

reported to the Senate in a matter of a minute or two, and the Defense authorization bill should be set aside to take it up—we are talking about giving our men and women in the military additional resources to fight the war on terror and to make this country secure. To even think we would set this aside for that is, to me, distasteful.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 2514, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2514) to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Pending:

Feingold Amendment No. 3915, to extend for 2 years procedures to maintain fiscal accountability and responsibility.

Reid (for Conrad) Amendment No. 3916 (to Amendment No. 3915), of a perfecting nature.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I rise today to express my support for the fiscal year 2003 Defense authorization bill. I believe this bill provides the needed resources to compensate and to reward the men and women in uniform who are doing an extraordinary job protecting this country across the globe and here at home. I also think the bill will provide the funding and the direction to continue the transformation of our military forces so that we are able to meet the new emerging threats of this new century.

This year, I again served as chairman of the Strategic Subcommittee. This subcommittee focuses on strategic systems, space systems, missile defense, intelligence, surveillance, and reconnaissance programs, and the national security functions of the Department of Energy. The subcommittee and the full committee held seven hearings dealing with matters in the subcommittee's jurisdiction.

The issues addressed by the subcommittee cover a wide range of subjects. These issues include the Nuclear Posture Review, which the Defense Department issued in December, which covers our strategic nuclear plan; the creation of a new Missile Defense Agency, which replaced the Ballistic Missile Defense Organization; increased concerns about the security of nuclear weapons and materials; the need to substantially restructure several space programs; and proposed re-

ductions to the number of deployed nuclear weapons in the context of the new and very commendable agreement with Russia.

Let me turn, first, to the issues of strategic systems.

The strategic systems that fall within the jurisdiction of the Strategic Subcommittee include long-range bombers, the land-based and sea-based ballistic missile forces, and the broad range of matters pertaining to nuclear weapons in the Department of Defense.

In the area of strategic systems, the bill, as reported, adds \$23 million to keep the Minuteman III ICBM upgrade programs and the effort to retire the Peacekeeper on track, as has been requested by the Air Force in their list of unfunded requirements.

The Peacekeeper and the Minuteman III missiles are both land-based missile systems. When the Peacekeeper is retired, Minuteman III will be the only land-based system, so it is very important to ensure, for our nuclear deterrence, that the process of retirement of Peacekeeper and modernization of Minuteman III continues at the appropriate pace.

Under the terms of the Nuclear Posture Review, the Department of Defense plans to eliminate all 50 of the Peacekeeper missiles and download the 500 Minuteman III missiles from their current multi-warhead configuration to a single warhead. This is a significant step in reducing the threat posed by nuclear weapons and one of the major reasons that the United States and Russia were able to come to an agreement.

Reducing the number of warheads on the Minuteman III to one warhead per missile, and removing all of the warheads from retiring Peacekeeper missiles, is a key to achieving the goals of a reduced number of deployed missiles that are at the heart of the agreement with the United States and Russia.

The commitment is to reduce the number of deployed nuclear warheads to the range of 1,700 to 2,200 from the present approximately 6,000 deployed warheads.

Also, this will provide more stability, as missiles with single warheads, in the context of deterrence policy, are a more stable element than multi-warhead missiles.

These are all encouraging developments, but it is necessary to keep this process on track by the additional funds which we have added to this legislation.

The subcommittee is also concerned about ensuring that the long-range bomber fleet is modernized and maintained. These bombers, particularly the B-2 and the B-52, have repeatedly showed their usefulness in conflicts from Desert Storm to present operations. There are no plans to replace these bombers in the near future. In fact, in 2000, when the Air Force last reviewed the projected lifetime of these bombers, they determined they could rely on these bombers for an additional

30 years. The reality is, the pilots who will retire the B-52 and B-2 bombers have not yet been born.

We have to maintain these systems, upgrade their electronics and avionics, to make sure they are still a valuable and decisive part of our forces.

This bill would include an additional \$28 million to address shortfalls in the B-2 and B-52 bomber programs, and also approves the request by the Department of Defense to reduce and consolidate the B-1 fleet.

Adding these additional funds is absolutely necessary if the Air Force projections are correct, and we will have these systems—the B-2 and the B-52—in our inventory for an additional 30 years.

Turning to the area of space, another jurisdiction of the Strategic Subcommittee, we considered a variety of very important Defense Department space programs. These programs include satellite programs that provide communications, weather, global positioning systems, early warning, and other satellites for defense and national security purposes.

Space programs are critical to the effective use of our Nation's military forces, and each day they grow in importance. This is a very important aspect of our deliberations.

We also included in our consideration the ability of the United States to continue to effectively launch space vehicles by looking at the east coast ranges in Florida and the west coast ranges in California.

The bill includes funding at the requested levels for most of the Department of Defense space programs. There are some exceptions, however. The committee has added \$29 million to continue to improve the readiness and operations safety at the east coast and west coast space launch and range facilities. If we cannot launch vehicles into space, we cannot ensure that we have the appropriate constellation of satellites to communicate, to provide intelligence resources, to provide global positioning signals—all the things that are critical to the success of our military forces in the field. These ranges are important, and these additional funds will upgrade their ability to continue to play a vital role in our national security.

The bill also includes reductions in certain space programs. One of these programs is the Space-Based Infrared Radar-High or SBIRS-High satellite program. This is a satellite program which is critical to replacing an older and aging system of satellites that provides early warning of missile launches and other activities of concern to the United States.

The worldwide reach of this satellite system is key to its ability to warn of any launches and to provide other critical intelligence. But this program has been plagued with serious problems. It is overbudget and years behind schedule. It is in the process of being restructured by the Department of Defense.

Reflecting this restructuring, the bill reduces the over \$800 million budget request for SBIRS-High by \$100 million so that this restructuring can literally catch up with the funding stream. I think this is an appropriate way to continue to maintain the defense capabilities of the United States while recognizing a program that is in the midst of serious restructuring by the Department of Defense.

The bill also reduces the requested funding for another satellite that has had a troubled history; and that is the Advanced Extremely High Frequency, or Advanced EHF satellite. This satellite program is designed to ensure that the Department of Defense and the military services will retain the ability to have a reliable and survivable communication. Advanced EHF, like SBIRS-High, is a replacement for a current system. But, here again, the program is in serious trouble, over-budget and behind schedule. It, too, is being structured. This restructuring made \$95 million available that the Air Force requested be shifted to other high-priority programs. And we have followed their advice and their suggestion.

Space programs are critical to the operations of the U.S. military. As I indicated, with each day, they become more and more critical. But several of these programs, not only the SBIRS-High program and the Advanced EHF communications satellite program, are experiencing significant problems with cost growth and schedule slippage.

Some of the problems with the space programs appear to be connected with the oversight and management of the programs. To address this, the bill includes a legislative provision to ensure the adequate oversight of space programs. This provision would direct the Office of the Secretary of Defense to maintain oversight of space programs and would require the Secretary to submit to Congress a plan on how oversight by OSD and the joint staff will be accomplished. This provision is included largely as a result of testimony before the Strategic Subcommittee in March of 2002 and will ensure that OSD remains and retains an oversight role for space programs.

Under Secretary of the Air Force Peter Teets, when testifying before the subcommittee, stated that the Air Force is facing significant challenges in several of our most important space programs. This bill attempts to address these concerns by ensuring that adequate oversight by the Department of Defense is maintained.

Let me again stress the importance of these programs. We have all been amazed by the extraordinary success of our military forces in Afghanistan. If you listened to the reports of the special forces troops conducting these operations on the ground, one of the key weapons they had was not a cannon or an M-16, it was a global-positioning, range-finding, targeting device which will operate magnificently as long as

we have GPS satellites and comparable satellites in the air. So communications and satellites are critical to the special forces soldier on the ground, the aviator in the air, every member of our military forces. We are endeavoring to maintain, to enhance, and to secure the future of our space operations within this legislation.

Let me turn now to another aspect of our responsibilities. That is the intelligence, surveillance and reconnaissance functions. This area includes programs such as the Global Hawk and the Predator unmanned aerial vehicles, or UAVs. We have long supported these very innovative and sophisticated weapons. They have shown their worth, particularly Predator in Afghanistan, and therefore the committee recommends fully funding the administration's request to accelerate the development and procurement of UAVs.

Another area we have supported—and in fact we provide additional support in the legislation—is the acquisition of commercial satellite imagery by the Department of Defense. The bill includes an additional \$30 million to authorize the Department to buy commercially available imagery to supplement and complement the imagery which we collect through our own assets. This will enhance our ability to conduct operations. This is an initiative strongly supported by Senator ALLARD, ranking member of the committee. We join in his support of this very worthy enterprise and endeavor.

Let me turn to some of the aspects in the subcommittee that touch upon the responsibilities of the Department of Energy when it comes to nuclear weapons. We include several provisions addressing DOE programs. The first would ensure that Congress continues to exercise its oversight responsibility with respect to funding for future nuclear weapons activities.

This is absolutely important. In December the administration released a Nuclear Posture Review. This Nuclear Posture Review has been criticized, challenged, identified as perhaps blurring the line between nuclear and conventional responses. This is an area where there is much concern. Again, it reinforces the need for Congress to be informed and responsive to evolving policy with respect to development and deployment and use, potentially—we hope never—of nuclear weapons.

If you look at the Nuclear Posture Review, you will see throughout a new triad which includes offensive strike systems which are described as including both nuclear and nonnuclear.

You will see that in the context and literal words of the Nuclear Posture Review, they have talked about “in setting requirements for nuclear strike capabilities, distinctions can be made among the contingencies for which the United States must be prepared. Contingencies can generally be categorized as immediate, potential, or unexpected.”

In the realm of immediate, potential, or unexpected contingencies, they list

countries such as North Korea, Iraq, Iran, Syria, and Libya. These are countries which may be endeavoring to develop nuclear weapons but at this time are not declared nuclear powers, raising the issue of whether we would abandon a long-term policy that we would not use nuclear weapons as a first strike on a nonnuclear power unless they attack us in conjunction with a nuclear power. This uncertainty, ambiguity, exists. Perhaps it has always existed, but it underscores the need for Congress to be informed, to be part of this evolving discussion and debate about nuclear policy.

Therefore, we would ask that the Department of Energy specifically request funds for any new or modified nuclear weapons. There is no money in this budget for such weapons, but I think at this juncture we have to go on record to ask for that type of specific information and not rely upon finding it buried in some larger account. It is an important issue. It is a critical issue. After the tensions between Pakistan and India, that have not yet subsided totally, no one needs to be reminded about the horrendous impact of the potential use of a nuclear weapon. Therefore, it is vitally important that this Congress be informed of any potential developments of new weapons by the United States.

The budget request did include \$15.5 million for a feasibility study of a robust nuclear earth penetrator weapon. The bill denies funding for this purpose and directs the Secretaries of Energy and Defense to submit a report to Congress setting forth the military requirements, the characteristics and types of targets the nuclear earth penetrator would hold at risk, the employment policies of such a nuclear earth penetrator, and an assessment of the capabilities of conventional weapons against these potential targets.

Once again, in the context of a statement by administration officials about the, perhaps, rejection of long-term policy, the nonfirst use against nonnuclear powers, and the ambiguity that has been created, it is essential to stop and look at justification for creating this weapon system.

We already have a nuclear earth penetrator. It is the B61-11; it has been publicly reported. We have the system in place. It is incumbent upon the Departments of Energy and Defense to say why we need to modify another system to do a similar job.

I will also point out there has been some suggestion that what the Department of Energy might be working on is a small mini-nuke that would be less troublesome in terms of radiation, in terms of the impact. Quite seriously, once we cross the nuclear threshold, the size of the weapon may be less important than the fact that we have crossed the threshold.

From the candidates that might be chosen to modify for this robust nuclear earth penetrator, these are very large weapons, hundreds of kilotons, at

least six or seven times the destructive force that was used upon Hiroshima. We have to be very careful. The bill goes ahead and denies the funds and asks the Department of Energy to justify with the report several parameters which are necessary before they go forward, if they do go forward.

The last DOE provision I would like to speak about is a provision that would focus additional resources, \$100 million, in cleanup efforts to clean up DOE sites throughout the country that have been polluted by the nuclear activities going back more than 50 years. It is essential to make our commitment to communities throughout this country that have hosted DOE facilities and now see the ground around them literally contaminated, in many cases by nuclear operations. This is very important.

Let me turn to one of the most contentious and challenging issues before the subcommittee. That is the issue of ballistic missile defense. I want to take some time and go into some detail because there are misconceptions and misinformation about what the subcommittee did and what the committee finally approved.

Let me start with the very broad picture. The administration requested \$7.6 billion for missile defense. The committee recommends \$6.8 billion, a reduction of \$812 million, or 11 percent. I should point out that the budget for missile defense has grown dramatically in the last several years. We are still funding this program at a very robust \$6.8 billion. The \$812 million reduction in ballistic missile defense was transferred to more immediate and pressing needs in the view of the committee.

The most significant, in terms of dollars, was \$690 million for additional shipbuilding, which will provide advanced procurement for a new submarine, a new destroyer, and a new troop transport ship, all immediate and vital needs for our military forces.

Some of the additional money would be used to increase the security of the Department of Energy facilities. Again, after the last several weeks, where we thought an al-Qaida operative was making his way to the United States to steal radioactive material to construct a "dirty" bomb, the need for enhanced security at DOE sites, as well as many other sites that have radiological material, cannot be underestimated.

Let me talk in general terms about the ballistic missile threat and the programs that are evolving to meet that threat. First, historically and generally, we have categorized this in two ways: short-range threats and the longer range threat of the intercontinental ballistic missile. The reality is that many countries have short-range missiles, some of which are capable of mounting chemical and biological warheads. They are an immediate present threat to U.S. forces deployed throughout the world and to U.S. allies throughout the world.

Intercontinental ballistic missiles are those, obviously, that travel long

distances and are designed to strike the homeland of the United States. Those two distinctions have formed most of our programmatic response for many decades.

The administration has come in and, in some respects, blurred the lines between these two distinctions. Rather than the traditional distinction between theater missile and national missile defense, between the short- and medium-range missiles and the longer range intercontinental ballistic missiles, they have talked about creating a missile defense consisting of the boost phase defense systems—those systems designed to strike a missile when it leaves the launch pad, in the 2 or 3 minutes before it gets into the upper atmosphere; in fact, outside of the atmosphere in some cases—a midcourse phase, as the term indicates, which would destroy the missile in the middle of its flight; and the terminal phase, which is the final point where the missile is heading toward its target, coming down rapidly towards its target.

Now, there is a certain logic to this. I have to be fair about that. If one looks at defense in other contexts, such as the more terrestrial contexts of a land battle, defense in depth is a watchword—long-range fires, intermediate fires, and close fires. So there is a logic to this, and it might be unwitting, but there is a blurring and distortion that I think can be misinterpreted—and I think it has been in many cases—with respect to the actual programs we are trying to develop and the progress on those programs.

One case in point is a recent article in the Wall Street Journal, on June 18, where it talks about discussions by General Kadish, about the Navy theater-wide missile system, on which the Journal opined in this article:

The move would represent the first deployment of a defensive missile shield since a system was first proposed by President Reagan in the 1980s.

What General Kadish was talking about was a theater missile, not a national missile system. In point of fact, the PAC-3 system, a land based theater system, is being operationally tested now and likely will be deployed. Certainly it is further along in development than this proposed sea based system.

This type of blurring of the lines in recalibration and renaming of systems I think has created a lot of misunderstanding. Hopefully, we can add some clarity today.

As I mentioned before, theater ballistic missiles have long threatened forward deployed U.S. forces. For years we have confronted the potential of a real-time missile attack in North Korea and in other places. Long-range missiles were the source of our long and, fortunately, stalemated cold war with the Soviet Union. They had the capacity to fire missiles intercontinentally. We were able to wait them out or, through deterrence, through our strategic policy, we were able to bring

the cold war to a conclusion, and also to have a situation in which now we are making real progress with Russia in terms of strategic arms control. So this distinction between theater missiles and ICBMs is significant.

I think it is appropriate at this point to try to go through the list of the systems which have been developed, which we have been developing, and systems that are the underpinning of this new constellation of missile defenses the administration talks about.

I ask unanimous consent to have printed an article by Philip Coyle, former director of operational test and evaluation in the Department of Defense, in the Arms Control Today of May 2002. It summarizes in excellent detail the systems we are talking about today.

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

[From Arms Control Today, May 2002]

RHETORIC OR REALITY? MISSILE DEFENSE  
UNDER BUSH

(By Philip Coyle)

Since it assumed office, the administration of President George W. Bush has made missile defense one of its top priorities, giving it prominence in policy, funding, and organization.

First, the administration outlined an ambitious set of goals that extend well beyond the Clinton administration's missile defense aims. In early January 2002, Secretary of Defense Donald Rumsfeld described the administration's top missile defense objectives his way: "First, to defend the U.S., deployed forces, allies, and friends. Second, to employ a Ballistic Missile Defense System (BMDS) that layers defenses to intercept missiles in all phases of their flight (i.e., boost, midcourse, and terminal) against all ranges of threats. Third, to enable the Services to field elements of the overall BMDS as soon as practicable."

Then, in its nuclear posture review, the administration outlined the specific elements of a national missile defense that it wants to have ready between 2003 and 2008: an air-based laser to shoot down missiles of all ranges during boost phase; a rudimentary ground-based midcourse system, a sea-based system with rudimentary midcourse capability against short- and medium-range threats; terminal defenses against long-range ICBMs capable of reaching the United States; and a system of satellites to track enemy missiles and distinguish re-entry vehicles from decoys.

Finally, to speed implementation, the administration has taken a number of tangible steps. It announced on December 13, 2001, that the United States would withdraw from the 1972 Anti-Ballistic Missile (ABM) Treaty, ostensibly because the treaty was restricting testing of mobile missile defenses against y026ICBMs. In its first defense budget, the administration requested a 57 percent increase in funding for missile defense—from \$5.3 billion to \$8.3 billion, of which it received \$7.8 billion. Then, Rumsfeld reorganized the Ballistic Missile Defense Organization into the new Missile Defense Agency, cancelled the internal Pentagon documents that had established the program's developmental goals, and changed the program's goal from being able to field a complete system against specific targets to simply being able to field various missile defense capabilities as they become available.

All in all, a lot has happened in missile defense in the first year or so of the Bush administration. But have these actions brought

the United States any closer to realizing its missile defense goals, especially deployment of a national missile defense? And what elements, if any, of a national missile defense capability might it be possible for the United States to deploy by 2008, as called for in the nuclear posture review?

Despite the Bush administration's push for missile defense, the only system likely to be ready by 2008 is a ground-based theater missile defense intended to counter short-range targets—i.e., a system to defend troops in the field. Before Bush leaves office, the only system that could conceivably be ready to defend the United States itself is the ground-based midcourse system pursued by the Clinton administration. None of the other elements mentioned in the nuclear posture review as possible defenses against strategic ballistic missiles is likely to be available by 2008.

To understand why, let us examine each of the missile defense programs—starting with the short-range, theater missile defense systems and moving to the longer-range, strategic systems—to see what has happened since the Bush administration took office 16 months ago. The results suggest that the Bush administration should not base its foreign policy on the assumption that during its tenure it will be able to deploy defenses to protect the United States from strategic missiles.

#### THEATER MISSILE DEFENSES

Each of the U.S. military services has been pursuing tactical missile defense programs designed to defend U.S. troops overseas. None of these programs was designed to defend the United States against ICBM attacks, and none has any current capability to do so. However, the administration hopes to be able to apply some of the technology from these service programs to a layered national defense capable of defending the U.S. homeland. (For an explanation of the various stages of development discussed below, see the box below.)

#### PAC-3

The Patriot Advanced Capability-3 (PAC-3) is a tactical system designed to defend overseas U.S. and allied troops in a relatively small area against short-range missile threats (such as Scuds), enemy aircraft, and cruise missiles. Developmentally, it is the most advanced U.S. missile defense system, and a small number have been made available for deployment although testing has not yet been completed.

PAC-3 flight testing began in 1997. From 1997 to 2002, 11 developmental flight tests were conducted, including four flight intercept tests with two or three targets being attempted at once. Most of these tests were successful, but in two of the tests one of the targets was not intercepted. In February, PAC-3 began initial operational testing, in which soldiers, not contractors, operate the system. Three operational tests have been conducted, all with multiple targets. In each, one of the targets has been missed or one of the interceptors has failed.

A year ago, PAC-3 was planned to begin full-rate production at the end of 2001. However, problems with system reliability and difficulties in flight intercept tests have delayed that schedule. This means that full-rate production likely will be delayed until more stressing "follow-on" operational tests can be conducted against targets flying in a wide range of altitudes and trajectories. In March, Lieutenant General Ronald Kadish, who heads U.S. missile defense programs, testified to Congress that the full-rate production decision would be made toward the end of 2002 (before operational testing has been completed), representing a delay of about a year since last year. The full system

will be deployed once all operational testing has been completed, perhaps around 2005.

A future version of PAC-3 is being considered for terminal defense of the United States. However, PAC-3 was not designed to counter long-range threats, and no flight intercept tests have been conducted to demonstrate how it might be incorporated in a terminal defense layer. Further, the ground area that can be defended by PAC-3 is so small that it would take scores of systems to defend just the major U.S. cities. A version of PAC-3 that could be effective in a national missile defense is probably a decade away.

#### THAAD

The Theater High Altitude Air Defense (THAAD) system is designed to shoot down short- and medium-range missiles in their terminal phase. THAAD would be used to protect forward-deployed troops overseas as well as nearby civilian populations and infrastructure. THAAD is to defend a larger area against longer-range threats than PAC-3, but it is not designed to protect the United States from ICBMs.

From 1995 to 1999, 11 developmental flight tests were performed, including eight in which an intercept was attempted. After the first six of those flight intercept tests failed, the program was threatened with cancellation. Finally, in 1999, THAAD had two successful flight intercept tests. The THAAD program has not attempted an intercept test since then, instead focusing on the difficult task of developing a new, more reliable, higher-performance missile than the one used in early flight tests.

A year ago, full-rate production was scheduled to begin in 2007 or 2008, but because there were no intercept tests in 2000 or 2001, that schedule has likely slipped two years or more. In fact, no flight intercept test is scheduled until 2004, and it is therefore unlikely that the first THAAD system will be deployed before 2010.

The Bush administration is considering THAAD for use in a layered national missile defense system. Conceptually, THAAD might be used in conjunction with PAC-3 as part of a terminal defense, or it could be deployed overseas to intercept enemy missiles in the boost phase. However, in its current configuration THAAD is incapable of performing these missions—even once it has met its Army requirements for theater missile defense—and therefore a role for THAAD in national missile defense is probably more than a decade away.

#### Navy Area Theater Ballistic Missile Defense

The Navy Area Theater Ballistic Missile Defense was the sea-based equivalent of PAC-3. The Navy Area system was being designed to defend forward-deployed Navy ships against relatively short-range threats. But in December 2001 the program was cancelled because its cost and schedule overruns exceeded the limits defined by law. (Ironically, the cancellation came just one day after President Bush announced that the United States would pull out of the ABM Treaty because its missile defense testing was advanced enough to be bumping up against the constraints of the treaty.)

The Navy still wants to be able to defend its ships against missile attack, and the program will most likely to be restructured and reinstated once the Navy decides on a new approach. In the meantime, the Navy Area program is slipping with each day that passes. As with PAC-3, the Bush administration has considered extending the Navy Area system to play a role in the terminal segment of a layered national missile defense. However, at this point the program is too poorly defined to allow speculation about when it could accomplish such a demanding mission.

#### Navy Theater Wide

The Navy Theater Wide program was originally intended to defend an area larger than that to be covered by the Navy Area system—that is, aircraft carrier battle groups and nearby territory and civilian populations—against medium range missiles during their midcourse phase. In this sense, Navy Theater Wide is the sea-based equivalent of THAAD.

In January, the Navy Theater Wide program conducted its first successful flight intercept test, but a dozen or more developmental flight tests will be required before it is ready for realistic operational testing. About a year ago, full-rate production was scheduled for spring 2007, meaning that the system could be deployed before the end of the decade.

But since then, the Pentagon has given new priority to a sea-based role in defending the U.S. homeland. Navy Theater Wide was not designed to shoot down ICBMs, but the Bush administration has restructured the program so that it aims to produce a sea-based midcourse segment and/or a sea-based boost-phase segment of national missile defense.

Either mission will require a new missile that is twice as fast as any existing version of the Standard Missile, which the system now uses; a new, more powerful Aegis radar system to track targets; a new launch structure to accommodate the new, larger missiles; and probably new ships. As a result, the Navy Theater Wide program requires a great deal of new development. It is unlikely that Navy Theater Wide will be ready for realistic operational testing until late in this decade, and it will not be ready for realistic operational demonstration in a layered national missile defense for several years after that.

#### Airborne Laser

The Airborne Laser (ABL) is a program to develop a high-power chemical laser that will fit inside a Boeing 747 aircraft. It is the most technically challenging of any of the theater missile defense programs, involving toxic materials, advanced optics, and the coordination of three additional lasers on-board for tracking, targeting, and beam correction. The first objective of the program is to be able to shoot down short-range enemy missiles. Later, it is hoped the ABL program will play a role in national missile defense by destroying strategic missiles in their boost phase.

The ABL has yet to be flight-tested. About a year ago, full-rate production of the ABL was scheduled for 2008. The plan was to build seven aircraft, each estimated to cost roughly \$500 million. At that time, the first shoot-down of a tactical missile was scheduled for 2003. Recently, the ABL program office announced that the first shoot-down of a tactical missile had been delayed to later 2004 because of many problems with the basic technology of high-power chemical lasers—about a one-year slip since last year and about a three-year slip since 1998. Accordingly, full-rate production probably cannot be started before 2010, and the cost will likely exceed \$1 billion per aircraft.

Assuming all this can be done, it is important to note that the ABL presents significant operational challenges. The ABL will need to fly relatively close to enemy territory in order to have enough power to shoot down enemy missiles, and during a time of crisis it will need to be near the target area continuously. A 747 loaded with high-power laser equipment will make a large and inviting target to the enemy and will require protection in the air and on the ground. Finally, relatively simple countermeasures such as reflective surfaces on enemy missiles could negate the ABL's capabilities.

Deployment of an ABL that can shoot down short- and medium-range tactical targets is not likely before the end of the decade, and the Airborne Laser will not be able to play a role in national missile defense for many years after that.

#### NATIONAL MISSILE DEFENSE

The Bush administration hopes to build a layered national missile defense that consists of a ground-based midcourse system, expanded versions of the theater systems discussed above, and, potentially, space-based systems. The Bush administration does not use the phrase "national missile defense" because it was the name of the ground-based midcourse system pursued by the Clinton administration and because the Pentagon's plans to defend the country are now more robust. But national missile defense is a useful shorthand for any system that is intended to defend the continental United States, Alaska, and Hawaii against strategic ballistic missiles, and it is in that sense that it is used here.

For all practical purposes, the only part of the Bush national missile defense that is "real" is the ground-based midcourse system. It is real in the sense that six flight intercept tests have been conducted so far, whereas versions of the THAAD or Navy Theater Wide systems that might be used to defend the United States have not been tested at all. Space-based systems are an even more distant prospect. For example, the Space-Based Laser, which would use a laser on a satellite to destroy missiles in their boost phase, was to be tested in 2012, but funding cuts have pushed the testing date back indefinitely. Deployment is so far in the future that it is beyond the horizon of the Pentagon's long-range planning document, Joint Vision 2020.

As a result, despite the Bush administration's attempts to distinguish its plans from its predecessor's, Bush's layered national missile defense is, in effect, nothing more than the Clinton system.

Since 1997, the ground-based midcourse program has conducted eight major flight tests, known as IFTs. The first two, named IFT-1A and IFT-2, were fly-by tests designed simply to collect target information. The next six tests, IFT-3 through IFT-8, were all flight intercept tests. IFT-4 and IFT-5, conducted in January 2000 and July 2000 respectively, both failed to achieve an intercept, which became a principal reason why, on September 1, 2000, President Bill Clinton decided not to begin deployment of ground-based midcourse components, such as a new X-band radar on Shemya Island in Alaska.

Another year passed before the next flight intercept test, IFT-6, was conducted. The intercept was successful except that the real-time hit assessment performed by the ground-based X-band prototype radar on the Kwajalein Atoll in the Marshall Islands incorrectly reported the hit as a miss. IFT-7, conducted in early December 2001, was also successful. Until then, all of the flight intercept tests had had essentially the same target cluster: a re-entry vehicle, a single large balloon, and debris associated with stage separation and decoy deployment. Then, in IFT-8, conducted on March 15, 2002, two small balloons were added to the target cluster. This flight intercept test also was successful and marked an important milestone for the ground-based midcourse program.

However, despite these recent successes, there have been significant delays in the testing program. Several of the flight tests were simply repeats of earlier tests, and as a result IFT-8 did not accomplish the tasks set for it in the original schedule. In short, the testing program has slipped roughly two years—i.e., what was originally scheduled to

take two years has taken four. That is not to say that the program has made no progress but rather that key program milestones have receded into the future.

The pace of successful testing will be one of the primary determinants of how quickly the United States can field a national missile defense. If the ground-based midcourse system has three or four successful flight intercept tests per year, as it has during the past year, it could be ready for operational testing in four or five years. If those operational tests also were successful, then whatever capability had been demonstrated in all those tests—which would probably not include the capability to deal with many types of decoys and countermeasures or the capability to cover much of the space through which an enemy missile could travel—could be deployed by the end of the decade or even by 2008.

However, the ground-based midcourse system has difficulties beyond the testing pace of its interceptor. The system requires a new, more powerful booster rocket than the surrogate currently being used in tests—a task that was thought to be relatively easy. That new booster was to be incorporated into the continuing series of flight intercept tests to make those tests more realistic and to be sure that the new booster's higher acceleration did not adversely affect other components or systems on board.

But development of the new booster is about two years behind schedule. Indeed, on December 13, just hours after President Bush announced U.S. plans to withdraw from the ABM Treaty, a test of the new booster had to be aborted and the missile destroyed in flight for safety reasons because it flew off course. Flight intercept tests that were to have used the new booster have come and gone without it. Indeed, development of the booster is so far behind that the Pentagon recently issued another contract for a competing design.

Equally problematic is uncertainty over how the system will track enemy missiles in flight and distinguish targets from decoys. One approach is to use high-power radars operating in the X-band (that is, at a frequency of about 10 billion cycles per second). A prototype X-band radar on the Kwajalein Atoll has been part all of the ground-based midcourse flight intercept tests so far, and technically, X-band radar progress has been one of the most successful developments in missile defense technology.

A year and a half ago, Lieutenant General Kadish testified to Congress that establishing an X-band radar in Alaska was the "long pole in the tent" for missile defense. This meant that the X-band radar was critical to a ground-based midcourse system and that if that radar was not built soon, the program would start slipping day for day. Then, as now, there were many other developments that would take as long or longer than building an X-band radar at Shemya, but the Pentagon's official position was that construction needed to start in the spring of 2001 at the latest. Nevertheless, Clinton deferred taking action on the radar.

Surprisingly, the Bush administration has not requested funding for an X-band radar at Shemya in either of its first two budgets. This may be because the administration views such an installation as inconsistent with the ABM Treaty, which the administration has said it will not violate while the treaty is still in effect. Or the administration may not have requested funding because the Missile Defense Agency has been exploring "portable" X-band radars—that is, X-band radars deployed on ships or barges.

Some defense analysts believe that the Space-Based Infrared Satellite (SBIRS) program could be used in place of the X-band

radar to assist a national missile defense. SBIRS—which would consist of two sets of orbiting sensor satellites, SBIRS-high and SBIRS-low—is designed to detect the launch of enemy ballistic missiles and could be used to track and discriminate among them in flight. However, the program has significant technical problems.

SBIRS-high, which will consist of four satellites in geosynchronous orbit and two satellites in highly elliptical orbits, is to replace the existing Defense Support Program satellites, which provide early warning of missile launches. A year ago, the SBIRS-high satellites were scheduled for launch in 2004 and 2006, but recently those dates have slipped roughly two years because of problems with software, engineering, and system integration. A year ago, realistic operational testing was scheduled for 2007; now, it may not occur this decade, which means that full deployment may not occur this decade. SBIRS-high is also well over cost and is in danger of breaching the legal restrictions covering cost growth.

SBIRS-low is to consist of approximately 30 cross-linked satellites in low-Earth orbit. A year ago, the launch of the first of these satellites was scheduled for 2006, but SBIRS-low has slipped two years because of a variety of difficult technical problems. The developmental testing program for SBIRS-low is very challenging, and realistic operational testing will probably not begin this decade. This could delay deployment of the full constellation of SBIRS-low satellites until the middle of the next decade. SBIRS-low is also dramatically over budget and was threatened with cancellation in the latest round of congressional appropriations.

For now, the administration has been saying that it will upgrade an existing radar on Shemya called Cobra Dane. Under this plan, the Cobra Dane radar would become an advanced early-warning radar with some ability to distinguish among targets. But the Cobra Dane radar operates in the L-band with about eight-times poorer resolution than a new X-band radar would have, raising questions about the effectiveness of any national missile defense using it.

In sum, the only element of a "layered" national missile defense that exists on anything but paper is the ground-based midcourse system pursued by the Clinton administration. Accordingly, it is nearly impossible to predict when, if ever, an integrated, layered national missile defense with boost, midcourse, and terminal phases might be developed. As noted above, given the most recent pace of testing, some part of the ground-based midcourse system could be deployed by the end of the decade or possibly by 2008.

However, the capability such a system would have would be marginal and probably would not be able to deal with many types of decoys and countermeasures or to cover much of the space through which an attacking ICBM might fly. The Bush administration has said it will deploy test elements as an emergency capability as early as possible, but such a deployment would be rudimentary and its capabilities would be limited to those already demonstrated in testing. It would likely not be effective against unauthorized or accidental launches from Russia or China, which might include missiles with countermeasures. It also would not be effective against launches from Iraq, Iran, or Libya since those countries are to the east, out of view of a radar on Shemya.

#### CONCLUSION

During the first year of the Bush administration, all U.S. missile defense programs—both theater and national—have slipped. In general, the shorter-range tactical missile

defense systems are further along than the medium-range systems, and those medium-range systems are further along than the longer-range systems intended to defend the United States against ICBMs.

PAC-3 is the most developmentally advanced of any U.S. missile defense system, but full deployment will not likely take place before 2005, and realistic operational testing will continue for many years after the first Army units are equipped in the field. The THAAD program has slipped two years or more and will not be deployable until 2010. The Navy Area Wide program has been cancelled, and the Navy Theater Wide program has slipped two years or more and will not be deployable in a tactical role until the end of the decade. If the Pentagon restructures the program so that its priority is boost-phase or midcourse defense against strategic missiles, it will likely take longer. The Airborne Laser has slipped one year and will probably not be deployed as a theater missile defense before the end of the decade.

SBIRS-low has slipped two years and doubled in cost and probably will not be deployed before 2008. For all practical purposes, national missile defense is technically not much closer than it was in the Clinton administration. There have been no flight intercept tests of the boost-phase or terminal-phase elements suggested by the Bush administration, and developmental testing could take a decade or more, depending on the pace of testing and the level of success in each test. The only element that can be flight-intercept tested against strategic ballistic missiles today is the ground-based midcourse system. Part of that system could be deployed by 2008, but elements fielded before then will have only a limited capability.

Thus, while making foreign policy, the Bush administration would do well to consider that probably only a limited-capability version of PAC-3 will be fielded during its tenure and that an effective, layered national missile defense will not be realized while it is in office. It would make little sense to predicate strategic decisions on a defense that does not exist.

It is important for Congress and the American public not to be frightened into believing that the United States is—as some missile defense proponents like to assert—defenseless against even a limited missile attack by a “rouge state” such as North Korea. Powerful and effective options exist, both military and diplomatic.

In Afghanistan, U.S. attack operations with precision-guided weapons have been highly effective. Those same precision weapons would be effective against an enemy ICBM installation. In fact, given current capabilities and the ever-improving technologies for precision strike, it would be fantasy to believe any national missile defense system deployed by 2003 to 2008 would work better and provide greater reliability at a lower cost than the precision-guided munitions used in Afghanistan.

On the diplomatic front, in 1999 former Secretary of Defense William Perry made a series of trips to convince North Korea to stop developing and testing long-range missiles. He was remarkably successful. Although Secretary Perry would not say that North Korea was no longer a threat, it was obvious that the North Korean threat had been moderated. Secretary of State Madeleine Albright was able to build on his trip the next year to secure a pledge from Pyongyang to half flight testing of missiles. Dollar for dollar, Secretary Perry has been the most cost-effective missile defense system the United States has yet to develop. The most straightforward route to missile defense against North Korea may be through diplomacy, not technology.

Many decision-makers in Washington—and, from what one reads, the president himself—seem to be misinformed about the prospects for near-term success with national missile defense and the budgets being requested for it. It takes 20 years to develop a modern, high performance jet fighter, and it probably will take even longer to develop an effective missile defense network. Taking into account the challenges of asymmetric warfare, the time it can take to develop modern military equipment, the reliability required in real operational situations, and the interoperability required for hundreds of systems and subsystems to work together, it would be highly unrealistic to think that the United States can deploy an effective, layered national missile defense by 2004 or even by 2008.

In the meantime, policymakers should be careful that U.S. foreign and security goals and policies are not dependent on something that cannot work now and probably will not work effectively for the foreseeable future. A case in point is President Bush's decision to abandon the ABM Treaty with Russia. That decision was certainly premature given the state of missile defense technology and likely could have been avoided or postponed for many years if not indefinitely.

This is not to say that missile defense technology ought not to be pursued—only that it should be pursued with realistic expectations. Policymakers must be able to weigh the potential merits and costs of missile defense based on a sound understanding of both the technology and the possible alternatives. No one weapon system can substitute for the sound conduct of foreign policy, and even a single diplomat can be effective on a time scale that is short when compared with the time that will be required to develop the technology for national missile defense.

#### STAGES OF DEVELOPMENT

Missile defense, especially national missile defense, is the most difficult program ever attempted by the Department of Defense—much more difficult than the development of a modern jet fighter like the F-22 Raptor, the Navy's Land Attack Destroyer (DD-21), or the Army's Abrams M1A2 tank complete with battlefield digitization, endeavors that all have taken 20 years or more. Each new major weapons system must proceed through several stages of development, which are listed below. Most U.S. missile defense systems are currently in developmental testing and are therefore not close to deployment.

Research and Development (R&D): The period during which the concepts and basic technologies behind a proposed military system are explored. Depending on the difficulty of the technology and the complexity of the proposed system, R&D can take anywhere from a year or two to more than 10 years.

Engineering and Manufacturing Development (EMD): The period during which a system design is engineered and the industrial processes to manufacture and assemble a proposed military system are developed. For a major defense acquisition such as a high-performance jet fighter, EMD can take five years or more. If substantial difficulties are encouraged, EMD can take even longer.

Developmental Testing: Testing that is performed to learn about the strengths and weaknesses of proposed military technologies and the application of those technologies to a new military system in a military environment. Generally, developmental testing is oriented toward achieving certain specifications, such as speed, maneuverability, or rate of fire. Developmental testing is conducted throughout the R&D and EMD phases of development and becomes

more stressing as prototype systems evolve and mature.

Operational Testing: Testing that aims to demonstrate effective military performance against operational requirements and mission needs established for a system. Testing is performed with production-representative equipment in realistic operational environments—at night, in bad weather, against realistic threats and countermeasures. Military service personnel, not contractors, operate the system, which is stressed as it would be in battle. Operational testing of a major defense acquisition system typically takes the better part of a year and is usually broken into several periods of a month or two to accommodate different environments or scenarios. If substantial difficulties are encountered, several years of operational testing may be required.

Production: The phase of acquisition when a military system is manufactured and produced. Early on, during “low-rate production,” the quantities produced are typically small. Later, after successfully completing operational testing, a system may go into “full-rate production,” where the rate of production is designed to complete the government's planned purchase of the system in a relatively short period of time, about five years.

Deployment: The fielding of a military system in either limited or large quantities in military units. The first military unit equipped may help develop tactics, techniques, and procedures for use of the new system if that has not already been done adequately in development.

All ballistic missiles have three stages of flight.

The boost phase begins at launch and lasts until the rocket engines stop firing and pushing the missile away from Earth. Depending on the missile, this stage lasts three to five minutes. During much of this time, the missile is traveling relatively slowly although toward the end of this stage an ICBM can reach speeds of more than 24,000 kilometers per hour. The missile stays in one piece during this stage.

The midcourse phase begins after the propulsion system finishes firing and the missile is on a ballistic course toward its target. This is the longest stage of a missile's flight, lasting up to 20 minutes for ICBMs. During the early part of the midcourse stage, the missile is still ascending toward its apogee, while during the latter part it is descending toward Earth. It is during this stage that the missile's warhead, as well as any decoys, separate from the delivery vehicle.

The terminal phase begins when the missile's warhead re-enters the Earth's atmosphere, and it continues until impact or detonation. This stage takes less than a minute for a strategic warhead, which can be traveling at speeds greater than 3,200 kilometers per hour.

Mr. REED. The system that is most developed is one I mentioned previously, the PAC-3 system. It is a theater missile system. It is not designed to counter long-range threats. It has been tested rigorously. It is in operational testing now. Phil Coyle states that the administration is considering an advanced version of PAC-3 for a national missile defense. But if you were trying to use it in a terminal phase it would take many systems to defend a rather small area of the United States. We probably would never have the number of systems needed to adequately defend the United States.

Another system we have been developing for years is the THAAD system.



Phil Coyle states that the Administration is also considering use of THAAD along with PAC-3 for national missile defense. But in its current configuration THAAD is not ready for this role. In fact, it is far away from it—perhaps a decade before it could be reasonably used in that way.

The other system being developed as we speak is a Navy theater-wide system. It is a midcourse system as it is currently designed. They are now talking about this system as a potential element of their midcourse national missile defense. Again, there are still significant issues with respect to the use of this system for national missile defense.

As Mr. Coyle points out, if the system were to be used for a midcourse mission, or a boost phase mission, for national missile defense, it would require a new missile that is twice as fast as any existing version of the standard missile which the system now uses. He writes it would require:

A new, more powerful Aegis radar system to track targets; a new launch structure to accommodate the new, larger missiles; and probably new ships. As a result, the Navy theater-wide program requires a great deal of new development. It is unlikely that Navy theater-wide will be ready for realistic operational testing until late in this decade, and it will not be ready for realistic operational demonstration in a layered national missile defense for several years after that.

It is interesting to note that this system is being considered today by the Missile Defense Agency for possible deployment in 2004. It is also interesting, and a bit surprising, because in last year's authorization bill we asked the Missile Defense Agency to tell us what they propose to do with the Navy theater-wide system. We asked for a report on April 30. The response to our request was actually a letter that came to us on May 30, and repeated the questions we asked. It responded to some of the questions in a very cursory way. It didn't give any life cycle cost for us, so it is hard for us to estimate how much this new evolving system will cost. It simply said they redefined the system. That was May 30.

Yet, about 2½ weeks later, they were telling the press that we are deploying this system in 2004. In fact, one of the points they made in the letter is:

The details of the sea-based program block 2006 and out capability are being developed through work that is scheduled to be completed by December 2003. We will be able to provide specifics on the system definition, along with a preliminary assessment of force structure and life cycle cost at that time.

So this work is going to be completed in planning by 2003. Yet this system is being talked about for deployment in 2004.

It just does not seem to make much sense, and it illustrates, I think, the problem we have had in the subcommittee, first of getting reliable information, and second of getting a sense of the direction of all these programs.

We are not trying to micromanage the Missile Defense Agency, but when

we asked a year ago in our report for information specifically about a type of missile system, when we get a cursory response saying, we have renamed it and we will not be able to tell you anything until we conclude in December of 2003 our deliberations, and then 2 weeks later they are talking about the system being deployed in a theater role in 2004, it illustrates, I think, the problems and the issues we have confronted with simply getting the information we need to do our job, to inform our colleagues, to make decisions that are not only important to our national security, but extremely expensive decisions so that we can perform our mission, our role in the Senate.

That is the Navy theater wide system. There are other systems we have developed, and I think it is appropriate to note that the next system is the airborne laser system. This is a program to develop a high-power chemical laser that will fit inside a Boeing 747 aircraft. This is a system that would be designed to shoot down short-range enemy missiles in the boost phase. It has some potential, but it is a major technological effort which is going forward, but not going forward with great speed at the moment.

The final major component is the national missile defense midcourse, or the land-based system, in Alaska, and that system we have supported. We have supported it, but having supported it, we also have serious questions with it. The system was inaugurated, if you will; at least ground was broken last week for a test bed for missiles. There are concerns that the missiles cannot be effectively used in a flight test capacity because of safety concerns and other factors with respect to the local area in Alaska. That is one issue.

The other issue, though, is for several years now in the development of this national missile defense midcourse land-based system in Alaska, the administration and the Missile Defense Agency have talked about using an x-band radar, claiming it as absolutely necessary because of its ability to discriminate the warhead. This is important because the major issue that faces the midcourse intercept is the possibility of countermeasures and decoys. So we need a very fine discriminating radar to determine what is the warhead and what are the decoys. However, That x-band radar has not been funded by the administration. They have declared instead they will use an existing radar, COBRA DANE.

One of the problems with COBRA DANE is it faces the wrong way to provide any coverage of Iran or Iraq and provides only limited coverage of North Korea, if you are concerned with the "evil empire."

Despite that, and in an effort to support sincerely and consistently the mission of developing adequate national missile defense, we have provided robust funding for the Alaska test bed, and that is included in this

bill. However, I do think it is important and appropriate to state our reservations now because they are points we should consider as we go forward.

Let me continue to discuss some of the important issues, particularly some of the actions the committee has specifically taken.

One thing we should point out is we have looked at the theater missile systems. We have particularly found that the Arrow Missile Defense Program is making great progress. We have increased funding for the Arrow missile system. That is a joint United States-Israeli effort for a theater missile system.

We have also fully funded the PAC-3 system, which is the one closest to deployment. It is one that is, again, a theater missile system.

In all of our deliberations, we have striven to ensure deployment of these systems in a timely way, but also ensure these systems are operationally tested and rigorously tested before they are put in the field. That is incumbent upon us.

We also tried to ensure the independent oversight of the Defense Department's Director of Operational Tests and Evaluation is part of the process. One of the concerns I have, frankly, is that in an attempt by the administration for secrecy and flexibility, we will find a situation in which there is no outside objective voice within the Department of Defense. One that is looking at these programs, advising these programs, and making some judgments that are not influenced by the need for a successful program at any cost, or even a program—forget successful—at any cost, but are motivated by the need to deploy effective systems that will defend this country.

The other factor we considered, and consider constantly, is the discussion of contingency deployments, contingency capabilities. One of the reasons we pause slightly is these contingency capabilities and deployments often result in a rush to failure, often result in a situation where the system is pushed beyond its absolute capabilities. A few years ago, that is exactly what happened with the THAAD Program. It failed its first six intercept tests in a rush to deploy the system before it was ready.

The THAAD Program was subsequently totally redone and revamped. It cost hundreds of millions of dollars that were unnecessary expenditures. It is on track now but, frankly, the situation is such that we do not want to repeat that experience in other missile defense programs. We do not want a situation where the pressure for contingency deployments undercuts the need for thorough, deliberate consideration of the operational characters of these systems and the ability of these systems to do the job they are designed to do.

We have looked very closely at what we think are attempts to rush the systems. In one area, we have reduced

funding of THAAD because they have requested what we consider a premature acquisition of missiles before they have actually had missile's first flight test. We have made that judgment.

Let's turn to another aspect of missile defense, and that is the ICBM threat to the United States. It is not as immediate today as the theater missile threat, but it is still a threat.

Fortunately, with our new relationship with Russia, the ICBM threat has decreased significantly. China has a small arsenal of ICBMs, but they typically do not have their missiles on ready status, fueled, and with a warhead on the missile. North Korea seems to be developing an ICBM capability of reaching the United States, although it has voluntarily suspended its long-range missile flight test program. There are other potential adversaries.

This is an issue about which we are concerned, but one of the things we have to recognize with an ICBM is that its launch leaves an indelible signal of the point of departure and our deterrence doctrine is very clear. We have the capacity to strike back, and strike back with overwhelming force. That has been the hinge, really, of our deterrence policy for 50 or more years, and it remains an important part of our policy.

As I have mentioned, the issue of intercontinental ballistic missiles has been with us for many years. We have relied upon deterrence as a mainstay of our defense posture. Today we are developing one system in Alaska that is clearly designed to be a national missile defense system, and this authorization bill supports that effort in Alaska.

As I mentioned, we have taken away resources from some programs that are unjustified or duplicative and simply not advancing what we believe is the common concern of developing adequate missile defense systems, both theater and national. We have taken away approximately \$800 million and applied \$690 million to shipbuilding. But in addition, we have applied resources for security at our nuclear facilities.

One of the things I found startling in press reports was the fact that the Department of Energy asked for considerably more money to protect nuclear facilities, and they were turned down by OMB.

This is a letter to Bruce M. Carnes, who is the Director of the Office of Management Budget and Evaluation, from the chief financial office of the Department of Energy:

We are disconcerted that OMB refused our security supplemental request. I would have much preferred to have heard this from you personally, and been given an opportunity to discuss, not to mention, appeal your decision. We were told by Energy Branch staff that the Department's security supplemental proposals were not supported because the revised Design Basis Threat, the document that outlines the basis for physical security measures, has not been completed. This isn't a tenable position for you to take, in my

view. We are not operating, and cannot operate, under the pre-September 11 Design Basis Threat. Until that is revised, we must operate under Interim Implementing Guidance, and you have not provided resources to enable us to do so.

That is from the Department of Energy to the OMB. We would move resources into the Department of Energy to provide for security of DOE facilities.

But I think this underscores something else, too. It illustrates what I would say are the misaligned priorities between missile defense and other pressing, immediate concerns. Yes, missile defense is important. Yes, we should develop it quickly, thoroughly, and deliberately, but certainly defending and protecting our facilities that have nuclear radiological material is of an immediate and significant concern.

Last week, we were not threatened by an intercontinental missile. We were threatened by a terrorist, an American who became infatuated with the al-Qaida and their rhetoric and came here, if you believe the press reports, to obtain nuclear materials to construct a "dirty" bomb. That is the immediate real threat today.

Yet when the question before the administration was, do we fund security at DOE facilities or do we continue to put resources into missile defense, they made their choice to put resources in missile defense, way above, I believe, the appropriate amount. As a result, we have made adjustments, and I think those adjustments are entirely appropriate.

The other aspect of this, too, when it comes to the issue of resources, is, first, a point that all of these deliberations on the missile defense budget seems to be outside the purview of the Joint Chiefs of Staff. I thought it was shocking when the Chiefs came up and testified that they were not consulted during the preparation of the ballistic missile defense budget. These are the uniformed leaders of our military forces. These individuals are charged with and have taken an oath to the Constitution to protect the country, and yet they were not consulted at all about this budget.

Another point that is critical, and let me quote from Secretary Rumsfeld's testimony before the Appropriations Committee on May 21. He said:

In February of this year, we began developing the Defense Planning Guidance for fiscal year 2004. In the fiscal years 2004 to 2009 program, the senior civilian and military leadership had to focus on the looming problem of a sizeable procurement bow wave beyond fiscal year 2007.

This is shorthand for describing the course of procurement of systems that will be ready for fielding later in this decade.

If all were funded, they would crowd out all other areas of investment and thereby cause a repetition of the same heartaches and headaches that we still suffer from today as a result of the procurement holiday of the 1990s.

This in the context of his plea to cut the Crusader system.

But what is most alarming about this quote is that this bow wave does not include any deployment costs of missile defense at a time when the administration is developing multiple systems which they proposed to deploy at the end of this decade, costing hundreds of billions of dollars perhaps.

As a result, we cannot simply ignore the cost implications of these systems. As I mentioned before, simply to obtain life cycle cost information on any of these systems has proven to be virtually impossible. We asked for that with respect to Navy theater wide and we got a letter back saying, we will not know until December of 2003 and then we will tell you.

We cannot operate without an idea, understanding that it will be amended many times before the end of this decade, but an idea about the cost of all of these systems over several years, procurement and operational deployment. If this bow wave is a crisis today, it becomes a tidal wave when you include missile defense costs. As a result, we have asked again for more specific information about the projected costs associated with the missile defense program.

One of the areas, and an area on which we have focused our reductions, has been systems engineering funding. The Department of Defense Missile Defense Agency has asked for significant amounts of money for systems engineering, BMD systems engineering, in addition to specific moneys they are asking in every one of these component parts, boost phase, midcourse, and terminal, where there is sufficient systems engineering money. So we have directed reductions in this BMD systems engineering.

It seems to us, again, to be an ill-defined area. We have asked for what products they are buying. Mostly, I suspect it is engineering services, or consulting services. It is not hardware. We have asked for this and we have gotten very little in terms of a response. As a result, we have shifted these funds significantly into the aforementioned shipbuilding programs and further security for our Department of Energy laboratories.

These efforts represent an attempt to provide good government, good management to a program. We hope it will accelerate the deployment of an effective missile system that has been operationally tested.

I hasten to add that this does not represent a revisitation of the ABM Treaty debate. The President used his prerogative as President to withdraw. This is not about arms control as much as it is about maintaining good management, informing the Congress, so we can make difficult decisions, so that 5 years from now we are not surprised when that bow wave hits us and suddenly the bow wave becomes a tidal wave because of the inclusion of significant costs of missile defense and for theater missile defense.

There is a consensus to support missile defense, clearly theater and, in



fact, I think also at this juncture clearly national missile defense. I do not think we support that without asking tough questions and making tough choices about how we spend our money, particularly when it comes to the other uses that are so necessary today, the immediate protection of our homeland, the immediate protection of forces around the globe that are confronting our enemies today. So we have to make these judgments and we made these judgments.

In addition to that, we have asked that a whole system of, we think, very sensible reports and information be given to us. I have a disconcerting feeling that there is a deliberate attempt to limit information that we get and it is justified under the guise that we need flexibility, that we have not thought through the problem yet. There may be something to that, but it is particularly distressing when the Director of Test and Evaluation does not have unfettered access to the program. It is particularly distressing when the Joint Requirements Oversight Council, the JROC, chaired by the Vice Chairman of the Joint Chiefs of Staff, does not have a role in these deliberations. It is particularly distressing when the Joint Chiefs of Staff are not consulted in the preparation of this significant budget. The American people, I think, assume that these officials of the Department of Defense are intimately involved in all of these details and have a seat at the table to make judgments and to give advice. Our legislation would do that.

As we go forward, we will continue to ask the tough questions. The specifics of our requests with respect to these issues of oversight include a reiteration of some of the things that we incorporated in last year's request.

Last year, the National Defense Authorization Act required the Agency to submit lifecycle cost estimates for all missile defense programs that it entered into the engineering and manufacturing and development, or EMD, phase. These are the same types of reports that every major weapons system provides to the Congress.

The THAAD missile defense program, I have mentioned before, entered EMD phase 2 years ago. We fully expected those lifecycle costs would be reported to us in a routine way. However, instead of providing the required information for THAAD, the Department chose to reclassify THAAD as no longer being in EMD thereby avoiding, in their view, the congressional requirement to submit the cost estimate.

It seems to be gamesmanship, to avoid responding to an obvious question, an obvious concern: Tell us how much this system will cost over its lifetime. That, again, is the type of nonresponsiveness, either inadvertent or deliberate, that we have encountered. Therefore, it reinforces the need for additional language in this legislation to require appropriate reports, the same types of reports that you get

from mature systems in other areas of defense procurement.

We are not asking for the speculative. We are looking at systems that have had many years of development, which are entering the phases of engineering work. So the issue is defined. We can't do that because it is not defined—sometimes we hear that—that is not at the heart of our request. We have applied the request to major missile defense systems such as the ground and sea-based midcourse program, Airborne laser, and the THAAD program.

It is particularly important to get information because, on the one hand, the administration says these are all speculative, ill-defined, and they are thinking about it. And then they say: We will deploy the system in a very short time, in 2004, for example.

You cannot have it both ways. If we are ready for contingency deployment, certainly the information should be available to the Congress. And this legislation would ask for that information.

We also recommend a provision that requires the Pentagon's director of testing and evaluation to assess the potential operational effectiveness of the major missile defense systems on an annual basis. This would help the administration and Congress determine whether a contingency deployment of a missile defense system is appropriate. There has to be a certain operational threshold before deploying the system. Who better than the director of testing and evaluation to make that assessment.

It also requires the Joint Requirement Oversight Council to annually assess the costs and performance in relation to military requirements. This is the statutory role of the JROC for all military programs. Missile defense is too important to bypass such a review.

As I mentioned earlier, the Chiefs were not even asked to provide their views with respect to these missile defense priorities. That should be corrected also. That should be something the Secretary of Defense would want to have and would insist be included.

Now, we are endeavoring to bring this legislation to the floor representing a commitment to missile defense but also a commitment to the overall defense and security of the United States, to be able to assure our constituents that we have looked carefully and deliberately at all these programs and are aware of these programs, that we support these programs, but we don't do it blindly. We do it on an informed basis and are able to tell them: We are doing what we can, indeed, all we can, in a thoughtful, deliberate, careful, professional way, to enhance the security of the United States in terms of missile defense and in terms of overall defense. We are, in fact, doing our job.

I believe the legislation we have brought from the subcommittee to the committee and to the floor does this. It is a product of careful deliberation. It

is a product of many hours of work by staff and Members. It is a product that is designed to enhance the security of the United States. I believe it does. I hope my colleagues agree and concur.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I hope all Members listened closely to the Senator from Rhode Island. He certainly is qualified by virtue of his service in the Congress, but mostly by virtue of his service in the U.S. Army. The Senator from Rhode Island is the only Senator to graduate from the U.S. Military Academy at West Point, to my knowledge. I always listen closely to what he says. The country is very fortunate to have his expertise.

Mr. WARNER. Would the Senator allow me to associate myself as an extension about observations regarding my colleague. We have some philosophical differences, but he does bring to our committee the wealth of experience he gained in the U.S. military. That is so important.

I also want to discuss scheduling on the floor.

Mr. REID. I am happy to yield without losing the floor.

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

Mr. WARNER. I say to our leader, subject to the pending amendment, we are hopeful to move on to other amendments in due course.

Mr. REID. I respond to my friend from Virginia, the comanager of this bill, Majority Leader DASCHLE announced in his dugout this morning that he wanted Members to offer amendments and that he was going to look very closely early next week, if things are not moving well, at filing cloture on this bill.

We cannot have this bill not completed by the time we leave for the July recess. The committee has worked too hard. The President needs this legislation. The United States military needs it. We have to complete this bill.

I agree with the Senator from Virginia. We have a very important amendment now pending, and we have to figure out some way to get this off the floor. There are many people working on that as we speak.

The Senator from Virginia is absolutely right. Members need to offer amendments. The majority leader spoke earlier today; he very much desires to move this legislation along quickly. If it does not move quickly after a week or so of debate, he will try to invoke cloture.

Mr. WARNER. I thank our distinguished assistant majority leader.

I am assured that the Republican leader worked hand-in-glove with the majority to bring up this bill, providing our committee with this very important period of time prior to the Fourth of July, but we must finish it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAHAM. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with for purposes of an introductory statement of approximately 5 minutes. At the conclusion, it is my intention to place the Senate back into quorum call.

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

The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

(The remarks of Mr. GRAHAM pertaining to the introduction of S. 2652 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GRAHAM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

#### ORDER OF BUSINESS

Mr. REID. Madam President, for the information of Members, we have had a message from the House. We are going to go back into a quorum call. We are trying to move on that as quickly as possible. As I mentioned to the distinguished Senator from Texas, we are going to modify the second-degree amendment. Then Senator GRAMM has some things he wants to say and a motion he wants to make, of which we are aware. But this should not take long. In a few minutes we should be able to get to the legislation.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam 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. 3916, AS MODIFIED

Mr. REID. Madam President, I send a modification to the desk to the Reid-Conrad amendment. This is on behalf of Senator CONRAD.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment, as modified, is as follows:

Strike all after the first word in the amendment, and insert the following:

#### BUDGET ENFORCEMENT.

(a) EXTENSION OF BUDGET ENFORCEMENT POINTS OF ORDER.—Section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) is amended—

(1) in subsection (c)(2)—

(A) by inserting "and" before "312(b)" and by striking "and 312(c)"; and

(B) by striking "258C(a)(5)"; and

(2) in subsection (d)(3)—

(A) by inserting "and" before "312(b)" and by striking "and 312(c)"; and

(B) by striking "258C(a)(5)"; and

(3) in subsection (e), by striking "2002" and inserting "2007".

(b) EXTENSION OF BUDGET ENFORCEMENT ACT PROVISIONS.—

(1) IN GENERAL.—Section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 note) is amended to read as follows:

"(b) EXPIRATION.—Sections 251 and 258B of this Act and sections 1105(f) and 1106(c) of title 31, United States Code, shall expire September 30, 2007. The remaining sections of part C of this title shall expire on September 30, 2011."

(2) STRIKING EXPIRED PROVISIONS.—

(A) BBA.—The Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.) is amended by striking section 253.

(B) CONGRESSIONAL BUDGET ACT.—The Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.) is amended—

(i) in section 312, by striking subsection (c); and

(ii) in section 314—

(I) in subsection (b), by striking paragraphs (2) through (5) and redesignating paragraph (6) as paragraph (2); and

(II) by striking subsection (e).

(c) EXTENSION OF DISCRETIONARY CAPS.—

(1) IN GENERAL.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)) is amended—

(A) in the matter before subparagraph (A), by striking "2002" and inserting "2007";

(B) by striking subparagraphs (C), (D), (E), and (F); and

(C) by redesignating subparagraph (G) as subparagraph (C).

(2) CAPS.—Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(c)) is amended by striking paragraph (7) and (8) and inserting the following:

"(7) with respect to fiscal year 2003—

"(A) for the discretionary category: \$766,167,000,000 in new budget authority and \$756,259,000,000 in outlays;

"(B) for the highway category: \$28,931,000,000 in outlays;

"(C) for the mass transit category: \$6,030,000,000 in outlays; and

"(D) for the conservation spending category: \$1,922,000,000 in new budget authority and \$1,872,000,000 in outlays;

"(8)(A) with respect to fiscal year 2004 for the discretionary category: \$784,425,000,000 in new budget authority and \$814,447,000,000 in outlays; and

"(B) with respect to fiscal year 2004 for the conservation spending category: \$2,080,000,000, in new budget authority and \$2,032,000,000 in outlays;"

(3) REPORTS.—Subsections (c)(2) and (f)(2) of section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904) are amended by striking "2002" and inserting "2007".

(d) EXTENSION OF PAY-AS-YOU-GO.—

(1) ENFORCEMENT.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) is amended—

(A) in subsection (a), by striking "2002" and inserting "2007"; and

(B) in subsection (b), by striking "2002" and inserting "2007".

(2) PAY-AS-YOU-GO RULE IN THE SENATE.—

(A) IN GENERAL.—Section 207 of H. Con. Res. 68 (106th Congress, 1st Session) is amended—

(i) in subsection (b)(6), by inserting after "paragraph (5)(A)" the following: "except that direct spending or revenue effects resulting in net deficit reduction enacted pursuant to reconciliation instructions since

the beginning of that same calendar year shall not be available."; and

(ii) in subsection (g), by striking "2002" and inserting "2007".

(B) SENATE PAY-AS-YOU-GO ADJUSTMENT.—For purposes of Senate enforcement of section 207 of House Concurrent Resolution 68 (106th Congress), upon the enactment of this Act, the Chairman of the Committee on the Budget of the Senate shall adjust balances of direct spending and receipts for all fiscal years to zero.

(3) PAY-AS-YOU-GO ENFORCEMENT DURING ON-BUDGET SURPLUS.—If, prior to September 30, 2007, the Final Monthly Treasury Statement for any of fiscal years 2002 through 2006 reports an on-budget surplus, section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) shall expire at the end of the subsequent fiscal year, and the President, in the next budget, shall submit to Congress a recommendation for pay-as-you-go enforcement procedures that the president believes are appropriate when there is an on-budget surplus.

(e) SENATE APPROPRIATIONS COMMITTEE ALLOCATIONS.—Upon the enactment of this Act, the Chairman of the Committee on the Budget of the Senate shall file allocations to the committee on Appropriations of the Senate consistent with this Act pursuant to section 302(a) of the Congressional Budget Act of 1974.

(f) ADVANCE APPROPRIATIONS.—

(1) IN GENERAL.—Section 204 of H. Con. Res. 290 (106th Congress) is amended by striking subsections (a) through (f), (h), and (i).

(2) LIMITATION.—Section 202 of H. Con. Res. 83 (107th Congress) is amended—

(A) in subsection (b)(1)—

(i) by striking "2003" and inserting "2004"; and

(ii) by striking "\$23,159,000,000" and inserting "\$25,403,000,000"; and

(B) in subsection (d), by striking "2002" in both places it appears and inserting "2003".

(g) SPECIAL RULE.—Section 250(c)(4)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)(D)(i)) is amended by adding at the end the following: "Any budget authority for the mass transit category shall be considered nondefense category budget authority or discretionary category budget authority."

(h) TREATMENT OF CRIME VICTIMS' FUND.—For purposes of congressional points of order, the Congressional Budget Act of 1974, and the Balanced Budget and Emergency Deficit Control Act of 1985, any reduction in spending in the Crime Victims' Fund (15-5041-0-2-754) included in the President's budget or enacted in appropriations legislation for fiscal year 2004 or any subsequent fiscal year shall not be scored as discretionary savings.

(i) EXERCISE OF RULEMAKING POWERS.—Congress adopts the provisions of subsections (d)(2), (e), (f), (g) and (h) of this section—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each house, or of that house to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either house to change those rules (so far as they relate to that house) at any time, in the same manner, and to the same extent as in the case of any other rule of that house.

(j) SENATE FIREWALL FOR DEFENSE AND NONDEFENSE SPENDING.—

(1) IN GENERAL.—It shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that exceeds \$392,757,000,000 in new budget authority or \$380,228,000,000 in outlays for the defense discretionary category or \$373,410,000,000 in new budget authority or \$376,031,000,000 in outlays for the nondefense discretionary category for fiscal year 2003, as adjusted pursuant to section 314 of the Congressional Budget Act of 1974.

(2) EXCEPTIONS.—This subsection shall not apply if a declaration of war by Congress is in effect or if a joint resolution pursuant to section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

(3) WAIVER AND APPEAL.—This subsection may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this subsection.

Mr. REID. Madam President, Senator CONRAD, chairman of the Budget Committee, wants to speak about this modification. The chairman of the Judiciary Committee, Senator LEAHY, has been here for a while. Senator CONRAD has graciously allowed him to speak first. Senator LEAHY needs up to 15 minutes as in morning business. Following that, the Senator from North Dakota would be recognized.

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

The Senator from Vermont.

(The remarks of Mr. LEAHY are located in today's RECORD under "Morning Business.")

Mr. CONRAD. Madam President, this is perhaps one of the most challenging years we have faced dealing with the budget of the United States. That is why moments ago I sent a modified amendment to the desk. Let me just outline what is included in that amendment and why I think it is so critically important that we adopt it today.

The Conrad-Feingold amendment sets discretionary spending limits for 2003 and 2004.

It also extends the 60-vote points of order protecting Social Security, enforcing discretionary spending caps, and requiring fiscal responsibility, and it extends for 5 years the pay-go and other budget enforcement provisions that otherwise expire on September 30.

Let me discuss the level of spending that is covered by this amendment. For 2003, it would provide a discretionary spending limit of \$768.1 billion. That is precisely the same as the President's budget for 2003. The President sent us a discretionary spending level of \$768 billion.

I have talked with Mr. Daniels this morning, the head of the Office of Management and Budget. He believes this number is too high by some \$9 billion. Even though that is the President's number, even though that is the number the President sent us, we have not adopted the President's policy because the President has proposed switching certain accounts from mandatory spending to discretionary spending.

Those are the retirement requirements of people in the Federal Government. In other words, he has proposed switching the retirement accounts that come out of the budget of the various agencies from mandatory spending to discretionary spending.

Obviously, that would make discretionary spending more by \$9 billion. That is included in the President's proposal. We have not adopted that part of his proposal. Their argument is that would shift back to the mandatory side of the equation and reduce the \$768 billion by \$9 billion. That is true. They are correct about that.

It is also true that their budget needs to be adjusted in a number of ways, I believe, in order to secure passage in the Congress. The President has cut transportation funding, highway construction, and bridge construction by 27 percent, by \$9 billion. We proposed adding back about two-thirds of that, about \$6 billion. That money has to come from somewhere.

The President has proposed cutting law enforcement by over \$1 billion. I do not think that is realistic at a time when we face terrorist threats to the United States. The President has proposed a smaller amount for education that is even provided for in his own No Child Left Behind legislation. That is going to have to be acknowledged and dealt with before we finish our work. We are not going to cut that program of No Child Left Behind that the President talked about all across the country.

There are other provisions as well that are going to have to be addressed. We are going to need that \$9 billion to meet the needs of the country. Again, it still leaves us with an overall amount that is precisely what the President sent us in his own budget.

In addition to that, there is a second year of budget caps, of restrictions on what can be spent, and that amount is \$786 billion. That is about a 2-percent increase over this year. That is a very sharp restriction on spending, especially given the fact we are under attack, especially given the fact the President, no doubt, will be asking more for defense, more for homeland security. But we have agreed to a cap this year that is exactly the number the President sent us in his budget, and we have agreed on a cap for spending for next year at \$786 billion, about a 2-percent increase over where we are now.

In addition, the amendment I have sent to the desk limits advance appropriations. This was raised as an issue by Members on the other side of the aisle. They wanted a restriction on advance appropriations, so we included that in this bill. And we have included another request from the other side of the aisle to establish a 1-year defense firewall. What that means is, the money that is allocated for defense would go for defense and could not be used for other purposes.

This amendment establishes a supermajority point of order in the Senate

to enforce a defense/nondefense firewall in 2003. Again, this was in response to requests from Members on the other side of the aisle.

This is the circumstance we face that I think we need to keep in mind as we consider this amendment. Last year, the Congressional Budget Office told us we could expect some \$5.6 trillion of budget surpluses over the next decade. That is what we were told just a year ago—nearly \$6 trillion of surpluses. Some of us questioned that. Some of us said: Do not rely on a 10-year forecast. There is too much risk associated with that. But others said: No, there will even be more money. That is what we were told repeatedly.

Now we get to June of this year and look at the difference a year makes. Not only do we not see any surpluses for the next decade, we see deficits of some \$600 billion over the next 10 years.

Where did the money go? This chart shows our analysis of what happened to those surpluses, and the biggest chunk went for the tax cuts that were enacted last year and the additional tax cuts passed this year.

Forty-three percent of the disappearance of the surplus went to tax cuts; 21 percent went to increased spending as a result of the attack on this country—increased defense spending, increased homeland security spending. That is where all of the increase has gone. Twenty-one percent is from economic changes, that is, the economic slowdown that occurred. That is where 21 percent of the disappearance of the surplus occurred. And the last 14 percent is technical changes. Largely, those are underestimations of the cost of Medicare and Medicaid. That is where the money went, primarily to tax cuts; the next biggest is increased spending as a result of the attack on the country; the next biggest reason was the economic slowdown, and actually those two are equal; and the final and smallest reason is underestimations of the cost of Medicare and Medicaid.

That is where we are. What it tells us, as we look over an extended period of time, a 10-year period going back to 1992 when we were in deep deficit, and when the husband of the occupant of the chair came in as President of the United States and fashioned a 5-year plan in 1993 that was very controversial to raise revenue and cut spending, we can see that plan worked.

Each and every year, we were pulling ourselves out of deficit under that plan. In 1997, we had a bipartisan plan that finished the job. As a result, we emerged from deficit. We stopped using Social Security funds for other purposes, and we were running surpluses, non-trust-fund surpluses for 3 years.

Then last year we had the triple whammy: the tax cut that was too large, the attack on this country, and the economic slowdown. We can see now that we are headed for deficits for the entire next decade. That is Social Security money being taken to pay for

the tax cuts, being taken to pay for other items.

In fact, we now estimate some \$2 trillion will be taken from Social Security over the next decade to pay for the President's tax cuts and other spending initiatives. All of that matters, and it matters a lot because of where we are headed.

The leading edge of the baby boom generation starts to retire in 6 years. It is hard to believe, but that is the reality. What that tells us is those surpluses in the trust funds that have helped us offset these deep deficits are going to evaporate; in 2016 the Medicare trust fund is going to turn cash negative; and in 2017 the Social Security trust fund is going to turn cash negative. Then it is going to be like falling off a cliff.

This is a demographic time bomb that we are facing as a society. It is unlike anything we have ever faced before because always in our history the succeeding generation has been much larger than the generation retiring.

In very rapid fire order, the number of people who are eligible for Social Security and Medicare are going to double. We are headed for a circumstance in which there will only be two people working for every retiree. If that does not sober us, if that does not inform our actions, I do not know what it will take.

The first thing we need to do is get these budget spending caps in place for next year and the year thereafter, and couple that with the budget disciplines that give us the chance to fend off ideas for greater spending and for more tax cuts that are not paid for. Yes, we can have spending initiatives. They have to be paid for. We can have additional tax cuts, but they have to be paid for; otherwise, we are going to dig this hole deeper and deeper.

There are real consequences to digging that hole deeper. Mr. Crippen, the head of the Congressional Budget Office, told us that when he appeared before the Senate Budget Committee. He said, in response to a question from me:

Put more starkly, Mr. Chairman, the extremes of what will be required to address our retirement are these: We'll have to increase borrowing by very large, likely unsustainable amounts; raise taxes to 30 percent of GDP, obviously unprecedented in our history; or eliminate most of the rest of the Government as we know it. That is the dilemma that faces us in the long run, Mr. Chairman, and these next 10 years will only be the beginning.

I do not know how to say this with more force or more persuasiveness, but we are coming to another moment of truth on this journey in our economic future. Some will rise and say this spending amount is too much; that \$768 billion is \$9 billion more than the President proposed, even though the \$768 billion number is precisely the number the President sent us. Some will say we ought to wait. Some will say there is some other reason to be opposed.

Another moment of truth is coming very soon, and the question is, Are we going to have the budget disciplines that otherwise are phased out at the end of September? Are we going to have those to discipline the process as we proceed this year? Are we going to have a budget number that can inform the appropriations process as we proceed, a budget number, I again say, that is identical to the budget number the President sent us?

I am swift to acknowledge we have adopted his number but not his policy. It is absolutely correct he wanted to switch \$9 billion from mandatory spending to discretionary spending, and when we do not do that, it allows us to use that \$9 billion in a way different from the way he proposed.

I say to my colleagues, do they really want to adopt a 27-percent cut in highway and bridge construction that puts 350,000 people out of work in this country? I do not think that is the will of the Congress or the will of the American people. We have proposed a reduction from what was spent last year but not as big a reduction as the President has proposed.

Are we really going to cut the COPS Program by over a billion dollars when we have a terrorist threat to this country?

Are we really going to take police off the street? I do not think so. Are we really going to cut the President's signature education program, No Child Left Behind? I do not think so. Those are the fundamental issues that are before us now.

I emphasize to my colleagues that not only is this a spending cap for this year at the level the President proposed in his budget, but in addition to that, it is a spending cap for next year of \$786 billion. That is an increase of over 2 percent. That is very tight fiscal constraint. I am ready to take the medicine to get us back on a course to fiscal responsibility, and I believe most of my colleagues are as well.

This amendment is the product of weeks of negotiation between Republicans and Democrats and is a good-faith effort to capture in an amendment the positions of Democrats and Republicans on what should be contained in the budget for this year and next; what the limits should be on spending for this year and next; what should be the budget disciplines that are continued so we have a way of enforcing fiscal restraint, and it contains a 1-year defense firewall in the Senate, something requested by Members on the other side.

For those of us who believe it is critically important to have a budget process in the Senate, for those of us who believe it is critically important to have budget disciplines in place, this is our opportunity. This is our chance. It may not come again.

I urge my colleagues to very carefully consider their votes on this measure. This should not be a Republican vote or a Democratic vote. This should

be a vote for the country. This should be a vote for the Senate. This should be a vote that sends a signal we are serious about reestablishing fiscal discipline. This is a vote that should send a signal that fiscal discipline matters to the economy of this country. This should be a signal to the markets that this Congress is serious about fiscal responsibility, and this should be a signal that while the President has asked for the second biggest increase in our debt in our Nation's history, all of us are committed to getting back on track towards a course of reducing the debt of the United States, especially in light of the coming retirement of the baby boom generation.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. FEINGOLD. Madam President, the pending amendment and the second degree to it, as modified, are an effort to control spending and protect the Social Security trust fund. That is what it is—pure and simple—to control spending and, by doing so, also protect the Social Security trust fund. That is obviously not a new idea.

What we are doing here is trying to extend a process that has worked, and worked pretty well, for most of the years since 1990. We are trying to give 2 more years of life to the process that helped us do something that a lot of people didn't think could happen—balance the budget without using Social Security in both 1999 and 2000.

What we are trying to do is make sure there is some constraint on the size of the Government.

I remind my colleagues, if we do not pass this amendment, if we do not extend the budget process, then the vast majority of budget process constraints will simply expire on September 30. Our failure to act will mean an almost complete absence of responsible budget limitations.

Again, what our amendment does is not something new. It just tries to keep in place these limitations that made the good fiscal management of this Government possible during the 1990s.

As we saw this deadline coming, this problem that will occur on September 30 with the loss of the rules and constraints, what I have tried to do, with others, is work very hard to come to where we are today. Our amendment is not my idea alone, by any means. It is the result of a collaborative effort extending over several months. Starting in March, my staff has been working with the staff of Senators from about a dozen Senate offices, half Republican and half Democratic. I followed up in a

number of meetings with Senators from other sides of the aisle, trying to build consensus. What we tried to do is get the strongest budget process we could.

My colleagues will recall that we tried to extend the caps for 5 years in an amendment to the supplemental appropriations bill that Senator GREGG and I offered on behalf of Senators CHAFEE, KERRY, VOINOVICH, MCCAIN, and CANTWELL. Half the Senate, a bipartisan group of Senators, actually voted for that amendment, but we were not able to generate the support necessary to get the 60 votes and have the amendment actually adopted.

The amendment before us today is an effort to get the most done that we can. For the first 2 years, it provides almost exactly the same cap levels that were in the amendment of myself and Senator GREGG to the supplemental appropriations bill. It is my judgment, and the judgment of the bipartisan group of Senators with whom I worked to draft this amendment, that this is as strong a budget process that the Senate will actually be able to pass this year. So that is what I am asking of my colleagues—to do at least this much. Let's at least get this done. Let's at least preserve this much constraint and this kind of responsibility, even though many of us would prefer more.

One of the reasons is because in the next decade the baby boom generation will begin to retire in large numbers. Starting in 2016, Social Security will start redeeming the bonds it holds and the non-Social Security Government will have to start paying for those bonds from non-Social Security surpluses. Starting in 2016, the Government will have to show restraint in the non-Social Security budget so we can pay the Social Security benefits that Americans have already earned or will have already earned by that time. If we keep adding to the Federal debt, we will simply add to the burden to be borne by the taxpayers of the coming decade and decades thereafter. That is all we are really doing. It has been said in many political speeches, but it is true—we are just leaving them the bill. We are not doing our job. We are not showing responsibility, if that is how we leave things.

Of course, September 11 changed our priorities in many ways, including how our Government spends money. But September 11 does not change the oncoming requirements of Social Security. As an economist has said: "Demographics is destiny." We can either prepare for that destiny or we can fail to prepare for it.

To get the Government out of the business of using Social Security surpluses to fund other Government spending, we have to strengthen our budget process. That is what this amendment does. That is why we urge our colleagues to support it.

We have sought to advance a goal that has a long and bipartisan history,

and I would like to just recite a little of that history. In his January 1998 State of the Union Address, President Clinton called on the Government to "save Social Security first." That is also what President George W. Bush said in a March 2001 radio address. In his words, we need to "keep the promise of Social Security and keep the Government from raiding the Social Security surplus." That is what President Bush said. It is what the Republican leader, Senator LOTT, said on the Senate floor in June 1999 when he said:

Social Security taxes should be used for Social Security and only for Social Security—not for any other brilliant idea we may have.

It is what Senator DOMENICI said in April of 2000 when he said:

I suggest that the most significant fiscal policy change made to this point—to the benefit of Americans of the future . . . is that all of the Social Security surplus stays in the Social Security fund. . . .

Yes, we should stop using Social Security surpluses to fund the rest of Government because it is the moral thing to do; for every dollar we add to the Federal debt is another dollar our children must pay back in higher taxes or fewer Government benefits.

I do not think our children's generation will forgive us if we fail in our fiscal responsibility today. History will not forgive us if we fail to act. We must balance the budget, we must stop accumulating debts for future generations to pay, and we have to stop robbing our children of their own choices.

We have got to make our own choices. We are doing that today. Let's not take away from these kids their right to make their own choices in their time because we have locked up all the money and we cannot pay the Social Security benefits.

The amendment before us today, I am pretty sure, is the best, last hope to do this this year. I urge my colleagues to support it.

Madam President, the Center on Budget and Policy Priorities has issued a paper that concludes as follows:

These proposals, No. 1, are likely to be workable because they extend enforcement tools that have worked in the past; No. 2, are evenhanded because they treat spending increases and tax cuts in the same fashion, without favoring one or the other; and, No. 3, set targets that appear realistic and thus are more likely not to be blown away by subsequent congressional action.

This analysis by the Center on Budget and Policy is their view of this amendment. It is a positive analysis.

I ask unanimous consent the full text of this analysis be printed in the RECORD.

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

[From the Center on Budget and Policy Priorities, June 20, 2002]

THE FEINGOLD AMENDMENT TO THE DEFENSE AUTHORIZATION BILL: A WORKABLE AND RESPONSIBLE STRENGTHENING OF FISCAL DISCIPLINE

Senator Feingold's amendment to the Defense authorization bill would establish tight

but realistic caps on appropriations for 2003 and 2004, extend for five years the requirement that tax and entitlement legislation be paid for, and extend supermajority enforcement of congressional budget plans for five years. These proposals: (1) are likely to be workable because they extend enforcement tools that have worked in the past; (2) are evenhanded because they treat spending increases and tax cuts in the same fashion, without favoring one or the other; and (3) set targets that appear realistic and are thus more likely not to be blown away by subsequent congressional action.

Key Budget Enforcement Tools are Due to Expire This September 30. Four key tools to enforce budget discipline are scheduled to expire September 30, 2002. If these provisions expire, Congress will find it much easier to increase appropriations and entitlements by unlimited amounts and cut taxes by unlimited amounts. The clear risk is that the large deficits we are currently experiencing would grow even larger rather than decline, leaving the budget in a weak position at just the wrong time—right before the baby boom generation retires and places still greater pressure on the budget. Allowing all these budget enforcement tools to expire could set the stage for highly undisciplined budgeting in the coming months and years.

Congressional Budget Targets. The budget targets in Congressional budget plans are currently enforced by points of order that can only be waived by 60 votes. This means that appropriations and entitlement bills cannot spend more than is provided for in the Congressional budget resolution and tax cuts cannot exceed the level of tax cuts the Congressional budget resolution allows, unless 60 Senators agree. Starting October 1, however, excessive appropriation bills, excessive entitlement increases, and excessive tax cuts can all be agreed to by simple majority vote. The Feingold Amendment keeps these vital 60-vote enforcement mechanisms in place for another five years.

Discretionary Caps. Currently, a statute requires the President to cut appropriations bills across-the-board if, at the end of a session, those bills have breached dollar "caps," or upper limits, set in statute. This law worked well for eight years—from 1991 through 1998—but then was evaded through gimmicks or set aside by statute for the last four years because the caps established in 1997 proved unrealistically tight. The entire mechanism of caps and across-the-board cuts (called "sequestration") expires on September 30 and so does not apply to FY 2003 appropriations bills. The Feingold amendment renews the mechanism for another five years and sets caps for 2003 and 2004 (no such caps currently exist). The 2003-2004 caps in this amendment are at the levels in the recent Gregg-Feingold amendment and are tight but probably realistic.

The Senate Pay-As-You-Go Rule. Currently, a point of order waivable by 60 votes lies against legislation that would increase the cost of entitlements or reduce revenues unless these costs are offset over 1, 5, and 10 years, except to the extent that a budget surplus is projected outside Social Security. This rule expires September 30; the Feingold Amendment would renew it for another five years.

The Statutory Pay-As-You-Go Rule. Under current law, a statute requires the President to cut a selected list of entitlement programs across the board if, at the end of a session, OMB determines that tax and entitlement legislation has not been fully offset for the coming fiscal year, i.e., if entitlement increases and tax cuts have not been "paid for." This mechanism worked well from 1991 through 1998 but broke down when surpluses appeared; Congress wrote ad hoc provisions

setting it aside. Starting October 1, the mechanism effectively expires even though deficits have returned—new entitlement increases and tax cuts will not have to be paid for. The Feingold Amendment renews for five years the requirement that such legislation must be paid for, while turning off this requirement if the Treasury reports that a year has been completed in which the budget outside Social Security was in surplus.

The Feingold Amendment Sets Appropriations Targets For This Year That Can Be Enforced By The Senate. In addition to the extension of the four enforcement mechanisms discussed above, the Feingold Amendment responds to the particular situation faced by the Senate this year because a new congressional budget plan has not been agreed to. While last year's congressional budget plan continues to govern entitlement and tax legislation, it does not govern appropriations. This means that, as soon as the Appropriations Committee is ready, the Senate can begin consideration of appropriations bills at any funding level and pass them by majority vote. The Feingold Amendment would address this problem by requiring 60 votes for any 2003 appropriations bill that exceeds its allocation. The allocations for all the appropriations bills combined must not exceed the statutory cap the Feingold Amendment sets.

HOW TIGHT ARE THE FEINGOLD APPROPRIATIONS CAPS?

If caps are too loose, they do not constitute fiscal discipline. Experience also demonstrates that caps fail to impose fiscal discipline if they are set unrealistically tight. In that event, the caps are inevitably breached, which can lead to a free-for-all on appropriations.

The Feingold caps are tight but realistic. They equal the levels for 2003 and 2004 in the Gregg-Feingold amendment offered three weeks ago. If Congress provides the defense and homeland security increases the President has requested, as appears very likely, these caps would require a *reduction* in FY 2003 funding for all other discretionary programs of \$5 billion below the CBO baseline level—i.e., below the FY 2002 level adjusted for inflation. (It may be said that the proposed FY 2003 cap would be \$36 billion above the 2000 level adjusted for inflation. This is true, but the President's defense and homeland security levels are \$41 billion above the 2002 levels adjusted for inflation. Assuming the defense and homeland security requests are funded, everything else would have to be cut \$5 billion below the CBO baseline.)

These figures constitute restraint. If figures much tighter are agreed to, either the President will not receive his full defense and homeland security increases, or, more likely, the caps will be maneuvered around when appropriations battles heat up because the cuts required in other programs will be too large to be politically achievable. If that occurs, the attempt at restraint will fail and, as has been the case over the last few years, no effective cap will be in operation.

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

The PRESIDING OFFICER (Mrs. CARNAHAN). The clerk will call the roll. The senior assistant bill clerk proceeded to call the roll.

Mr. REID. Madam 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. Madam President, I ask unanimous consent that the Conrad

second-degree amendment be agreed to; that the time until 3 p.m. today be for debate with respect to the Feingold amendment, as amended, with the time equally divided and controlled by the two leaders or their designees; that during this time, whenever Senator GRAMM of Texas raises a Budget Act point of order against the amendment, and a motion to waive the point of order is made, the Senate vote on the motion to waive at 3 p.m., without further intervening action or debate; provided that no other amendments or motions be in order prior to a vote on the motion to waive the point of order.

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

Under the previous order, the second-degree amendment is agreed to.

The amendment (No. 3916), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3915

Mr. GRAMM. Madam President, I wish to explain why I am opposed to this amendment, why I intend to raise a point of order against it, and why I believe that point of order should be sustained.

Let me begin by saying we have not adopted a budget this year. A budget has never been brought to the floor of the Senate during this session of Congress. We have not been in a similar position since 1974. We are now being asked on a Defense authorization bill to have the Senate commit to a budget figure outside the budget process. In fact, the point of order arises because we are basically going outside the budget process and dealing with an amendment that was not reported by the Budget Committee.

In doing so, we would be committing the Senate to a level of spending that next year is \$9 billion more than the President requested and \$52 billion more than we spent last year. We would be going on record as agreeing to setting a constraint under which we could spend \$25 billion this year that would not be counted until the following year.

In other words, we could actually spend \$25 billion more than the \$9 billion more that we are committing above the level the President requested by what is called advanced appropriations. I do not believe the Senate should lock itself into a budget that has not been approved by the Budget Committee. We had a vote on that budget that was brought up on another bill. Nobody voted for it—not one Democrat or one Republican. We are now being asked to commit to a figure of \$9 billion above the President's, \$52 billion above last year, with the ability to get around that constraint by spending \$25 billion in advanced appropriations. Last year was the largest level of advanced appropriations in American history, and that was \$23 billion. This would set a new global record. And I do not believe this represents good policy.

This is adamantly opposed by the President. OMB has notified Members

today that they are opposed to it. There is no possibility the House will agree to this. I say to any of my colleagues who are tempted by this and by the thought that any kind of budget numbering process is better than none, the bottom line is the House will never agree to this. What they would be doing in the process would be committing to a level of spending \$9 billion above the level the President requested, with a \$25 billion advanced appropriation escape hatch.

I do not believe this is a good deal. I wish we had more than an opportunity to offer an amendment, but a consensus among Members that when we didn't adopt a budget, we needed a permanent budget enforcement process. This would give us the process but at numbers that are grossly beyond the level the President requested and far beyond the numbers I could ever support.

So I hope my colleagues will sustain this budget point of order. I don't think it is good for the Senate to be trying to write a partial budget on a Defense authorization bill instead of bringing a budget up and debating it and amending it. The amendment will be subject to amendment if we do not sustain the point of order. There will be amendments offered. I will offer amendments if we do not sustain the budget point of order.

Let me reiterate briefly that this is \$9 billion more than the President requested, \$52 billion more than we spent last year. This would have advanced appropriations of \$25 billion, which would be the largest in American history, that would be sanctioned under this agreement. The White House is adamantly opposed to this amendment. The House will never accept this amendment. Therefore, it cannot and will not become binding.

I urge colleagues to sustain the budget point of order. This is a budget point of order with a purpose. Sometimes these budget points of order represent sort of a "gotcha" kind of circumstance, where they apply, but the logic of them is kind of convoluted. They are almost accidental. The budget point of order I raise is not accidental. It says that an amendment that alters the budget process has to come through the orderly process of being reported by the Budget Committee or else it is subject to a point of order.

I remind my colleagues that we are under a unanimous consent request. So by making the point of order now, I am not cutting off anybody's debate. That will continue until 3 o'clock. I say that so everybody understands exactly where we are.

The pending amendment contains matter within the jurisdiction of the Committee on the Budget, and it has been offered to a measure that was not reported from the Budget Committee. I therefore raise a point of order against amendment No. 3915 pursuant to section 306 of the Congressional Budget Act.



Let me ask the Parliamentarian a question. Is 3915 the right number, given they have merged the amendments?

The PRESIDING OFFICER. It is 3915, as amended.

Mr. GRAMM. Madam President, I make that point of order against the pending amendment under section 306.

Mr. FEINGOLD. Madam President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment.

The PRESIDING OFFICER. The motion is pending. Who yields time?

The Senator from New Mexico is recognized.

Mr. DOMENICI. Madam President, parliamentary inquiry. Is there a time limit on the situation with which we are confronted?

The PRESIDING OFFICER. Yes. The time is evenly divided up until 3 o'clock.

Mr. DOMENICI. Then we must proceed to a vote?

The PRESIDING OFFICER. That is correct.

Mr. DOMENICI. I thank the Chair.

Who is in charge of the time in favor of the amendment?

Mr. FEINGOLD. Madam President, how much time do we have on our side?

The PRESIDING OFFICER. Forty-one minutes remain for the sponsors.

Mr. FEINGOLD. How much time does the Senator want?

Mr. DOMENICI. May I have 20?

Mr. FEINGOLD. I yield to the Senator from New Mexico 20 minutes.

Mr. DOMENICI. Madam President, it is not often I would come to the floor on a Thursday afternoon when a Defense authorization bill is before us and join in an amendment offered by the chairman of the Budget Committee on the other side, who has failed to produce a budget resolution heretofore. I believe his side of the aisle had a responsibility to do that. They did not do it. That is not the end of the world.

We are today confronted with that situation. The truth of the matter is that there will be an awful lot of Senators pondering the appropriations process and wondering whether Senator PHIL GRAMM from Texas, who knows an awful lot about this, is right when he speaks of the dangers to America of authorizing a budget produced by the Congress, not the President, which would exceed the President's annual appropriation by \$9 billion.

My friend from Texas makes that appear to be a very big issue. Let me suggest that I would not join in producing an alternative to a congressional budget that would permit us to spend between \$9 billion and \$10 billion more than the President in appropriations if I did not see down the road something a lot more onerous than a congressional attempt not only to limit spending for each of the next 2 years, but also to insert the points of order that

are going to keep this Congress from going absolutely wild on entitlement spending during the ensuing months.

I think I could say this is going to be a year without any restraints, if it were the \$9 billion we were arguing about. But I tell you, that is not it. For all the Senators who have been praying for the day when there is no longer a Budget Act, they thought they would be confronting appropriations bills run wild. But the truth of the matter is, it is the entitlement programs that are coming to us during the next 4 months, until October 1, that will have no constraints on them and no 60-vote points of order, which have saved the American people and this Congress from hundreds and hundreds of billions of dollars of outyear, next year expenditures.

For formal purposes, the Senator ought to put my name on the amendment as a cosponsor. This amendment sets caps that is expenditure limitations—for 2003 and 2004 with a Defense firewall in the Senate but only for 2003, and that is good enough. That means in the Senate we will not spend Defense money for domestic programs, but neither will we spend the opposite. We will not spend domestic money for Defense programs. That is what a wall means.

White House, before you get on the telephone and do what Senator PHIL GRAMM said you have done, Mr. President—our President, down on Pennsylvania Avenue—before you say to all the Republicans, "Vote against this," let me make a couple points for you.

One, this is not your budget, Mr. President—I am speaking of our President down at the White House. It is not your budget. You have a budget. The law of America says you produce a budget. I do not know what would happen if you did not, Mr. President, but you did.

Then it says in another place in the law that Congress passes a budget, and that congressional budget is for the use by the Congress in their attempting to get their priorities adopted by the Congress. And, Mr. President, if I were you, I would say: Congress, pass the best one you can, but remember, that does not mean I am going to sign every bill you produce.

The President still has the veto threat on every appropriations bill, if that is what he wants.

I submit to you, Mr. President, my friend down on Pennsylvania Avenue, just because the Senator from Texas has talked about the ravages of his \$9 billion that we might spend in excess of your appropriations, just remember, you can vitiate every one of those with negotiations in the appropriations bills and a veto just like you have today. We cannot change your veto authority.

We have proceeded in a realistic manner with one of two alternatives, and listen up, there are not 20, there are 1 or 2. Do we do this, which is a half-baked budget resolution? It is half-baked because you did not do your job, half-baked because you did not do

your job because you were supposed to produce a budget resolution, and you should not make up your mind that it is too tough this year so we will not do it. I heard somebody on that side say that. That is not the law.

For 27 years, when I was either chairman or ranking member, we produced a budget every single year, no matter how tough it was, no matter who had to vote on issues on which they did not want to vote. Senator Baker sat right there on that table with the appearance of a Buddha, and every Republican who came up, the Buddha would say—and 37 times the Buddha won.

We did precisely what the Republicans wanted to do to move our country ahead. You did not have that. That is not my fault. That is your fault. But it isn't America that ought to suffer from it, nor should Congress be put in a position where they cannot do any work.

I have come to the conclusion it is a lot better to get caps, and they are at pretty meaningful levels. Next year's are pretty low. The one for the budget we are writing today is \$9 billion to \$10 billion over the President's, and I submit when all this day is gone and the rhetoric has simmered down, it is going to be very difficult, even with our President with his pen in hand waiting to veto, it is going to be very difficult to come out of this spending less than the amount that we put in these caps. I hope we can. I will be there attempting to enforce them, for what it is worth. The truth is, those caps are better than none, and the President retains his veto authority.

For the defense of America, for which you asked us for so much money, Mr. President, we put all that money in and we got a firewall, meaning you cannot spend defense money for anything else. That is a very important budget consideration.

We set limits on advance appropriations consistent with what we wanted on this side when we met.

We extend the 60-vote budget points of order, including the pay-as-you-go.

We eliminated a gimmick regarding the crime victims fund, and I think you all have seen that and concurred with it. We showed it to you 10 days ago.

I do not know if 3 o'clock is enough time, or quarter of 3, but I think it is. If somebody wants more time and we need to explain it better, or I need to explain it to my side better, just come down and ask for some time. I think we will get it.

I repeat, I want to talk to two situations for the next 2 minutes. I say to my fellow Senators, through no fault of this side of the aisle, we are in a real predicament today. If we let a whole batch of bills get through and do not put some points of order and some budget-like points of order and some caps on how much you can spend after which the expenditure bills get hit—we have to do that. We cannot sit here and watch this all go down the river, with the economy already in sputtering shape.

Second, the President of the United States does not lose anything in terms of his power, his strength. If anything, he gains a potential for orderliness in the Senate and House as we finish our business that we might not have but for the adoption of this amendment.

My last remarks: I do not know that this is the best bill on which to put this, but I do not know which bill is next. It is sort of the chicken and egg. The appropriators are waiting for the number. We are saying: You know the number. Let's bring an appropriations bill up and we will put this on it.

Others are saying that is too late if you do that. So here is a big authorizing bill. If we approve this—and I urge that we do; Senator STEVENS, if he had time, would be here concurring in this, pledging to stick to the numbers—if we approve this, we can put it on another bill later if, as a matter of fact, this defense bill does not pass or gets tied up in a conference that takes too long.

If anybody wants any further explanation, I will do it here on the floor and seek time, or I will meet them wherever they like and show them what we have done. I believe we might turn somebody. Thanks to Senator FEINGOLD for his courage, and Senator GREGG who is with the Senator on this amendment. If he is not, we must ask him to be a cosponsor because he had a lot to do with it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I ask unanimous consent that the Senator from New Mexico, Mr. DOMENICI, be added as a cosponsor of the pending amendment.

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

Mr. FEINGOLD. How much time remains on our side?

The PRESIDING OFFICER. The Senator has 29 and ½ minutes.

Mr. FEINGOLD. I yield 15 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Madam President, I thank my colleague. We have heard some arguments advanced by the Senator from Texas as to why Members should not vote for this amendment. The Senator has said this has not gone through the budget process. I reject that argument by the Senator from Texas. The fact is the numbers that are before us are exactly the numbers that passed the Senate Budget Committee on the budget resolution that I took through the committee. That is a fact.

The fact is, I reported out of the Budget Committee, pursuant to the budget I proposed, \$768.1 billion in discretionary spending for this year. That is precisely the same as what was in the President's budget. It is true we did not adopt his policy. We did adopt his number.

The Senator says this is outside what the Budget Committee has rec-

ommended. It is not outside what the Budget Committee has recommended. It is precisely what the Budget Committee recommended in the resolution I offered—\$768 billion this year, \$786 billion next year. Where is the money going? I say to my colleagues who think that is too much money, here is where the money is going: Last year we spent \$710 billion. The President has asked for, and we have agreed to, a \$45 billion increase for national defense, every penny of it requested by the President of the United States.

The President asked for an additional \$5.4 billion for homeland security. We have endorsed that, every penny of it requested by the President of the United States. Now there is another \$7 billion, \$7 billion on a base last year of \$710 billion. That is a 1-percent increase available for all the other functions of Government, after the increase asked for by the President for defense, after the increase asked for by the President for homeland security.

If we look at the amount of money that is in this budget for this year, the \$768 billion, we have provided for the year thereafter an increase of \$18.4 billion. That is an increase of 2 percent, and that is precisely what was in the budget resolution that passed the committee. It is true, we have not yet considered a budget resolution on the floor of the Senate. That is not unprecedented for June. There have been many times we have not concluded work on a budget. In fact, 4 years ago, we never did complete work on a budget through the whole process.

So we know the reality. We know what has occurred in the past. The fact is, we have passed a budget resolution through the committee. The budget numbers that are in that document are the numbers that are before us today. They represent serious constraint on spending for both this coming year and the year thereafter.

When the Senator from Texas says there is a \$50 billion increase over last year, it is actually a \$58 billion increase. But where is it? Again, I remind my colleagues, it is in defense; \$45 billion of the increase is in national defense, every penny of it requested by the President of the United States.

Is the Senator from Texas saying he is against that increase in defense? And \$5.4 billion is an increase in homeland security, every penny requested by the President of the United States. Is the Senator from Texas against that increase in homeland security requested by the President of the United States? The only other money is \$7 billion for everything else, a 1-percent increase.

Let's get serious about budgets and let's get serious about what is being discussed. The Senator from Texas raises advanced appropriations. Advanced appropriations have been done for many years. Why? Because the school year does not fit the fiscal year of the Federal Government. The Federal fiscal year ends at the end of September. Everybody knows the school

year does not end until May or June. So advanced appropriations were adopted to fit the reality of the school year in America. There is nothing wrong about that. There is nothing wrong with that at all.

The Senator from Texas says the House will never agree. That is not our job, to write a budget that agrees with the House. Our responsibility is to write a budget for this Chamber. We will then negotiate with the House on an overall agreement. The first thing we have to do is reach a conclusion in this Chamber.

What we are proposing, once again, for discretionary spending for fiscal year 2003, is exactly the same number the President sent up in his budget, \$768 billion. That is what was in my mark that passed through the Budget Committee and that is what we are proposing. It is true it is not the same policy as the President proposed. He proposed a different way of spending the money, but he proposed exactly that same number.

I am proud of the way the Budget Committee has performed. The Budget Committee had dozens of hearings and produced a responsible document, one that restrains spending, one that did not contain a tax increase or any delay in the scheduled tax cuts, but one that also called on the Congress to put in place a circuitbreaker mechanism so that next year it will be a responsibility of the Budget Committee to come before our colleagues with a plan to stop the raid on Social Security.

The Budget Committee had more debt reduction than the President proposed, less deficits than the President proposed and said that additional tax cuts can be had, but they ought to be paid for, and to put in place serious restraint on spending, not only for this year but in the years following.

I am proud of that budget resolution. I am proud of the parts of it that are before us now, that give our colleagues a real opportunity to choose. Are we going to have a budget for this coming year and budget caps for the next year? Are we going to have a continuation of the budget disciplines that are critically important to keep this process from spinning out of control or are we not? That is the choice that is before the body.

I want to again thank my colleague from Wisconsin who has been a valued member of the Budget Committee and who came to the floor with something he negotiated on both sides of the aisle. I then became involved with him in an effort and we have negotiated with many more Members on both sides of the aisle. I think we have a responsible package, and our colleagues are going to have a chance to vote in a few moments. I hope they will carefully consider the implications of a failure to pass this amendment.

I yield the floor, and I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, in this modern age, we are used to revisionist history, but I have to say the debate we just heard is one of the most extraordinary examples of revisionist history I have ever heard. I am tempted to get into this debate about this wonderful budget that when it was voted on not one Democrat voted for it and not one Republican voted for it. That is a vote of confidence, or lack thereof, which I have never witnessed before.

The budget that was rejected without a single vote in favor was a budget that set taxes above the level requested by the President the first year, the first 5 years, the first 10 years, and consistently spent more money. In fact, it raided Social Security in the first year more than the President's budget, even though it had taxes higher than the level requested by the President because it increased spending by over \$13 billion. But that is an old debate. Why debate a budget that was rejected unanimously?

Now we are on another debate, and it is a wonderful debate because we have our colleagues who are saying we want to control spending, and we need this budget to control spending. There is only one problem. The budget increases spending. The budget proposes spending \$9 billion above what the President requested.

This amendment before us proposes spending \$52 billion above last year, and it does not stop with spending \$9 billion more than the President wants. That kind of budget constraint we have had a lot of. It not only spends \$9 billion more than the President wants, but it allows \$25.4 billion to be appropriated this year that won't count until next year, what is called advanced appropriations. Last year, we set a record in American history with \$23 billion. This year, in this amendment, we would condone in advance \$25.4 billion, but that is not the worst of it. We have had a budget provision that banned delayed obligations.

Senator DOMENICI was a big proponent of this provision, as I remember. This was to try to deal with this phony little game we play by starting a program on the last day of the fiscal year and claiming in the budget that it costs one-three hundred and sixty-fifth as much as it really does, and then have it permanently in effect.

Interestingly enough, not only does this amendment spend \$9 billion more than the President requested, not only does it say you can spend \$25 billion more than that, it gets us back in the game of deferred obligations by striking subsections (a) through (f), (h), and (i) of House Concurrent Resolution 290. That is the section that deals with deferred obligations.

This doesn't have to be belabored. This is not about controlling spending. This is about spending. This is about force-feeding the President and making the President take \$9 billion more than he requested, setting up a procedure

where we will spend \$25 billion more than that, which will not count because it will be spent next year, and then allowing us to get into the game of spending it, but deferring the spending until a point where it doesn't count. This is an issue about spending, and this point of order is about controlling spending.

The President has not been silent on this. Last night he spoke. I will read what he said:

I know there's going to be some tough choices on these appropriations bills, but I want to make sure that everybody understands with clarity that the budget the House passed is the limit of spending for the United States Congress.

If we adopt this amendment, we will be saying the President wants \$9 billion less, but we are going to go on record saying we are going to spend \$9 billion more. I will be with the President on this issue. Other Members will have to decide where they are.

We have a letter dated today from the OMB Director, and I will read part of it:

It is my understanding that the Senate will continue consideration today of two pending amendments regarding budget enforcement—a Feingold amendment and a Reid/Conrad amendment. I ask that you strongly oppose these amendments and encourage your colleagues to oppose them as well.

Both amendments would lock in a spending cap that is much too high—over \$19 billion more than the President's budget request.

Budget enforcement in Congress is vital and necessary but enforcement at the wrong number could be even more detrimental to our budget outlook.

Now, if we had not waived the budget last week, maybe I would take this seriously. If 60 Members of this body had not last week voted to waive the Budget Act to spend more money, maybe I would take this thing seriously. But I don't take it seriously. We rejected making the death tax permanent. This amendment would spend nine times as much money next year as making the death tax penalty permanent would have cost.

Our colleagues do not have a nickel, they do not have a penny, to let working people keep more of what they earn, but they have billions to spend. They never, ever, have enough to let working people keep what they earn, but they have always got plenty to spend.

This is an effort to bust the President's budget. This is an effort to mandate that we set a budget \$9 billion above the President's level. This is a proposal that would let us back into the gimmick business on deferred obligations. This is a budget that would let us advance appropriate—which is spending money but not counting it until another year—at a level unprecedented in American history. The President does not want this. OMB has asked that we oppose it. I hope my colleagues will oppose it. But I hope they will understand, whether they oppose it or whether they support it, that this

amendment is not about budget control. This amendment is about spending, pure and simple. If you want to spend more, you want this amendment.

Now, I am not saying it is going to be easy in the budget process not having a budget. But we don't have a budget. We have not passed a budget, and I don't believe we are going to see one brought to the floor. People are proud of the budget resolution considered in the Budget Committee, but not proud enough to bring it to the floor to debate it, amend it, and vote on it.

The President has said he will veto appropriations that violate his budget and the budget adopted by the House. What this amendment would do would be to legitimize \$9 billion in additional spending. That is what it does.

Last week, we voted to waive the same points of order to spend money. We have done it over and over again. What we are doing here is legitimizing more spending. If you don't want to do it, you want to vote and sustain this point of order. Those who want to waive the point of order will have to have 60 votes. Maybe they have it. I pointed out earlier, this is not going to become law. I don't think it ought to be passed by the Senate. I don't think we ought to be slapping the President of the United States in the face today.

When the President last night said he was going to hold the line on his budget, to then turn around and do this is to say: You say you are going to hold the line, but we are not going to let you do it.

Count me with the man. Count me with the President. That is what this issue is about.

I hope when people cast this vote, they won't be confused. I hope they will understand. This is not about budget points of order that we just waived last week. This is not about process. This is about spending \$9 billion more spending next year, \$25 billion more spending above that in advanced appropriations, and an unlimited amount of spending through a gimmick. I don't understand why people who support the budget process, after all our effort to get rid of these delayed obligations, can support this amendment. I am sure our colleagues remember the games that were played where we started a program on September 30 of a year so that it becomes law but you only count 1 day of the spending. Why anybody could say this is about controlling spending and could have an amendment that strikes the point of order on deferred obligation, I don't understand. This is about spending, pure and simple.

Don't be confused. If you are for spending, if you are against the President, then vote to waive the budget point of order. But if you are with the President, if you are against all this spending, if you think it has to end somewhere, end it right here today. Let's stop this process today. Do not add \$9 billion more than the President asked today. Do not spend \$25 billion

beyond that in advanced appropriations today. And do not let Congress back in the gimmick business today. Vote to sustain the point of order.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I yield myself such time as required.

The Senator from Texas knows very well that my goal in working on this amendment has nothing to do with trying to upset the President's budget. We have talked together, worked together on the Budget Committee, and he knows exactly what I and other Members are trying to do. We think there ought to be some rules, there ought to be some caps, there ought to be some budget discipline. I don't think he could point to one shred of information or comment I have made throughout the months to suggest it has anything to do at all with trying to disrupt the President.

I remember welcoming the comments of the OMB Director when he suggested some aspects of what we were trying to do made sense. I will work with anybody on this in order to get it done, because in the 10 years I have been in the Senate, we have had rules, we have had budgets disciplines, and they have had good results. Sometimes when the Democrats were in the majority, and sometimes when the Republicans were in the majority, at least on this issue, I have seen this body function, and function well, but only because there were caps, only because there were rules and because there were enforcement mechanisms.

The Senator from Texas complains we are doing this outside of the budget process. I agree with him. This is not the ideal way to do this. But he knows why. He saw the efforts we made in the Budget Committee and the difficulties we had. We could not get it done there. It is not my idea to have to do it on the Defense bill.

The Senator says, even if the Senate were considering the budget resolution, that the resolution could not have accomplished the extension of the budget process that our amendment would do. But the Senator from Texas knows that a budget resolution, unlike this one, cannot constitutionally bind the President or his OMB. We have to pass a law, not just a resolution to extend the Budget Act.

I would say nobody in the history of the Senate knows this better than the Senator from Texas, who is very famous across this country for passing statutes to control Government spending. A statute has much more enforcement power than simply doing it on a budget resolution.

The Senator also suggests this is not going to go anywhere because the House will not accept it. I certainly agree with my chairman, Senator CONRAD. The one thing that makes sure nothing happens is if we do not do anything at all in the Senate. If we send a message to the House that we do not

need rules and disciplines, that is an invitation to them to do nothing.

On the other hand, if we do something here, and even though the Senator from Texas knows it is much less than I wanted to do at the beginning, and less than he wanted to do, maybe it will put a little pressure on the other body. Maybe they will hear from their constituents, who will say: At least in the Senate they still believe there ought to be some limits and some caps and some rules. Why don't you folks in the House do the same thing?

If we do nothing, there is no pressure on them. As the chairman indicated, if we at least put a marker down here, put something in this bill that suggests some limits and some rules, we have a chance that something will come through in a conference report that will achieve bipartisan limitation on this.

We have now heard arguments about the levels in our amendment being too high. We also heard arguments that they are too low. In this respect the debate is taking on sort of the hallmarks of any debate to set a level. There is always going to be disagreement about the amount. But let's be clear about the amount in this 2-year period. The chairman of the committee has indicated we have sought to use what I believe to be the most neutral starting point. The number for 2003 is what the Budget Committee reported. It is what we included in the Gregg-Feingold amendment, for which 49 Senators voted, including the Senator from Texas. On June 5, he voted for these exact 2-year limitations. I admit there were 3 other years there on top of it, but he did vote for these figures for those 2 years.

It is also the most neutral and most appropriate figure because it is our best estimate, as the chairman has pointed out, of what the President's budget request actually requires, what it really is when you cut away the gimmicks and see what the real number is.

I think this is a consensus number that is reasonable. As the Senator from Texas knows, he and I have worked together in various meetings to try to have an even stronger budget process. We have tried to draft amendments, and we reached agreement on a budget process amendment that, had it been enacted, would have created powerful incentives to reduce the deficit and further protect Social Security. I stood ready and I stand ready to work with him to tighten fiscal discipline. In the battle for fiscal responsibility, I want the Senator from Texas to know I am and will be his ally.

But as the Senator from Texas also knows, we did not offer the amendment we drafted. Now the question is, in the absence of that, in the absence of a more perfect solution to the budget process, what will we do?

We really only have a couple of choices. We can stand by and simply do nothing or we can at least do this. That is the choice before the Senate today.

Nobody really believes there are going to be a lot of real opportunities to do this in the future if we do not do it today.

I would prefer a stronger budget process. In fact, not only in committee but on the floor I, with Senator GREGG, fought for a stronger budget enforcement regime, and we offered our amendment to the supplemental appropriations bill.

I voted with the Senators from Arizona and Texas when they sought to limit spending on the supplemental appropriations bill. I stood ready, and I continue to stand ready, to work with the Senator from Texas to fight for the process changes that we worked on together. But the amendment that Senator GREGG and I offered received only half of the votes—it actually needed 60 to prevail.

The efforts to stop spending items on the supplemental appropriations bill fell well short of a majority, and we have not offered the amendment we worked on together.

So we face a very stark choice. We face the expiration of the budget process. We have to face the question, Is the absence of a budget process preferable to the 2-year extension of the existing process that I and Chairman CONRAD and Senator CANTWELL and now Senator DOMENICI offer today? Obviously, it most assuredly is not. Even though there are imperfections in the existing budget process, it does provide some budget discipline. It creates 60-vote hurdles for spending measures that exceed the caps. It requires 60 votes to expand entitlements or cut taxes without paying for the cuts.

These constraints have been a valuable force for consensus. They have helped ensure the work we do in the Senate can garner the support of three-fifths of the Senate, not just a bare majority. I think these are useful bulwarks in the defense of the taxpayers' dollars.

Again, there could be better budget processes. After the adoption of this amendment, if it is adopted, I will still join with others who seek to advance further budget improvements. Even if this amendment is adopted, nothing will stop the Senator from Texas from offering the budget process on which he and I were working.

But at least let's draw the line. Let's at least prevent further erosion of budget discipline. Let's seek further improvement where we can, but let's at least ensure that things do not get worse.

The Senator from Texas may consider the amendment before the Senate today to be half a loaf or maybe even less. I admit the amendment before the Senate today is not perfect, but it is a far better result than doing absolutely nothing, and that is where we are headed. Nothing is what we will get if the Senate votes down this very modest attempt at fiscal discipline.

I urge my colleagues to join at this barricade, if you will, this last stand

this year for fiscal responsibility. I urge my colleagues, more than anything else, to do this to defend the Social Security surplus. I urge them to support this amendment.

How much time do we have?

The PRESIDING OFFICER. The Senator from Wisconsin has 12 minutes; the Senator from Texas has just under 22 minutes.

Who yields time?

The Senator from Texas.

Mr. GRAMM. Mr. President, let me make clear I feel strongly about this amendment, but I have profound respect for my colleague. I am a long-time believer in the Jeffersonian thesis that good men, with the same facts, are prone to disagree.

I point out the Gregg amendment that I voted for had 5 years of budget numbers; not just the 2 years where the budget went up, but 3 years where it went down. So I thought, in terms of the whole package, it was an improvement over nothing. But I do not think it is an accident that this amendment has only the 2 years where spending goes up.

Maybe I was not tending my business, but I do not think that the Gregg amendment struck the provision on delayed obligations. If it did, I was not aware of it, and I would stand to be corrected if anybody corrected me.

I think the Gregg amendment left advanced appropriations untouched, whereas this amendment increases them by \$2.4 billion.

But ultimately, if we are talking about this being a consensus product, there is one person who is not part of this consensus and that is the President.

The President is taking a hard position, and, quite frankly, it is about time. I love our President. I have known him for a long time. I respect him. But I thought last year, in trying to work with both parties and trying to bring a new environment of bipartisanship to Washington, that he let Congress spend too much money. But it was a price he was willing to pay to try to work with everybody and try to be bipartisan. But our President is a Texan. And once you have slapped him once or twice, then he begins to think maybe you mean to fight. The bottom line is the President has said, I am going to limit spending to the budget that I proposed, and to the aggregate number adopted in the House. The amendment before us would add billions of dollars to that. It would not only condone but basically justify \$25.4 billion of spending—in addition to the \$9 billion I spoke of earlier—counted a year later through a process called advanced appropriations. This would be the highest level in American history.

Finally, to add insult to injury—and I asked somebody to explain to me why it is in here—this amendment strikes the language on delayed obligations. If people weren't meaning to cheat, why do they make it legal? If people didn't expect to be in jail, why are they pull-

ing the bars out of the windows? If people aren't expecting to take advantage of something we had stopped in the past, why are they taking the prohibition against it out?

I do not know if my colleague from Oklahoma is aware of it, but the amendment before us in part strikes our old language preventing delayed obligation.

Our colleague will remember the bad old days when you wanted to fund a great big old costly program but you didn't have the money in the budget, so you started it on September 30—the last day of the fiscal year. Then it cost only 1 day. It was just magic. You could spend 365 times as much money by just starting the program on the last day. We finally wised up to that. We stopped it.

Now we have an amendment where our colleagues say they are trying to stop spending. They are not for spending. They want to stop spending. But yet they strike the language on delayed obligations, which is a gimmick that has been used to spend billions of dollars.

I do not know how you could say they don't intend to do it when they are legalizing it.

To sum up—because I know we have others who want to speak, including my colleague from Oklahoma—this comes down to whether you are with the President or you are with the spenders.

With all good intentions—I don't doubt good intentions on the other side—the bottom line is that this amendment, if adopted, gives credence to and gives cover to people who mean to bust the President's budget in three ways: \$9 billion on its face, \$25.4 billion in advanced appropriations, and then cheating with delayed obligation.

If you are with the President, if you are for fiscal restraint, if you want to stop the spending spree in Washington, this is not the way to do it.

I don't mind people making the best arguments they can. But I don't think you can have it both ways. I don't think you can say this is about fiscal restraint, and then say: Oh, by the way, we want to bust the President's budget by adopting this.

I mean you have to be fish or fowl. You are either with the man or you are against the man. I am with the man.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, the Concord Coalition indicated today that our amendment “provides a strong and needed dose of fiscal discipline.” I ask unanimous consent that a copy of the complete Concord Coalition statement appear in the RECORD.

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

THE CONCORD COALITION,  
Washington, DC, June 20, 2002.

CONCORD COALITION SUPPORTS BUDGET  
ENFORCEMENT AMENDMENT

WASHINGTON.—The Concord Coalition said today that the Conrad-Feingold-Domenici bi-

partisan budget enforcement amendment provides a strong and needed dose of fiscal discipline. It sets new discretionary spending caps for two years at tough but achievable levels, extends the pay-as-you-go (paygo) requirement for entitlement expansions and tax cuts, and renews important points of order that enforce discipline.

The rapidly deteriorating budget outlook highlights the importance of this amendment. With sudden speed, budget deficits are back and the first time in several years there is no clear agreed upon fiscal goal. As a result, open-ended budgeting is back. Rather than setting priorities and making hard choices, Congress and the President are falling back on the old habit—cut taxes, increase spending, eat up the Social Security surplus, and run up the debt. It's a dangerous path to follow when looming just beyond the artificial 10-year budget window are the huge unfunded retirement and health care costs of the coming senior boom.

Restoring a sense of fiscal discipline—and eventually returning to non-Social Security surpluses—is a very difficult challenge. It is virtually impossible without the type of enforcement mechanisms established in this amendment.

With the discretionary spending gaps, paygo, and vital enforcement points of order scheduled to expire, the choice for policymakers is whether to extend the current mechanisms—and thus maintain a measure of fiscal discipline—or to simply let the entire budget enforcement framework expire and be left with renewed deficits and no mechanism for enforcing fiscal discipline.

In Concord's view the choice is clear. Allowing caps, paygo, and 60-vote points of order to expire is an open invitation to fiscal chaos. The Concord Coalition strongly commends and supports this bipartisan effort to restore fiscal discipline to the budget process.

Mr. FEINGOLD. Mr. President, I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 5 minutes.

Mr. DOMENICI. Mr. President, first of all, my good friend, Senator GRAMM, is doing exactly what good debaters do, except that I caught him, so it won't work.

First of all, it is obvious on the point of the President's budget and this budget that this isn't the President's budget, it is Congress's budget. The President's budget is alive. The President's veto powers are alive.

What we are trying to do is pass some constraints that Congress will impose on itself in terms of entitlements, which have the opportunity of going through the roof in hundreds of billions of dollars, between now and October 1 and thereafter with no 60-vote point of order.

Down at the end of Pennsylvania Avenue, Mr. OMB Director, just get the President ready when this Congress sends entitlement programs that are going through the roof, because the 60 votes won't be available here, and they will end up on your desk.

The Senator from Texas said it 10 times, but I will only say it once.

I am with the President. He is the best President we will have in this century. When his first term is finished, that is what we will begin saying about

him. But, Mr. President, do not be fooled by people who want you to get involved in something in which you don't have to get involved. And you lose no prerogatives; you keep all of them.

The second point is, when Senator GRAMM loses his major argument, he turns to another one. So he is up here about as loud as I speak talking about this delayed obligation.

Let me tell Senator GRAMM, just take another look at the late obligations. First of all, it sunsets at the end of this year. So it isn't around. It is literally not around.

Mr. GRAMM. Why didn't you extend it?

Mr. DOMENICI. I don't speak when you are speaking, Senator. Would you mind?

Mr. GRAMM. All right.

Mr. DOMENICI. Would you mind acknowledging that you shouldn't be speaking when I am speaking? I would appreciate it very much.

Mr. GRAMM. All right.

The PRESIDING OFFICER. The Senator from New Mexico has the floor.

Mr. DOMENICI. Mr. President, the second point is, for as long as we have had this provision that he is now telling the President he is going to lose, which provision I invented, we have never used it because it can't be interpreted. We have never been able to interpret what these words mean, which is now the real reason the President should come down on us because we are getting rid of it. It never was used. It will never be used. It is not interpretable. I knew that one year after it was passed, and I considered getting rid of it because it isn't necessary. It wouldn't be used.

My last point is a very simple one.

Fellow Senators, writing a budget resolution is essentially the work of the Congress. The President is not bound by it. He loses no authority. He can veto every bill that comes through here if it doesn't meet what he wants. But I will tell you, fellow Senators, if you think you can live within the President's budget with no problems, then I suggest to you that you had better look at what is eliminated from the budget: \$1.2 billion for veterans' medical care, \$1.2 billion for the violent crime trust fund, and \$1.7 billion for State and local enforcement. They are not in his budget.

We will have to decide whether we are going to put them in and cut something else. Nonetheless, this will not change the President's prerogative to veto every single bill.

But, Mr. President—I am not speaking to you, Mr. President, but I am speaking to the President down the street on Pennsylvania Avenue—if something like this is not adopted, then remember this afternoon when Senator PHIL GRAMM said there was an invitation to spend, and see what you have when entitlement programs come down to your desk because they passed up here 51 to 48, or 51 to 49 because

there was no 60-vote point of order to keep them from breaking the budget because we will not have that protection unless this amendment is adopted.

I would say for an afternoon that it is a pretty good piece of change for the American people and a pretty good way for the President to say, I will veto, but I would rather not have all the entitlements coming up here. Which entitlements? You know what they are. They have to do with the various medical programs. They have to do with everything we are going to be looking at for Medicaid reforms and Medicare reforms. Sixty votes is not going to be applicable.

It seems to this Senator, Mr. President, that you ought to stick to your work and to your veto authority, and you ought to let us do our budget because we can help you a lot when we don't send you all the entitlement bills.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, first of all, I am not telling the President anything. The President was telling me. I read what the President said last night. I am joining my voice with the President's, but I am not speaking for the President.

Second, our problem is that the whole budget enforcement expired—not just this one provision. We are extending the rest of it. We are not extending this provision.

The bottom line is, this is about \$9 billion. Senator DOMENICI says we can't live within the President's budget. I believe we can live within the President's budget. And the President has asked us to try.

Now, granted, the President can do whatever he wants to do. The question is, Do Republican Senators want to vote to go on record for a budget number that is \$9 billion more than the President says he is going to stand behind? I think that is why it comes down to the question of whether you are with him or whether you are against him. I am with him.

Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator from Texas controls 14½ minutes.

Mr. GRAMM. Mr. President, I yield 10 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my friend and colleague from Texas for his remarks. I will just make a comment. I see the chairman of the Budget Committee is in the Chamber. Bring the budget to the floor. I can tell you, my colleagues—who might have listened to my very good friend, Senator Domenici, who says, let's vote for this amendment—this amendment is going absolutely nowhere, even if it is adopted—and it is not going to be adopted—because it is on the Department of Defense bill, I tell my colleague.

It does not belong on the Department of Defense bill. I have urged Senator WARNER and Senator LEVIN that they should table this amendment. It does not belong on this bill. Maybe we will make a budget point of order it is a little higher—it does not belong on this bill.

I am on the Budget Committee. Let's bring the budget before the Senate. Then we can have a good debate. Are we going to change points of order? Are we going to change on whether or not you can have end-of-year spending gimmicks that we have banned in the past, which evidently this one-day budget is going to do? Are we going to reverse that? I would like to know. I am on the Budget Committee.

I tell my good friend from Nevada, I believe the Senate procedures should work. Now, for whatever reason, the majority has not decided to call up the budget. So this is the second time that various Senators have said: Well, let's do the budget on whatever authorization bill is going through the Senate. That is not the way it should work. It is not the way it has worked. I have been in the Senate for 22 years, and it has never worked this way.

We have always passed the budget, and it has not been easy. I will tell the majority, I know it is not easy. I will help them try to work it. I want to see the Senate pass a budget. I do not happen to agree with the majority's budget, but I will help to try to formulate the process to go through the budget procedure to pass a budget. I believe in it. But it does not belong on DOD authorization.

Let's just assume that it passed. I hope and I believe it will not, but let's just assume that it passes. OK. So the Senate passes the Senate budget—or part of the Senate budget, because I do not believe this is the entire Senate budget. I do not think this is what passed the Senate Budget Committee, which I serve on, and we spent a couple days in markup. But we had lots and lots of hearings. It was a lot more extensive.

I don't know the difference between this and what passed out of the Senate Budget Committee, but I did not vote for it when it came out of the Senate Budget Committee. But I know one thing: It doesn't belong on the DOD authorization bill. I know my friends and colleagues from the House, and they would say: Thank you very much. That is not going to be accepted in conference. You have wasted your time—totally, completely.

Budgets have to pass both the House and the Senate if you want to have a binding budget. It does not do any good just to pass it in the Senate by one amendment on one day. That has no impact whatsoever. So we are absolutely wasting our time.

I urge my colleagues—I urge the majority because this is not in the minority's capability. The majority should bring this budget as passed out of the Budget Committee and try to pass it



on the floor. That is what we should do. Instead, we have this game, and it just happens to be the Democrats' budget. Obviously, the President does not want it.

My Budget Committee staff tells me it is \$21 billion higher than the figure the President submitted. It is not a 1-year budget; it is a 2-year budget. Wow. OK, it is \$21 billion. We increased the amount you can have on advanced appropriations, something that probably not three people in the Senate really understand. But we are going to increase that figure from \$23 billion to \$25 billion. Oh, we are going to do that. Oh, now we are going to be changing the rules of the Senate dealing with end of the year, beginning new programs, delayed obligations. Oh, we are changing that.

Wait a minute. I say, if we are going to do all these things, let's do it on a budget. Then, when we eventually pass it—it may not have my vote—but when we eventually pass it, it goes to the conference with the House, with budget conferees, not with DOD conferees. DOD conferees in the House would laugh this off. We don't agree with that. It is dropped.

The President is against it. He would say he would veto it if it is in the DOT authorization bill. It has no business being in DOD authorization.

We have to learn in the Senate at some point to have a little discipline and say, when we are going to bring up the DOD authorization bill, we are going to stay on DOD. That means the managers of the bill have to table non-germane amendments. That means the majority has to bring up a budget in a timely manner, which the law says we are supposed to bring up and pass by April 15. And now we are past June 15, and we have not had the budget brought up on the floor.

The majority needs to bring it up. It does not belong on this bill. It is not going to be included in this bill, I hope. I believe a budget point of order will be sustained. It takes 60 votes to pass it, as it should, because the budget statute says it has to come out of the Budget Committee, not to be done on DOD authorization. Oh, we are going to have Senator WARNER and Senator LEVIN be the conferees on the budget? It is not going to happen. We are wasting our time.

I am embarrassed for the Senate and the way this Senate is being run, the fact that we did not bring up a budget. And then some people say: Well, we will take pieces of it and put it on DOD authorization. That is absurd. And it just happens to be a couple of pieces that say: Oh, we are going to spend billions of dollars more than the President anticipated.

I will be happy to consider pay-go. I will be happy to consider a lot of different things that are in the germane jurisdiction of the Budget Committee on a budget resolution. But to do it on DOD authorization, I think, is just a total, complete waste of time.

The point of order that it does not belong on this bill is exactly right. I am sure—and I hope—that our colleagues will sustain that point of order.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, the Senator from Oklahoma argues that we should not have brought up this amendment on this bill.

This bill authorizes appropriations for the majority of appropriated spending. It may well be the largest spending bill we consider this year. So I think it is absolutely appropriate to consider the total amount of appropriate spending on this bill.

Mr. NICKLES. Will my colleague yield for a question?

Mr. FEINGOLD. For a question.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I respect my colleague from Wisconsin. I have agreed with him on many issues dealing with fiscal matters.

Wouldn't you agree we should have a budget resolution that passed the Senate Budget Committee for consideration by both Democrats and Republicans so we would go through the budget procedure as we have always done for the last 20-some years?

Mr. FEINGOLD. It would be great to have a budget resolution, but far more important, far more useful is a statute to guarantee that these caps and enforcement mechanisms exist to bind both Houses, a mechanism that is actually the law of the land.

So this is far more important. This is an appropriate vehicle to do it.

Mr. President, I yield the remainder of my time to the Senator from North Dakota.

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

Mr. CONRAD. Mr. President, how much time remains?

The PRESIDING OFFICER. Five minutes remains for the Senator from North Dakota.

Mr. CONRAD. Mr. President, I say to my colleague, the Senator from Oklahoma, that the Senator from Oklahoma argues against himself. He gives advances as a reason to oppose putting it on this measure, that it will never pass both Houses, and that a budget has to pass both Houses.

I say to my colleague, one of the key reasons we have not brought the budget resolution to the floor is because the House passed a 5-year budget when the requirement of the law is a 10-year budget. The President submitted a 10-year budget. We passed a 10-year budget through the Senate Budget Committee. The House passed a 5-year budget, even though they cut taxes and committed to spending money outside the 5-year window.

In addition to that, they used rosy scenario forecasts.

Mr. NICKLES. Will the Senator yield?

Mr. CONRAD. I will not yield.

They used an estimate of Medicare expenses in the House that says Medi-

care is going to rise at the lowest percentage in the history of the program.

Now, how are we ever going to reconcile a 10-year budget in the Senate, which is what the law requires, with a 5-year budget in the House, when we used Congressional Budget Office estimates, which we are supposed to do, and they used Office of Management Budget estimates because it made it easier for them to cover up the raid on Social Security in which they were engaged?

That is a fundamental reason that we have passed a budget resolution through the committee and not brought it to the floor because we know we would spend a week of the Senate's time and never be able to reconcile with the House because they have adopted rosy scenario forecasts, and they have adopted a 5-year budget when a 10-year budget is required.

Mr. NICKLES. Will the Senator yield for a quick question?

Mr. CONRAD. No, I will not yield.

We hear, over and over, this is more money than the President's budget. Well, the President's budget is exactly the same amount as in this amendment. The President called for \$768 billion in discretionary spending. It is true, we did not adopt his policy. There is a \$9 billion difference because he wanted to transfer money from mandatory spending to discretionary.

Do you know what he wanted to transfer? He wanted to transfer the cost of Federal employees' retirement and claim it was discretionary rather than mandatory. I have not found anybody who thinks that is a wise policy. Clearly, it is required that we pay the retirement costs of Federal employees. That is not discretionary.

The fact is, the President's discretionary number is exactly the same as the number we have. We didn't adopt his policy, but that is his number.

Now, let's look, in comparison, to last year. Last year we spent \$710 billion in discretionary. These are the increases: \$45 billion for defense, every penny of it requested by the President; \$5.4 billion in homeland security, every penny requested by the President. The only difference is \$7 billion, the difference between last year and this year, that is going to other things. All of the rest of the increase is for defense and homeland security, every dollar requested by the President.

There is \$7 billion more, 1 percent, for all the rest of Government. That doesn't even keep pace with inflation. Between 2003 and 2004, we are capping spending at \$786 billion, an \$18 billion increase, a 2-percent increase, for total discretionary spending by the Federal Government. That does not even keep pace with inflation, either. For those who say this is spending, spending, that doesn't pass the laugh test. This is a cap on spending, a cap on spending at the same number the President proposed, a cap on spending for the second year that allows a 2-percent increase

for all of domestic spending. That is defense, parks, law enforcement—all the rest.

The fact is, without this amendment passing, there will be no budget. There will be no budget disciplines. They expire on September 30. That is the reality.

This is a choice that really matters. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator has 20 seconds remaining. Who yields time?

Mr. GRAMM. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Texas has 8 minutes 25 seconds.

Mr. GRAMM. Mr. President, first, I want to respond. Our dear colleague from North Dakota said that the President submitted a budget that actually cut some programs. Can you imagine it? Can you imagine it? In \$2 trillion of spending, the President was able to find some low priority items so that when a vicious set of terrorists attacked and killed thousands of our people we could redirect some of that money.

Our colleagues are shocked. In fact, our colleagues can give you 100 taxes that they are willing to raise. They can give you dozens of tax cuts they are willing to take back. But they can't give you one Government program that they are willing to cut. And they are stunned that in a \$2 trillion Government, the President was able to come up with about \$10 billion of things that we might defer or do without so we could instead grab a few terrorists by the throat and break their necks.

I am not stunned. I am proud. We are the only people in the world who never set a priority, who never had to make a hard choice. The President is willing to make choices. That is one of the reasons I am supporting the President.

It is true that this amendment before us does have some things from the budget resolution considered in committee. But basically three of the things are things that spend more money. The President said last night and the OMB Director wrote us this morning, asking us to oppose this amendment to help the President hold the line on spending. That is what this issue is about.

It is not just about \$9 billion that our colleagues want to spend and the President doesn't want to spend. It is also about \$25 billion more spending now that won't count until next year. And then there is the whole issue about this delayed obligation where you can play these games when you start a program.

It is true that the amendment before us has some support, but when I look at the President's position and when I look at the position before us, if our colleagues had offered the President's number without this delayed obligation and without the \$25 billion of spending that doesn't count until next year, I would have voted for it. I would have been a cosponsor of it. But it

spends \$9 billion more than the President wants. He is pretty adamant about it. It opens up a floodgate for advanced appropriations where we spend it now so that when next year comes we say, we can't possibly hold the line on spending because we have already committed to spend part of it. Only Government could get away with that. No person in the real world could possibly get away with that.

The issue before us is, Are you with the man, or are you against the man? The President asked us to hold the line on spending. He asked us to enforce his budget. Now are we going to go on record and say: Thank you, Mr. President, we appreciate your letting us know what you think, but we are going to raise spending \$9 billion above what you want whether you like it or not? That is not part of any budget. It is part of a 2-year deal where we increase spending, but it really boils down to that.

I raised a point of order. So the question is, Are there 60 Members of the Senate willing to say to the President: We are going to basically commit ourselves and condone \$9 billion of spending you didn't ask for? Or are we going to stand with the President.

I urge my colleagues, this is a good day to start fiscal responsibility. This is a good day to start saying no to business as usual in Washington, DC.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Republican leader.

Mr. LOTT. Parliamentary inquiry: Do we have an agreement to get the vote at 3 on this issue?

The PRESIDING OFFICER. Three is correct.

Mr. LOTT. How much time remains on each side?

The PRESIDING OFFICER. Three and a half minutes controlled by the Senator from Texas; 21 seconds controlled by the Senator from Wisconsin.

Mr. LOTT. Mr. President, I yield myself some time out of my leader time to comment on this issue.

First, this situation has been caused by the fact that we don't have a budget resolution. I think that is very unfortunate. Ordinarily, we try to get a budget resolution by April 15 or as soon thereafter as possible. Usually we get one done by May. Here we are in June. We have not heard anything about when it might come up. Apparently it never will. That presents us problems in terms of what is the aggregate cap, what are the enforcement mechanisms that we are going to use to try to control spending, keep it within some reasonable amount.

I also recognize without these caps, some orderly disposition to the subcommittees, it is going to be very difficult to hold the line when these various appropriations bills come to the floor.

I don't know when that might be. We need to get going on the appropriations bills. Usually in June we do anywhere

between two and five appropriations bills. Then in July we usually do anywhere between, I guess, five and as many as nine. Right now I see none anywhere in sight. We have done a supplemental after a very difficult time. It is not clear when we will get going on appropriations.

I believe the House is going to pass the Defense appropriations bill and then the military construction appropriations bill before the Fourth of July recess. So that will begin the process. That is good.

I think to do this number and this procedure on this bill at this time is a mistake. First, this is the Defense authorization bill. You need some vehicle on which to put this. If not here, then where, somebody might ask. But now that this door is open, we are being advised that we are going to have all kinds of nongermane amendments on the Defense authorization bill. I had been pleading with Senator DASCHLE to call this issue up. And to his credit, he did. He could have gone to other issues, but he did the right thing and moved to Defense authorization.

Now we will be off on a discussion of taxes and Mexican trucks and perhaps an abortion amendment. I am hearing all kinds of things. At some point we will have to get back to Defense authorization itself. That is point No. 1. I believe this is the wrong place to do it.

Secondly, while the mechanisms have been improved—there is a firewall in here now, and also some clarification with regard to advanced appropriations—the number, 768, is still a problem. That is about \$9 billion above the President's request. Some people maintain—and I am sure it has been maintained—we are going to have to have more than what was asked for in the original budget as we try to move to a conclusion this year. Somebody even said: "You are fighting over twosies and threesies here." It is \$2 billion here, or \$3 billion for the supplemental, and \$9 billion there. Pretty soon, all those billions add up to real money.

So while I understand what we are trying to accomplish, I am concerned about how we go forward from here. I think the number is still too high. I think this is the wrong bill on which to be putting this. It is similar to the debt ceiling. If we are going to do this, probably we need to do it clean. That won't be easy. But a lot of people were shocked that we were able to move the debt ceiling the way we did in a bipartisan vote; 15 or so Democrats voted with most of the Republicans. We didn't do a budget resolution, and I think that is a travesty, but we are going to have to come to some agreement on how we proceed and how we get to a conclusion at the end of this fiscal year.

My urgent plea is that we look for a number that is closer to what the President and his advisers have indicated they could accept.

With that, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CONRAD. How much time remains?

The PRESIDING OFFICER. The Senator from Wisconsin controls 21 seconds.

Mr. FEINGOLD. I yield that remaining time to the Senator from North Dakota.

Mr. CONRAD. Mr. President, we cannot very well have it both ways. You can't, on the one hand, decry not having budget discipline and a budget, and, on the other hand, oppose those very provisions. That is what this vote is about. It is a budget and it is budget discipline provisions. They are critically needed. I hope colleagues will support it.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, I believe my colleague is right on one point. You can't have it both ways. You can't say I am for fiscal restraint and then say we are going to make the President take \$9 billion he doesn't want.

I think this boils down to a question, Are you with the President or are you against him? The President asked us to hold the line on spending. I am with the President, and therefore I am going to vote against waiving the budget point of order. I urge my colleagues to do the same.

The PRESIDING OFFICER. The question is on agreeing to the motion. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

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

The yeas and nays resulted—yeas 59, nays 40, as follows:

[Rollcall Vote No. 159 Leg.]

#### YEAS—59

Akaka	Domenici	Lincoln
Baucus	Dorgan	McCain
Bayh	Durbin	Mikulski
Biden	Edwards	Miller
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Graham	Nelson (NE)
Byrd	Gregg	Reed
Cantwell	Harkin	Reid
Carnahan	Hollings	Rockefeller
Carper	Inouye	Sarbanes
Chafee	Jeffords	Schumer
Cleland	Johnson	Shelby
Clinton	Kennedy	Snowe
Collins	Kerry	Stabenow
Conrad	Kohl	Stevens
Corzine	Landrieu	Torricelli
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden
Dodd	Lieberman	

#### NAYS—40

Allard	Bond	Burns
Allen	Brownback	Campbell
Bennett	Bunning	Cochran

Craig	Hutchinson	Sessions
Crapo	Hutchison	Smith (NH)
DeWine	Inhofe	Smith (OR)
Ensign	Kyl	Specter
Enzi	Lott	Thomas
Fitzgerald	Lugar	Thompson
Frist	McConnell	Thurmond
Gramm	Murkowski	Voinovich
Grassley	Nickles	Warner
Hagel	Roberts	
Hatch	Santorum	

#### NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 59, the nays are 40. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained. The amendment falls.

Mr. GRAMM. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

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

Mr. DOMENICI. I ask to speak for 1 minute.

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

Mr. DOMENICI. I worked very hard this afternoon and today for what I thought was the right approach. I am back on board, and I will do everything I can to see that we keep some process and there is some order for the remainder of the year in getting our work done.

I thank you very much.

Mr. REID. 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. BYRD. 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. BYRD. Mr. President, has the Pastore rule run its course?

The PRESIDING OFFICER. Yes, it has.

Mr. BYRD. Mr. President, I speak out of order.

The PRESIDING OFFICER. The Senator from West Virginia.

(The remarks of Senator BYRD are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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.

#### EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, there are a number of people who want to speak on matters not related to the Defense bill at this time. I think it would be appropriate—I have spoken to the Republicans—to go into a period of morning business. It is my understanding that the Senator from Illinois wishes to speak for 10 minutes, the Senator from North Dakota for 10 minutes, and the Senator from Maine for 10 minutes.

Why don't we go into a period of morning business for 40 minutes with 20 minutes on this side and 20 minutes on their side, with the Senator from Illinois recognized first?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent to modify my request, and that I be recognized following the 40 minutes.

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

The Senator from Illinois is recognized.

#### AMTRAK

Mr. DURBIN. Mr. President, I take the floor to alert my colleagues in the Senate and those who are following this debate that at a hearing this afternoon before the Transportation Subcommittee—

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. The Senator will suspend.

The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President. I am glad my colleague, the Senator from West Virginia, is in the Chamber because he attended this hearing. He may not have been present when the questions came. We asked the administrator of Amtrak what was ahead in the days to follow. At this moment in time, Amtrak needs \$200 million interim financing to continue operations across America. Mr. Gunn, who testified before Chairman PATTY MURRAY's Transportation Subcommittee, alerted us this afternoon that unless the interim financing of \$200 million is secured by Wednesday of next week, Amtrak will cease all operations—all operations—not scaled back but cease all operations.

Mr. Gunn explained it was necessary in order for them to park the trains, take the precautions necessary to guard them, and to prepare for the ultimate shutdown, which could begin as early as the middle of next week.