Charlie Houy, David Morrison, Susan Hogan, Mazie Mattson, Tom Hawkins, Bob Henke,

Leslie Kalan, Menda Fife, and Betsy Schmid.

Mr. President, finally I commend the House for their courtesy and cooperation. Chairman LEWIS and Representative MURTHA could not have been more gracious. While there were many issues upon which we differed, we were able to resolve those in a friendly and constructive fashion.

I note as well the great work of their fine staff led by Kevin Roper and Greg Dahlberg, and including:

Betsy Phillips, Doug Gregory, Alicia Jones, Greg Walters, Paul Juola, Steve Nixon, David Norquist, Greg Lankler, Clelia Alvarado, Paul Terry, Sarah Young, Sherry Young, Chris Mallard, David Killian and Bill Gnacek.

Mr. President this is a good bill, it is exactly what our armed forces need, and I urge all my colleagues to support it.

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I am pleased to be here with my distinguished colleague from Hawaii to offer this bill. It is the largest Defense bill in history. It is a bill that merits the support of every Member of the Senate.

I do congratulate Senator INOUE for his leadership and for his hard work and cooperation with the Members of the House, whom he has named, with whom we have worked on this bill.

We have had different views on this bill, but we have proceeded without rancor and I think worked out a compromise that is satisfactory to the administration, particularly the Department of Defense and the President. I believe it is a balanced and fair bill.

There were nearly \$18 billion in differences between the House and Senate bills. All of these have been reconciled within the limits of discretion and with good will. I think these compromises should receive overwhelming support from the Department because they actually make the bill much more functional, more workable. It is the kind of bill that we should have in the times we are in now, where we are close to a very difficult problem as far as Iraq is concerned.

This bill fully funds all military requirements for the armed services. It contains a 4.1-percent pay increase and lifetime health care benefits for the military retirees.

It further reduces the out-of-pocket costs for some of the military families who do not have the benefit of on-base housing.

We really have tried to strike a balance between near-term readiness and the investments we must make for the future, as far as our defense establishment is concerned.

This bill mandates full funding for six Stryker brigades to transform our ground combat forces and adds funds for future combat systems.

For the Navy, funding the CVN-X and the DD-X and the littoral combat ship and the *Virginia* class submarine,

all accelerate the introduction of a completely new 21st century technology for the Navy. The Navy, Marine Corps, and Air Force all await deployment of the Joint Strike Fighter, and so do we. The bill sustains the deployment of that new aircraft and adds funds for two new engine options. The Air Force receives funds to expand the effort for the production of the F-22, the C-17, and hopefully for the replacement of our aging fleet of air refueling tankers.

One of the difficult dreams I have is a flight of our fighters coming back to meet a tanker and finding it is not there. We have to work on this and work very hard to make sure we have the tanker capacity because our air power depends entirely upon our tanker capability. These commitments will deliver the capabilities we must have for the fiscal years ahead of us.

These systems not only contribute to the war against terrorism today, but they will fund replacement of equipment rapidly deteriorating. They must be functional for us in combat in the global war on terrorism. It is consistent with the President's budget request. This bill in particular funds a missile defense system at the President's request.

I hope all Members will realize, ranging from ground- and sea-based missiles to airborne lasers, we are going to have layers of defense that will protect our troops abroad and at sea, and our people here at home. That missile defense system must go forward.

Again, I commend my good friend, the chairman of the committee. It is a pleasure to work with him and the chairman of our full committee, Senator BYRD, in their efforts to move this bill forward. We have urged that the Defense bill be first, and the Defense bill is first. It indicates the priority that the whole national Federal Government places upon defense. I believe this conference report, as I said, merits the support of every Senator.

I also send my personal appreciation to the chairman of the House subcommittee, Congressman JERRY LEWIS, and the ranking member of the House subcommittee, Congressman JACK MURTHA. They have been very gracious people to work with under difficult circumstances.

I also ask that the Senate commend the staffs of both the majority and minority in the Senate and the majority and the minority in the House. These people have worked behind the scenes, around the clock, sometimes through weekends, to eliminate the difficult problems that have come up in this bill. As I said, \$18 billion of difference and there is not an argument between us in terms of this bill. But led by Charlie Houy here on the majority side and Steve Cortese, who is by my side now, our staffs have worked, I think, just without any rancor at all.

I do want to say at last, though, Kevin Roper and Greg Dahlberg, as Senator INOUE mentioned, made a tre-

mendous contribution to this work in the House.

I urge approval of this conference report.

#### JOINT COMPUTER AIDED ACQUISITION AND LOGISTICS SUPPORT PROGRAM

Mr. BYRD. Will my friend, the Senator from Hawaii, who ably serves as the chairman of the subcommittee on Defense, yield for a colloquy?

Mr. INOUE. I am pleased to yield to the Chairman of the Committee on appropriations, the Senator from West Virginia.

Mr. BYRD. Is my understanding correct that the FY 2003 Defense Appropriations Bill now before the Senate contains an increase of \$21.5 million above the President's budget request for the Joint Computer Aided Acquisition and Logistics Support, JCALS, program, for a total FY 2003 program level of \$58.9 million?

Mr. INOUE. The Senator is correct.

Mr. BYRD. I thank the Chairman for his assurances. If I may inquire further, it is also my understanding that it is the committee's intent that \$21.5 million of the JCALS funds in the Army RTDE account are to be spent exclusively on activities directly related to the JCALS Tactical Logistics Data Digitization (TLDD) initiative, which operates out of Hinton, WV.

Mr. INOUE. The Senator is correct that it is our strong intention that the TLDD initiative be expanded and deployment accelerated by use of the \$21.5 million of JCALS Army RDTE funds provided in the FY 2003 Defense Appropriations bill.

Mr. BYRD. I thank the Chairman. If he would yield for a final question, am I correct in my understanding that it is the Committee's further intent that the JCALS Program leverage and expand the capabilities of the Southeast Regional Technical Center now primarily located in Hinton, WV to provide support and training for the TLDD initiative? This action will address a key recommendation by the Institute for Defense Analysis in a study it prepared last year for the Office of the Secretary of Defense to increase training and support for the military services that utilize the JCALS program.

Mr. INOUE. The Senator from West Virginia is correct.

Mr. BYRD. I thank the Senator for his clarification and assistance with this most important issue.

#### APPLICATION OF THE BERRY AMENDMENT TO THE MULTI-YEAR AIRCRAFT LEASE PILOT PROGRAM

Mr. REID. Mr. President, I rise in order to enter into a colloquy with the Senator from Hawaii to seek clarification on the correct interpretation of report language in the conference agreement report that deals with the Berry amendment and the Multi-Year Aircraft Lease Pilot Program.

As I read this language, it appears the report language provides an explanation of Section 308 in the fiscal year 2002 Supplement Appropriations bill that permitted the multi-year aircraft

lease program to proceed without meeting the Berry amendment restrictions on the use of foreign sourced specialty metals in the procurement of air refueling tanker replacements. I, and many of my colleagues, are pleased to see that the report language seems to indicate that this suspension of the Berry amendment is only applicable to this unique multi-year leasing program. I ask the distinguished Senator from Hawaii, am I correct reading this report language?

Mr. INOUE. Mr. President, if I may respond to my good friend from Nevada, he is correct that this report language does state that Section 308 from the FY 2002 Supplemental Appropriations bill only applies to this specific Multi-year Aircraft Leasing Program and no other procurement or leasing program.

Mr. REID. Mr. President, I also would like to ask the Senator a question regarding another aspect of the report language. This language directs the Secretary of the Air Force to conduct a study and report to Congress on a comparison of foreign and domestic-sourced specialty metals to be used in this leased fleet of refueling tankers with the specialty metal content of military aircraft that have been procured by the Air Force in the last five years.

It appears that this new study by the Air Force is designed to look at the specialty metal content on a new "system-level" basis rather than on the current aircraft-by-aircraft basis. Therefore, I am concerned that this new "system-level basis" study could be the first step in eroding the longstanding practice of determining Berry amendment compliance under a whole new standard and could, in turn, harm our domestic specialty metal industry and its employees. I would like to ask the Senator from Hawaii whether this new Air Force study will be used by the Appropriations Committee to advocate additional Berry amendment exemptions for other procurement programs to modify the overall content requirements of the Berry amendment for future military procurement programs?

Mr. INOUE. Mr. President, the Senator from Nevada raises an excellent point. I want to assure him and my colleagues that I strongly support the provisions of the Berry amendment and I am not interested in supporting any legislative action that would harm our nation's specialty metal industry or its employees. The exemption of the Berry amendment for the Multi-Year Aircraft Leasing Program was a unique situation and I do not believe the multi-year leasing program should be the basis for any modification of the important aircraft-by-aircraft content requirements inherent in the Berry amendment. I hope this fully addresses the gentleman's concerns.

Mr. REID. Mr. President, I thank the Chairman for his support of the Berry amendment and for his commitment to ensure a viable and healthy domestic specialty metals industry.

Mrs. CARNAHAN. Mr. President, I am proud today to express my support for the 2003 Defense Appropriations Act. The Conference Report I will vote for provides a much-needed boost to our Defense budget, a total of \$355.1 billion, \$21 billion more than was appropriated for this year. This is the largest defense budget in our Nation's history, and it could not come at a more important time.

Our military is engaged in a global campaign against terror, and could be preparing for another war soon. It is essential that our military remains outfitted with the most advanced equipment to meet threats to our Nation today as well as into the future. But our most important asset is our soldiers, sailors, airmen, and marines. I am proud to support this bill, and its funding for a 4.1 percent increase in basic pay for all service members.

This bill is good for the military, good for the country, and good for Missouri. In fact, it funds over \$293 million for a number of Missouri defense projects, many of which will directly stimulate economic development in my State. In particular, the projects funded in this bill, from Boeing F/A-18 aircraft, to new advances in chemical and biological defenses, will support America's war effort against international terrorism.

Missouri's single largest defense contract, the F/A-18 program employs over 4,000 people in the St. Louis area. I am pleased that the Defense Appropriations Subcommittee increased funding for this program by \$120 million over the Administration's Super Hornet budget proposal.

Despite testimony by the Navy's top leaders requesting an increase in funding for this program, the President's original budget proposal reduced the number of Super Hornets that the Navy was originally scheduled to buy in 2003. Under the existing contract between Boeing and the Navy, the Defense Department was scheduled to purchase 48 aircraft in 2003. However, the President's budget only proposed 44 aircraft to be purchased in 2003.

This continues a downward trend for the F/A-18's budget, which is now in its third year of a multi-year contract. Coupled with reductions made in previous years, the President's proposed 2003 budget would mark a total of 10 aircraft cut in the course of three years. In response, I worked to restore funding for aircraft purchases.

I was pleased that earlier this year, the Senate passed a bill that included an additional \$240 million for this program, even though the House did not. While the final conference report did not fund this increase in full, it did provide \$120 million more than the original proposal submitted to Congress by the Administration.

This is an important development, and I pleased to lend my support to this Conference Report today. Today's bill marks Congress's continued backing for not only these critical tactical

aircraft but for the military's ongoing modernization to transform and meet the challenges our country will face in both the near and long term.

Mr. MCCAIN. Mr. President, I rise again to address the issue of wasteful spending in appropriations measures, in this case, the Appropriations Committee Conference Report to accompany H.R. 5010, a bill to fund the Department of Defense for fiscal year 2003. This legislation would provide \$355.1 billion to the Department of Defense. This year's defense appropriations bill adds 1,760 programs not requested by the President, at a further cost of \$7.4 billion with questionable relationships to national defense at a time of scarce resources, budget deficits, and underfunded, urgent defense priorities.

Just last week the Senate passed the Iraqi War Resolution by a vote of 77 to 23, authorizing the President of the United States to commit the United States Armed Forces to achieve a regime change in Iraq. America remains at war, a war that continues to unite Americans in pursuit of a common goal, to defeat international terrorism. All Americans have, and undoubtedly in the future will make sacrifices for this war. Many have been deeply affected by it and at times harmed by difficult, related economic circumstances. Our servicemen and women in particular are truly on the front lines in this war, separated from their families, risking their lives, and working extraordinarily long hours under the most difficult conditions to accomplish the ambitious but necessary task their country has set for them.

Despite the realities of war, and the serious responsibilities the situation imposes on Congress and the President, the House and Senate Appropriations Committees have not seen fit to change in any degree its blatant use of defense dollars for projects that may or may not serve some worthy purpose. Furthermore, some of the add-ons clearly impair our national defense by depriving legitimate defense needs of adequate funding.

Even in the middle of a war against terrorism, a war of monumental consequences that is expected to last for some time, the Appropriations Committees remain intent on ensuring that part of the Department of Defense's mission is to dispense corporate welfare. It is a shame that at such a critical time, the United States Senate persists in spending money requested and authorized only for our Armed Forces to satisfy the needs or the desires of interests that are unrelated to defense and even, in truth, unconcerned about the true needs of our military.

If the war against terrorism is taken to the Iraqi theater there will be bills to pay. White House economist, Lawrence Lindsey, estimates that a full scale mobilization in Iraq could cost as much as \$100 to \$200 billion. A lower es-

timate reported in the Washington Post puts the cost of committing United States forces in Iraq at \$30 to \$50 billion. This lower estimate assumes, quoting the September 24, 2002 Washington Post, a war "... with inept enemy forces, no use of chemical or biological weapons, access to bases and airspace in most Gulf states and Turkey, and low casualties on our side." It is quite obvious that the costs of the use of force in Iraq will be substantial. With the possibility of such a large expenditure in our future how can Appropriators spend our precious defense dollars so foolishly?

An Investor's Business Daily article published late last year entitled *At the Trough: Welfare Checks to Big Business Make No Sense*, stated, "[a]mong the least justified outlays [in the federal budget] is corporate welfare. Budget analyst Stephen Slivinski estimates that business subsidies will run \$87 billion [in 2001], up a third since 1997. Although President Bush proposed \$12 billion in cuts to corporate welfare [in 2001], Congress has proved resistant. Indeed many post-September 11 bailouts have gone to big business. Boeing is one of the biggest beneficiaries. ... While corporate America gets the profits, taxpayers get the losses. ... The Constitution authorizes a Congress to promote the general welfare, not enrich Boeing and other corporate behemoths. There is no warrant to take from Peter so Paul can pay higher dividends. In the aftermath of September 11, the American people can ill afford budget profligacy in Washington. If Congress is not willing to cut corporate welfare at a time of national crisis, what is it willing to cut?"

Yet, Congress didn't get the message this year. In the Fiscal Year 2003 Defense Appropriations conference report that we are considering today, the Appropriations Committees added nearly \$500 million in aircraft procurement that the Department of Defense did not request. There were funds appropriated for twenty-four types of aircraft; unfortunately none of these were identified by the military as requirements. It staggers the mind to think of what programs the services desperately need could have been funded by \$500 million.

Here is a very short list of just some of the more egregious examples of Defense appropriations

\$12 million for the 21st Century Truck. This program has been around for years and not once has the Department of Defense requested funding for it. While I'm sure we all would love to jump into a truck that could be in a James Bond movie, I'm not sure it is appropriate for the Department of Defense to pay for it.

\$3.4 million for the Next Generation Smart Truck. I suppose this is what we will drive before the 21st Century Truck is ready.

\$1 million for Canola Oil Fuel Cells. I would think that the only canola oil the Department of Defense should be investing in should be used for salad

dressings for our troops, not inventing batteries.

\$4.5 million for a Coastal Cancer Research Center. A worthwhile expenditure, but the Defense Appropriations Bill is not the place for these funds to come from.

\$1 million for Math Teacher Leadership.

\$3 million in Impact Aid for Children with Disabilities.

\$19 million for International Sporting Competitions.

\$7.7 million for the Alaska Wide Mobile Radio Program.

\$1 million for Animal Modeling Genetics Research.

\$2.6 million for the Pacific Rim Corrosion Project.

\$6 million for the Pacific Disaster Center Project.

\$1 million for the Rural Telemedicine Demonstration Project.

These are just a few glaring examples of the more than 1,760 Member additions that leave many people scratching their heads trying to find the link to defense program funding.

Here is a very abbreviated list of some of the member additions that, while at least connected to the Department of Defense, were still not requested in the President's budget nor were they on any of the service's unfunded priority lists. Remember, every one of these additions come at the expense of programs that our services need to carry out their missions. For every dollar spent on these additions, it is one taken out of priority programs.

\$53 million in Distance Learning.

\$101.3 million in Defense Wide Administration Activities.

\$44 million for Multi-Purpose Vehicles.

\$58.5 million for Automated Data Processing Equipment.

\$30.8 million for Non-System Training Devices.

\$14 million for Drones and Decoys.

\$6.7 million in Base Information Infrastructure.

\$1 million in Polar Fleece Shirts.

\$5 million for the Institute for Creative Technology.

\$2 million for the Center for Geosciences.

\$3 million for the Concepts Experimentation Program.

\$2 million for the Consortium for Military Personnel Research.

I will not list the rest of the additions as that would take hours. A larger list of Defense Appropriations Conference Committee earmarks is available on my website. I find it incredible that we are funding these unrequested and unneeded programs when we have more than 500 items that the Department of Defense says they need on their "Unfunded Priority Lists".

You will recall that last year, during conference negotiations on the Department of Defense Appropriations Act for Fiscal Year 2002, the Senate Appropriations Committee inserted into the bill unprecedented language to allow the

U.S. Air Force to lease 100 Boeing 767 commercial aircraft and convert them to tankers, and to lease four Boeing 737 commercial aircraft for passenger airlift to be used by congressional and Executive Branch officials. Congress did not authorize these leasing provisions in the fiscal year 2002 National Defense Authorization Act, and in fact, the Senate Armed Services Committee was not advised of this effort by Air Force Secretary Jim Roche during consideration of that authorization measure.

Again this year, without benefit of authorization committee debate or input—the Senate Appropriations Committee has added funding in the Fiscal Year 2003 Department of Defense Appropriations bill in the amount of \$3 million for the "Tanker Lease Pilot Program" for the proposed Boeing 767 aerial tanker leasing scheme. Furthermore, additional language in the bill modifies a provision that had been carefully negotiated by the Office of Management and Budget, OMB, with appropriators last year, and may now permit the Air Force to circumvent law, OMB and standard leasing arrangements and, with respect to the 100 Boeing 767s, will allow the Air Force to defer the termination liability costs up-front, unprecedented in leasing arrangements according to leasing experts and certainly against good business practices.

In multi-year contracts such as leases there is a statutory requirement to obligate money for termination liability payments in the first year of the contract. The reason is quite simple. If the government, the Air Force in this case, cancels the contract then the Air Force is required to pay Boeing for breaking the terms of the contract. What would happen if a Boeing 767 tanker was hit by hostile fire which caused a catastrophic fire onboard and the Boeing 767 tanker crashed. Under a similar leasing arrangement like the one that the Air Force signed with the Boeing Company for Boeing 737 VIP Executive aircraft, "loss or destruction of the aircraft constitutes a notice of cancellation" and under the terms of the lease the Air Force would be required to make a termination liability payment. Not planning for this is irresponsible, especially concerning military aircraft which operate in harms way with great regularity. This deferment of termination liability payment is an unfunded federal liability. This leaves Congress with no recourse but to foot the cost of this unfunded liability with the Boeing Company and leaves the taxpayer stuck with a big bill without any say in the matter. Boeing gets paid under this termination liability clause, yet the taxpayer is out an aircraft.

Particularly disconcerting is a provision that would allow the Air Force to fund the Boeing 767 aerial tanker lease from Air Force readiness appropriations rather than the usual procurement accounts already committed to purchase \$72 billion worth of other new

weapons systems, aircraft and ships. According to statute, readiness appropriations or operations and maintenance accounts, finance the cost of operating and maintaining the Armed Forces. Specifically, included are the amounts for training and operation costs, pay of civilians, contract services for maintenance of equipment and facilities, fuel, supplies, and repair parts for weapons and equipment. Using critical readiness dollars to pay to lease 100 Boeing 767 tankers, under a new start program, can only be properly referred to as a mistake of great proportions that will eventually have great consequences for all of our Armed Forces and not just for the Air Force. Since 1999, the defense budgets have made strides to reverse years of under-funding in the readiness accounts, however, I have serious concerns about the future state of preparedness of our units and our men and women in the military if we continue to follow the advice of the Secretary of the Air Force under some "rob Peter to pay Paul" leasing scheme.

There is yet another egregious legislative provision included in the appropriations bill that certainly could be regarded as a bail out for Boeing. This provision would authorize the Air Force to pay annual advance payments, up to one year in advance, for leasing Boeing 767 tanker aircraft. I would like to have one of my colleagues from the Appropriations Committee explain to me how is this provision in the best interest of the government or the taxpayer for that matter. This Boeing leasing arrangement is projected to cost \$20 billion, that means the Air Force may have to pay up front, each year, literally billions of dollars to Boeing with the promise to deliver aircraft later what a deal, courtesy of the Appropriations Committee. As a senior member of the Armed Services Committee, I would have liked to have heard some testimony regarding this significant change in acquisition policy. In fact, the Armed Services Committee is the proper committee to make recommendations as to reforming defense procurement policy, not the Appropriations Committee. The truth is there is no gain to the government for this provision the gain is all on the side of the ledger of the Boeing Company. This is waste that borders on gross negligence.

Does the appropriations committee have any respect for the authorizing committees in the Senate? I don't think so.

I believe this expensive aerial tanker lease program to be a new start that has been estimated by the Office of Management and Budget to cost between \$20–\$30 billion over six years. A program of this magnitude should require considerable consultation with the Secretary of Defense directly, not just that of Air Force Secretary Jim Roche or his staff or a nebulous entity know as the Leasing Review Panel that

was recently organized by the DOD acquisition secretary and DOD comptroller for the sole purpose to recommend leasing major weapons platforms such as aircraft, vessels, and combat vehicles according to the Project on Government Oversight. I am deeply concerned that the Armed Services Committees have not been given adequate time for review, inspection or comment on this significant, unprecedented proposal and that we do not have the advice of the Defense Secretary that this program is warranted. Recall, however, that we did hear from the Defense Secretary about the Army's Crusader that would have had a total program cost of only a half to a third as much as Air Force's scheme to lease Boeing 767 aerial tankers.

I appreciate the Secretary of Defense's strong support for the practice of using American taxpayers' money in a cost-effective manner to procure the best weapon system, at the best price for our men and women in uniform. I strongly endorse this practice. On June 28, 2001, in testimony before the Senate Armed Services Committee, the Defense Secretary said, "[w]e have an obligation to taxpayers to spend their money wisely. Today, . . . there is no real incentive to save a nickel. To the contrary, the way the Department operates today, there are disincentives to saving money. We need to ask ourselves: how should we be spending taxpayers dollars? We are doing two things: First, we are not treating the taxpayers' dollars with respect—and by not doing so, we risk losing their support; second, we are depriving the men and women of our Armed Forces of the training, equipment and facilities they need to accomplish their missions. They deserve better. We need to invest that money wisely."

The tanker leasing debate has not benefited from authorization committee input or a clear understanding of the Secretary of Defense's views on the requirement for this large procurement plan and the alleged Department of Air Force's change in policy to procure major weapons platforms, such as aircraft, through leasing schemes. I am concerned the impact of these provisions has not been adequately scrutinized, and the full cost to taxpayers has not been sufficiently considered.

I would like to note that OMB Director Mitch Daniels has often indicated his preference to maintain scrutiny of government leasing practices out of regard for U.S. taxpayers. Just last year, in a letter from the OMB Director to Senator Kent Conrad, OMB cautioned against eliminating rules intended to reduce leasing abuses. OMB's letter emphasized that the Budget Enforcement Act (BEA) scoring rules "were specifically designed to encourage the use of financing mechanisms that minimize taxpayers' costs by eliminating the unfair advantage provided to lease-purchases by the previous scoring rules. Prior to the BEA, agencies only needed budget authority for the first

year's lease payment, even though the agreement was a legally enforceable commitment to fully pay for the asset over time." OMB's letter continued by explaining that this loophole had permitted the General Services Administration to agree to 11 lease-purchase agreements with a total, full-term cost of \$1.7 billion, but to budget only the first year of lease payments. OMB's letter stated, "[t]he scoring hid the fact that these agreements had a higher economic cost than traditional direct purchases and in some cases allowed projects to go forward despite significant cost overruns. . . ." Sounds very familiar.

As I mentioned before on the Senate floor when the Fiscal Year 2002 Defense Appropriations Conference Report was being debated, this is a sweet deal for the Boeing Company that I'm sure is the envy of corporate lobbyists from one end of K Street to the other. The Project on Government Oversight a politically independent, non-profit watchdog organization called Secretary Roche's Boeing tanker lease deal " . . . a textbook case of bad procurement policy and favoritism to a single defense contractor."

Let me review some of the highlights of the information and costs of this leasing scheme that have been provided to the Congress by the Office of Management and Budget, the General Accounting Office, the Department of Defense Inspector General, the Congressional Budget Office, the Department of Defense, and other important outside independent experts:

GAO estimates the cost to lease 100 Boeing 767 tankers for 6 years to be \$20 to \$30 billion.

GAO estimates that the cost to modernize and upgrade 127 KC-135 Es to "R" Models is \$3.6 billion; a \$22.4 billion savings to leasing 100 tankers.

GAO estimates the cost for building new infrastructure for 100 Boeing 767 tankers to be \$1.7 billion, the same cost to modernize 59 older KC-135 tankers.

The Air Force estimates that their current fleet of KC-135s have between 12,000 to 14,000 flying hours on them only 33 percent of the lifetime flying hour limit and no KC-135E's will meet the limit until 2040.

According to the Air Force, the Mission Capable Rate for KC-135 tankers is 80 percent the highest in the Air Force inventory. The B-2 Mission Capable Rate by comparison is 39 percent.

According to the Air Force Air Mobility Command, there is no requirement to begin replacing KC-135's before fiscal year 2013.

OMB reports that the current fleet of KC-135s is in good condition.

According to OMB, leasing 100 Boeing 767 tankers, cost \$26 billion, will result in an overall decrease of total tanker fleet capacity of 2 million pounds of fuel; whereas upgrading 126 KC-135 Es to "R" models, cost \$3.2 billion, will result in an increase of total tanker fleet capacity of 1.7 million pounds of fuel over and above existing capacity.

According to the Air Force "Tanker Requirement Study 05," replacing the KC-135E fleet with leased Boeing 767 tankers would not solve, and could exacerbate, the shortfalls identified in the TRS-05.

According to the DOD IG, the Air Force competition/Request for Information, RFI, on leasing tankers was only 14 days, not the usual length of time of 90 days constituting a concern regarding the true nature of the competition.

The Congressional Budget Office has reported that a long-term lease of tanker aircraft would be significantly more expensive than a direct purchase of such aircraft.

According to DOD, while the KC-135 is an average of 35 years old, its airframe hours and cycles are low with proper maintenance and upgrades the KC-135 may be sustainable for another 35 years.

But this is just another example of Congress' political meddling and of how outside special interest groups have obstructed the military's ability to channel resources where they are most needed. I will repeat what I've said many, many times before, the military needs less money spent on pork and more spent to redress the serious problems caused by a decade of declining defense budgets.

This defense appropriations bill also includes provisions to mandate domestic source restrictions; these "Buy America" provisions directly harm the United States and our allies. "Buy America" protectionist procurement policies, enacted by Congress to protect pork barrel projects in each Member's State or District, hurt military readiness, personnel funding, modernization of military equipment, and cost the taxpayer \$5.5 billion annually. In many instances, we are driving the military to buy higher-priced, inferior products when we do not allow foreign competition. "Buy America" restrictions undermine DOD's ability to procure the best systems at the least cost and impede greater interoperability and armaments cooperation with our allies. They are not only less cost-effective, they also constitute bad policy, particularly at a time when our allies' support in the war on terrorism is so important.

Secretary Rumsfeld and his predecessor, Bill Cohen, oppose this protectionist and costly appropriations policy. However, the appropriations' staff ignores this expert advice when preparing the legislative draft of the appropriations bills each year. The defense appropriations bill include several examples of "Buy America" pork, prohibitions on procuring anchor and mooring chain components for Navy warships; main propulsion diesel engines and propellers for a new class of Navy dry-stores and ammunition supply ships; supercomputers; carbon, alloy, or armor steel plate; ball and roller bearings; construction or conversion of any naval vessel; and, other

naval auxiliary equipment, including pumps for all shipboard services, propulsion system components such as engines, reduction gears, and propellers, shipboard cranes, and spreaders for shipboard cranes.

I am pleased that an amendment that I introduced on the Senate floor carried through Conference Section 8147. This legislative provision would prohibit spending \$30.6 million for leasing of Boeing 737 VIP Executive aircraft under any contract entered into under any procurement procedures other than pursuant to the Competition and Contracting Act which promotes full and open competition procedures in conducting a procurement for property or services. I believe this amendment would ensure full and open competition with respect to Boeing 737 VIP Executive aircraft. Although last year's DOD Appropriations bill specified 4 Boeing 737 aircraft, it did not authorize the lease solely from the Boeing Company. Yet the Air Force only negotiated a sole source contract totaling nearly \$400 million with the Boeing Company, seemingly in direct violation of this statutory language if they disburse funds for this VIP Executive aircraft lease without a fair and open competition. In today's failing economy, I imagine there are many leasing entities that would like to compete for this lucrative leasing arrangement with the Air Force. With the downturn in the commercial aviation industry and the serious financial condition of most airlines in the United States, it is very likely that there are more than a few airlines that would like to participate in a full and open competition to provide excess Boeing 737 transport aircraft under some leasing arrangement with the Air Force.

I look forward to the day when my appearances on the Senate floor for this purpose are no longer necessary. I reiterate, over \$7.4 billion in unrequested defense programs have been added by the Committee to the defense appropriations bill. Consider how that \$7.4 billion, when added to the savings gained through additional base closings and more cost-effective business practices, could be used so much more effectively. The problems of our Armed Forces, whether in terms of force structure or modernization, could be more assuredly addressed and our warfighting ability greatly enhanced. The American taxpayers expect more of us, as do our brave servicemen and women who are, without question, fighting this war on global terrorism on our behalf.

But for now, unfortunately, they must witness us, seemingly blind to our responsibilities at this time of war, going about our business as usual.

Mr. WELLSTONE. Mr. President, I rise today in support of the Defense Department appropriations conference report.

I believe we must provide the best possible training, equipment, and preparation for our military forces, so they

can effectively carry out whatever peacekeeping, humanitarian, warfighting, or other missions they are given. They deserve the across-the-board pay raises of 4.1 percent, the incentive pay for difficult-to-fill assignments, and the reduced out-of-pocket housing costs from the current 11.3 percent to 7.5 percent contained in this conference report.

The report would also fully fund active and reserve end strengths, including well over 700 new positions for the Army National Guard, which will hopefully ease the current burden on our overstretched men and women in uniform. For many years running, those in our Armed Forces have been suffering from a declining quality of life, despite rising military Pentagon budgets. The pressing needs of our dedicated men and women in uniform, and those of their families, must be addressed as they continue to be mobilized in the war against terrorism. This conference report goes far in addressing those needs. In addition, it provides \$150 million for Army peer review breast cancer research and \$85 million for prostate cancer research.

The conference report also provides \$417 million for the Nunn-Lugar Cooperative Threat Reduction Program, which seeks to secure airtight control over fissile materials and technologies from Russia and other former Soviet Union states to ensure that none makes its way into the hands of terrorists or to places like Iraq. Further, the report gives \$70 million more than the administration requested to fund Israel's Arrow antimissile program, which could protect Israel against Scud missiles fired by Iraq. Finally, the report shifts \$368.5 million from Crusader research and development to a new, lighter cannon, which will engage the expertise of the highly skilled workforce at the United Defense Industries plant in Minnesota. For these reasons and others, I will vote for it today.

I also thank my colleagues on the conference committee for their hard work and their passage of an amendment I included in the Senate version of the Department of Defense appropriations bill. The final bill includes \$5 million to put confidential victim advocates on military installations across the country. This would ensure that victims whose lives are in danger have an alternative place to turn that is confidential and where their needs can be met without qualification.

The bill will also ensure that funds are made available to establish an impartial, multidisciplinary, confidential Domestic Violence Fatality Review Team. The team would be charged with investigating every domestic fatality in the military and helping to find ways to prevent fatalities in the future.

Finally, this bill would require that the Secretary report to Congress on progress in implementing the recommendations of the National Defense Task Force on Domestic Violence. Do-

mestic violence is something that we in Congress must constantly work to prevent, reduce, and eventually end. Having such reporting will help us work with the Military to address this terrible problem.

The National Defense Taskforce on Domestic Violence reported that "Domestic Violence is an offense against the institutional values of the Military Services of the United States of America. It is an affront to human dignity, degrades the overall readiness of our armed forces, and will not be tolerated in the Department of Defense." I do not think anyone who has followed the recent events at Fort Bragg would disagree.

Sadly, the North Carolina incidents, while unusual in that they were clustered within such a short time, are not unique. The Naval Criminal Investigative Service reported 54 domestic homicides in the Navy and Marines since 1995. The Army reported 131 and the Air Force reported 32. This is a problem that is by no means limited to the military, but its dimensions in the military context are complex. They need to be addressed. I know that Secretary Rumsfeld and Deputy Secretary Wolfowitz share that view. I applaud the Secretary and the Deputy Secretary for the attention they have given to this issue and the willingness they have shown to address it. I also applaud my colleagues, particularly Senator INOUE and Senator STEVENS, for their leadership in passing this important legislation.

I am however, very disappointed that the conferees took out an amendment, that I offered and which the Senate adopted, that would have barred any funds in this bill from being used to enter contracts with U.S. companies who incorporate overseas to avoid U.S. taxes.

Former U.S. companies who have renounced their citizenship currently hold at least \$2 billion worth of contracts with the Federal Government. I don't think that companies who aren't willing to pay their fair share of taxes should be able to hold these contracts. U.S. companies, that play by the rules, that pay their fair share of taxes, should not be forced to compete with bad actors who can undercut their bids because of a tax loophole.

The loophole gives tens of millions of dollars in tax breaks to major multinational companies with significant non-U.S. business. It also puts other U.S. companies unwilling or unable to use this loophole at a competitive disadvantage. No American company should be penalized staying put while others renounce U.S. "citizenship" for a tax break.

Well, the problem with all this is that when these companies don't pay their fair share, the rest of American tax payers and businesses are stuck with the bill. I think I can safely say that very few of the small businesses that I visit in Detroit Lakes, MN, or Mankato, in Minneapolis, or Duluth



can avail themselves of the Bermuda Triangle.

I should also say, that the amendment that the conferees dropped was really a very mild version. It was mostly prospective, and it only affected fiscal year 2003. I think it is appropriate for us to say that if the U.S. company wants to bid for a contract for U.S. defense work, then it should not renounce it's U.S. citizen for a tax break.

We all make sacrifices in a time of war, the only sacrifice this amendment asked of federal contractors is that they pay their fair share of taxes like everybody else.

My final point on this issue is that it is now clear that this fight is going to take place on the Homeland Security bill. The Senate has adopted a very strong amendment that I offered. There is a very similar amendment in the House passed bill. If the Republicans would end their filibuster of the homeland security bill we could get it to conference and get a good provision signed into law to crack down on these tax cheats. The Congress will not dodge this issue.

• Mr. ALLARD. Mr. President, after many long months of negotiation, the fiscal year 2003 Defense Appropriations will finally come to a close today. I add my strong support for this bill and would like to thank Senators INOUE and STEVENS for their work to ensure our continuing support for the men and women in the United States Armed Services.

At the very beginning of his administration, President Bush made it a priority to rebuild our military after 8 years of substantial and dangerous levels of operation and maintenance funding shortfalls under the previous administration. Those of us in the Senate have also heeded this call and I am pleased that we are about to take the next step in maintaining a military fully capable of defending our Nation and meeting our foreign policy goals.

While some balked at the largest defense budget increase in nearly 2 decades, I support the President in his efforts to transform our military. His reasoning for this increase is firm, and I quote the President for his two reasons behind the plan:

I sent up to Congress the largest increase in defense spending since Ronald Reagan was the President. I did it for two reasons. One, any time we commit our troops into harm's way, they deserve the best pay, the best equipment, and the best possible training. And secondly, the reason I asked for an increase the size of which I did is because I wanted to send a message to friend and foe alike that when it comes to the defense of our freedoms, we're not quitting. There's not calendar on my desk that says, well, we've reached this time, it's time to stop. That's not how I think. That's not how America thinks. We want our friends understanding that. We want the enemy to know it, as well—that when it comes to the defense of our country, comes to defending the values we hold dear, it doesn't matter how much it costs, it doesn't matter how long it takes, the United States will be firm and resolved. We owe that to our children, and we owe it to our children's children.

Specifically, I would like to point out some very important programs that have a great deal of bearing on the safety of our country. As the ranking member on the Strategic Subcommittee, I have made it abundantly clear how important missile defense is to not only our defense, but also our close allies. The most advanced cooperative military project between the United States and Israel is the Arrow missile defense system—a theater wide missile defense system capable of shooting down ballistic missiles fired at Israel or U.S. troops stationed in the Middle East. The Arrow system is operational, providing Israel with a functioning defense against surface-to-surface missiles.

The appropriations conferees agreed on this priority and have provided \$70 million to continue funding this very important program. This funding will ensure that Arrow remains capable of providing reliable protection against evolving threats, such as decoys and faster and longer-range ballistic missiles and also speed production of additional Arrow missiles.

Likewise, I am encouraged by the \$15 million allocated to purchase commercial satellite imagery. Three high-level DOD commissions, the Space Commission, the NRO Commission, and the NIMA Commission, all stated that DOD needs to better utilize commercial imagery. The NIMA Commission suggested that a new OSD account should be established with an initial budget of \$350 million for the first year. The Space Commission stated that the "U.S. Government could satisfy a substantial portion of its national security-related imagery requirements by purchasing services from the U.S. commercial imagery industry." I am convinced that there is yet more untapped potential with commercial space imagery, and I believe this is a good first step.

This Defense Appropriations bill also provided funding for a number of developmental programs critical to space-based systems and technologies. The Network, Information, and Space Security Center will facilitate cooperation for protecting information and information systems, which is becoming increasingly important in the face of cyberterrorism threats from around the world. The Center for Geosciences is a leading-edge environmental research center continuously improving weather forecasts for our military forces around the world. TechSat 21 will demonstrate the technical and operational feasibility of microsatellites—a truly transformational approach to space-based systems. And finally, the GPS Jammer Detection and Location System will enable our military commanders to rely on GPS and GPS-supported systems such without the threat of interference or jamming by the enemy.

While we find ourselves at the end of another legislative year, the Senate and our colleagues in the House have

taken a solid step toward the transformation of the United States military. While much work remains to be completed in the coming years, it bodes well for our men and women in the armed services that Congress will continue to support them in the defense of our country. •

Mr. FEINGOLD. Mr. President, I will vote against the conference report accompanying the fiscal year 2003 Department of Defense appropriations bill. I regret that Congress has missed another opportunity to reorient the thinking, and spending, of the Pentagon.

I strongly support our men and women in uniform in the ongoing fight against global terrorism and in their other missions, both at home and abroad. I commend the members of the National Guard and Reserves and their families for the sacrifices they have made to protect our security and freedom. All members of our military and their families, active duty, National Guard, and Reserves, deserve our sincere thanks for their commitment to protect this country and to undertake the fight against terrorism in the wake of the horrific attacks of September 11, 2001.

And they deserve our support as they face the uncertainly surrounding possible military action against Iraq.

Each year that I have been a member of this body I have expressed my concern about the priorities of the Pentagon and about the process by which we consider the Department of Defense authorization and appropriations bills. I am troubled that the Department of Defense does not receive the same scrutiny as other parts of our Federal budget. This time of national crisis underscores the need for the Congress and the Administration to take a hard look at the Pentagon's budget to ensure that scarce taxpayer dollars are targeted to those programs that are necessary to defend our country in the post-Cold War world and to ensure that our Armed Forces have the resources that they will need for the battles ahead.

There can be no dispute that Congress should provide the resources necessary to fight and win the battle against terrorism. There should also be no dispute that this ongoing campaign should not be used as an excuse to continue to drastically increase an already bloated defense budget.

The conference report on which we are about to vote accompanies what will be the largest defense appropriations bill that Congress has ever passed. It represents a \$34.1 billion increase over the fiscal year 2002 level, including supplemental defense spending that was appropriated in the wake of the September 11 attacks. It represents a \$54.5 billion increase over the fiscal year 2001 funding level.

The United States spends more on defense than all of the other countries of the world combined.

Of course, a strong national defense is crucial to the peace and stability of

our nation. But a strong economy is also essential to national security. We must not focus on one to the detriment of the other. Many of the expensive weapons systems for which there are billions in appropriations in this conference report have little or nothing to do with the fight against terrorism, which is often cited as the reason for the \$34 billion increase in defense spending for fiscal year 2003. I am concerned that if we continue down this path, defense spending will spiral further out of control, perhaps putting other areas of our economy at risk.

I am pleased that this conference report contains no funding for the Army's Crusader mobile artillery program. I support the Secretary of Defense's decision to cancel this outdated program, and earlier this year, I introduced legislation that would have done just that. I commend the Secretary of Defense for his efforts to transform our military to meet the challenges of the 21st Century and beyond, and agree that weapons that were better suited to the Cold War than to the battles of this century should be terminated.

I regret that so little progress has been made to transform the military for these new challenges. The hard-fought battle to terminate the Crusader program, a program that was canceled by the Secretary of Defense, stands as an example of how difficult it is to change the mind-set of the Pentagon and the Congress. The beleaguered Crusader is the poster child for an obsolete, Cold War-era program, yet there are those in the Congress and at the Pentagon who tried desperately to save it. The termination of a weapon system such as the Crusader is an example of the hard decisions that this body will have to make as we face the realities of the Federal budget and as we seek to provide our Armed Forces with the equipment that they will need to fight the battles of the future.

As I have said time and time again, there are millions upon millions of dollars in this bill that are being spent on outdated or questionable or unwanted programs. This money would be better spent on programs that truly improve our readiness and modernize our Armed Forces. This money also would be better spent on efforts to improve the morale of our forces, such as ensuring that all of our men and women in uniform have a decent standard of living or providing better housing for our Armed Forces and their families. For those reasons, I will oppose this conference report.

The PRESIDING OFFICER. Who yields time?

Under the previous order, Mr. WELLSTONE is recognized.

Mr. WELLSTONE. Mr. President, first of all, I thank both of my colleagues, Senator INOUE and Senator STEVENS, for their fine work. I also think this is a very important piece of legislation, extremely important to our Armed Forces, just on the basis of making sure the men and women who

serve our country—from salaries to living conditions, you name it; it is just an important piece of legislation.

I also thank both of my colleagues for fighting in the conference committee to keep an amendment in that deals with the problem of domestic violence and sexual assault. We all agree that both Under Secretary Wolfowitz and Secretary Rumsfeld are well aware of some of the problems and are more than willing to put together the necessary task force and really take a long, hard look at this to make sure we do what we need to do. I thank them for that.

This amendment also says we really need, on our bases, to have a place where women can go with some confidentiality if, in fact, they are in a situation where they are being battered and there is nowhere to go for support. It is extremely important for these women. It is extremely important for these children. It is extremely important for their families. I am glad this amendment is in. I know there was some discussion down at Fort Bragg about the amendment and it was very positive. So I thank my colleagues for supporting this.

I want to finally express my indignation, even though I believe in both these Senators, that this is one part of this political process that drives people in Minnesota nuts, drives people in the country nuts, and drives me nuts. I brought an amendment to the floor. It was eminently reasonable. It said for those companies that go to Bermuda and renounce their citizenship so they do not pay their fair share of taxes—it was only prospective, it did not look back; it was for 1 year—they don't get Government contracts.

If they want to renounce their citizenship and not pay their fair share of taxes, they are not going to get any government contract.

There is overwhelming support on the floor of the Senate.

I have learned my lesson now. I will have been here almost 12 years. Why haven't I learned my lesson and ask for a rollcall vote? Maybe that wouldn't have done any good, anyway. It seemed that there was strong support from some Senators who didn't want to vote against it but who didn't want to vote for it. But I thought, OK, the point is to get this passed.

This was taken out in the conference committee. With all due respect, my understanding is the House conferees would not budge. They would not budge.

I want to just say to the House Republican leadership and to the conferees, you are not going to be able to continue to win on these kinds of votes. People in Minnesota and in the United States of America are outraged that these companies go to Bermuda and renounce their citizenship and don't pay their fair share of taxes.

You get into the conference committee, and it is the same old, same old, same old. Special interests do their lobbying and get the job done.

Senator LIEBERMAN is on the floor. If this homeland defense bill goes in, we have this provision in that bill. I am counting on Senator LIEBERMAN's support.

I thank Senator INOUE for fighting as hard as he could.

I want to say to the House Republican conferees, you are not going to win this fight. This is going to come back. You are not going to win this fight. And you are way out of sync with about 90 percent of the people in this country on this question.

Listen, I have been involved in fights on the floor of the Senate where I was the one who was in the minority.

But let me tell you, on this question, you guys are just wrong. You took it out of conference committee, but you are not going to win this fight. We are going to bring this provision back, and we are going to get it into legislation. It is in the very sweeping homeland defense bill. We are going to keep it in that bill, and come back and back.

It is not right for the businesses in your State, Mr. President—New Jersey—or in Minnesota. Ninety-nine percent of the businesses that play by the rules of the game but don't have the lawyers and the accountants to tell them how to evade paying their fair share of taxes—they wouldn't do it even if they could because they don't think it is right—why should they be penalized for doing the right thing? And why should these companies get away with murder?

I wish this had not been taken out by the conference committee. I regret it. I know my colleagues did their best. We will be back.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Hawaii.

Mr. INOUE. Mr. President, 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 conference report. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI), is necessarily absent.

Mr. NICKLES. I announce that the Senator from Colorado (Mr. ALLARD), the Senator from Wyoming (Mr. ENZI), the Senator from Arkansas (Mr. HUTCHINSON), the Senator from Arizona (Mr. MCCAIN) and the Senator from Alabama (Mr. SESSIONS), are necessarily absent.

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

The result was announced—yeas 93, nays 1, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—93

Akaka  
Allen

Baucus  
Bayh

Bennett  
Biden



Bingaman	Feinstein	Miller
Bond	Fitzgerald	Murkowski
Boxer	Frist	Murray
Breaux	Graham	Nelson (FL)
Brownback	Gramm	Nelson (NE)
Bunning	Grassley	Nickles
Burns	Gregg	Reed
Byrd	Hagel	Reid
Campbell	Harkin	Roberts
Cantwell	Hatch	Rockefeller
Carnahan	Helms	Santorum
Carper	Hollings	Sarbanes
Chafee	Hutchison	Schumer
Cleland	Inhofe	Shelby
Clinton	Inouye	Smith (NH)
Cochran	Jeffords	Smith (OR)
Collins	Johnson	Snowe
Conrad	Kennedy	Specter
Corzine	Kerry	Stabenow
Craig	Kohl	Stevens
Crapo	Kyl	Thomas
Daschle	Landrieu	Thompson
Dayton	Leahy	Thurmond
DeWine	Levin	Voinovich
Dodd	Lieberman	Warner
Domenici	Lincoln	Wellstone
Dorgan	Lott	Wyden
Durbin	Lugar	
Edwards	McConnell	
Ensign	Mikulski	

## NAYS—1

Feingold

## NOT VOTING—6

Allard	Hutchinson	Sessions
Enzi	McCain	Torricelli

The conference report was agreed to.

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

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

The motion to table was agreed to.

## ORDER OF PROCEDURE

Mr. DASCHLE. Mr. President, I know the distinguished Republican leader wishes to speak. I ask unanimous consent that he be accorded whatever time required. I know Senator MIKULSKI has an interest in speaking for 5 minutes following the distinguished Republican leader. I ask unanimous consent that request be accommodated as well.

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

The Republican leader is recognized.

UNANIMOUS CONSENT REQUEST—  
SHEDD NOMINATION

Mr. LOTT. Mr. President, last week, the Judiciary Committee pulled from their agenda the pending nomination of Judge Dennis Shedd to fill a seat on the 4th circuit court of appeals. That was contrary to all of the understandings as to what would happen with regard to that nominee. I think various Members on the judiciary committee on several occasions had been assured he would be given a vote. I think there is no question that Senator THURMOND had been under the impression there would be a vote on Shedd's nomination this year. Yet the nomination was removed from the calendar and, therefore, not even considered by the committee. A vote was not taken, and I presume it was blocked procedurally because there would have been enough votes in the Committee to actually report Shedd's nomination to the full Senate had there been a vote.

I understand that moving to the executive calendar is traditionally a prerogative of the Majority Leader. However, there has been an extraordinary and unprecedented violation of Senate rules and tradition in the manner in which Judge Dennis Shedd's nomination was considered in the Judiciary Committee. I also believe that the manner in which Senator THURMOND was led on regarding Judge Shedd's nomination constituted a slight of Senator THURMOND during the final days of his long and distinguished Senate career. I remind Senators that we depend very heavily around here on comity and trust to do the vast majority of our business on behalf of the American people. When that trust is violated or misused it is hard to conduct business as usual.

Mr. President, Dennis Shedd's nomination was finally put on the Judiciary Committee's agenda way back on Sept. 19, but was held over to the next mark-up which as it turned out was last Tuesday, October 8th. It is also my understanding that the normal practice is that when Senators in the Committee hold legislation and nominations over at a mark-up, the tradition and practice has always been that the items held over are placed on the very next mark-up.

In this instance, the October 8th mark-up was actually postponed from the previous Thursday, October 3rd, so that Chairman LEAHY could concentrate on passing the Department of Justice (DOJ) Re-authorization Conference Report. During the vote to invoke cloture on that bill, it is my understanding that Senator THURMOND was once again assured by Senator LEAHY that Judge Shedd would be on the mark-up on October 8th.

Unfortunately, that assurance as well as the practices and traditions of the Committee were violated last week because Judge Dennis Shedd's nomination was pulled from the committee's agenda—preventing the Committee from reporting him out to the full Senate. However, breeches in decorum regarding Judge Shedd and Senator THURMOND predate last week.

On July 31st, Chairman LEAHY publicly promised Senator THURMOND at a committee meeting that Judge Shedd would be voted on this year. When Shedd wasn't on the August 1st mark-up, Senator LEAHY assured Senator THURMOND's Chief of Staff that Shedd would be voted on immediately after the August recess. When Shedd was not on the agenda for the first mark-up after the Senate returned in September—which was Sept. 5th—Senator THURMOND then was assured that Dennis Shedd would be on the next mark-up on Sept. 19th.

While Shedd was actually put on that mark-up on Sept. 19th, he was held over to the next mark-up—which is the right of Senators in the Committee to do. And then, as I said previously, contrary to tradition and practice, Shedd was kept off the agenda for the last mark-up of the year by Senator LEAHY.

Mr. President, there is no doubt about Judge Shedd's qualifications. He has strong bipartisan support. One of his most ardent supporters is the distinguished Democrat Senator from South Carolina, Senator HOLLINGS. The ABA—the "Gold Standard"—so often cited by Senator LEAHY—gave Judge Shedd a "Well Qualified" rating, its highest rating. So, it is not Judge Shedd's qualifications which are standing in the way.

He was appointed by President George H.W. Bush to the United States District Court for South Carolina in 1990, and has now served as a federal jurist for more than a decade—following nearly twenty previous years of public service and legal practice. In addition to his service on the District Court, he has sat by designation on the Fourth Circuit Court of Appeals on several occasions. Judge Shedd also has served on the Judicial Conference Committee of the Judicial Branch and its Subcommittee on Judicial Independence.

From 1978 through 1988, Judge Shedd served in a number of different capacities in the United States Senate, including Counsel to the President Pro Tempore and Chief Counsel and Staff Director for the Senate Judiciary Committee when Senator THURMOND was the Chairman.

Judge Shedd would bring unmatched experience to the Fourth Circuit. He has handled more than 4,000 civil cases since taking the bench and over 900 criminal matters. In fact, no judge currently sitting on the Fourth Circuit has as much federal trial experience as Judge Shedd, and none can match his ten years of experience in the legislative branch.

Mr. President, Dennis Shedd's record demonstrates that he is a mainstream judge with a low reversal rate. In the more than 5,000 cases Judge Shedd has handled during his twelve years on the bench, he has been reversed fewer than 40 times (less than one percent). So, it should be clear that Judge Shedd is the victim of a deliberate, calculated, attempt by outside groups to embarrass one of President Bush's nominees and not any deficiency in his professional training or temperament.

But Judge Shedd is not the only victim here. This is also an affront to Senator THURMOND in his final days as a Senator. We owe it to Senator THURMOND, as a sign of our respect and admiration for his distinguished service, to vote on the nomination of his former staff director before Senator THURMOND's career comes to an end—an action the Senator feels that Senator LEAHY gave him his word he would do.

Mr. President, the rules of the Senate provide a motion to discharge a nomination. I want to do that. But I am under no illusion that I would be allowed to make that motion and have it succeed under any circumstances. That has been tried on the other side of the aisle when I was majority leader, and I know that it would be interpreted as a