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

CONGRATULATING THE CARROLL COLLEGE FIGHTING SAINTS

Mr. BAUCUS. Mr. President, I rise today to express a little hometown pride.

Last Saturday, I had the great opportunity to watch history in the making in Savannah, TN, as the Carroll College Fighting Saints from Helena, MT, marched to victory over the St. Francis Cougars from Fort Wayne, ID.

Carroll College is a private, Catholic college in my hometown of Helena, MT. Carroll is home to 1,500 students and enjoys a host of outstanding accomplishments in its nationally award-winning academic and pre-professional programs. Carroll is especially known for its flagship pre-medical, engineering and nursing programs.

The Carroll Talking Saints Forensics Team is ranked in the top five in the Nation and has reigned as Northwest Regional Champions for the past 15 years. It is a small school, with a huge record of accomplishment.

The Carroll College Fighting Saints are the only team on any level of college football in the modern era to win four national titles in a row.

They only gave up 9 points per game this season, adding to their outstanding national accomplishments.

Led by Tyler Emmer, who claimed the NAIA player of the year for the second time, the Saints offensive attack has piled up impressive numbers this season. The Saints can stretch the field with long passes or they can use their short passing game to keep the chains moving, as they did last Saturday.

It was wonderful to be there and watch, as the PA kept saying, ''Move those chains, move those chains,'' as Carroll kept scoring on the first down.

Emmert has thrown for 3,039 yards and 33 touchdowns this season. He owns a career record of 50–to–3 wins as a starter for the Saints. Emmert and his teammate Jeff Shirley were named Frontier Conference Players of the Year. A class act, Tyler is the first to credit his teammates for his success.

To win Saturday, putting the Carroll College Fighting Saints in the record book, is more than just about football. It is about hard work, dedication, competitiveness, leadership, friendship, and family.

In his 7-year career at Carroll, head coach Mike Van Diest led his team to four national championships. Mike again was named Frontier Conference Coach of the Year. He is a class act.

Working tirelessly to inspire these young athletes, Mike has created more than a championship football team. He has taught them the value of a quality education, the strength of teamwork, and the importance of giving back to the community and those in need. Coach Van Diest defines what it is to be a true Montanan. I commend him for setting such high standards for all of us.

Also, congratulations go to Carroll College athletic director Bruce Parker and his staff.

I recognize Carroll College President Tom Trebon for his leadership and commitment to Carroll College.

Finally, I want to commend my good friend from Indiana, Senator EVAN BAYH. The Senator and I had a little wager on the game. We went double or nothing on a bet from last year—Montana-brewed beer against Indiana-grown popcorn. I look forward to the popcorn. We appreciate the Senator being such a good sport.

Carroll College is more than a 4-year experience; it is for life. As the 17 senior players complete their football careers, they begin life's journey more equipped to meet the challenges of their new lives. I am confident the Saints will continue to march on to many more victories. They are a wonderful bunch of guys and gals at Carroll College, a great team, a great coach. I was there Saturday to watch the game. I was so pleased to be part of the Carroll family, and I cannot commend all of them enough for what they do in the best sense of the term, all the values that mean so much to basic America. I thank Carroll College for what you do.

I yield the floor.

INTELLIGENCE AUTHORIZATION

Mr. REID. Mr. President, I rise today to speak on the fiscal year 2006 Intelligence authorization bill.

As every American knows, we are a nation at war—at war in Iraq and at war against radical terrorists. These are wars Democrats and Republicans agree we cannot afford to lose. These wars have demanded a great deal from our troops and our taxpayers and will require much more sacrifice before they are over.

Given the stakes involved and the sacrifices required of so many, you would think that funding our troops and our intelligence community would be this Republican controlled Congress's top priority. You would think that our friends on the other side of the aisle would take up this must do legislation at the start of the Congress not at the end.

Unfortunately, while the Republican leadership is fond of stating the importance of prevailing in these wars and taking care of our troops, they have not matched those words with action. In fact, the hypocrisy demonstrated by the Republicans in this Congress on national security matters is astounding. How else to explain that with less than a week to go before Christmas, in the waning hours of this session of Congress, our Republican friends have yet to complete action on three major pieces of national security legislation—the fiscal year 2006 Defense authorization bill, the fiscal year 2006 Defense appropriations bill, and the fiscal year 2006 Intelligence authorization bill.

In recent times, Republicans have been extremely fond of painting themselves as patriots and extremely quick to brand those who challenge their policies as traitors. Given the callous way Republicans have treated our national security and our troops, I feel I must speak out on the Republicans' hypocrisy.

Although this point could be made with respect to each of the unfinished national security bills bottled up in this Congress, right now, I want to focus my remarks on the Intelligence authorization bill—a bill Republicans have not even seen fit to bring to the Senate floor despite the fact that the bill was reported out unanimously by the Senate Intelligence Committee.

This bill should have been taken up months ago. And Democrats would have been more than willing to quickly debate and pass this legislation once it reached the Senate floor so it could go to a conference with the House. Democrats know that it is essential that we permit the men and women of the intelligence agencies to continue their critical work on the front lines of the war in Iraq and the war on terror.

Unfortunately, our colleagues on the other side of the aisle apparently don't share that view. Republicans have taken months to move this bill through the legislative process. Once the committee acted and the bill was ready for the floor, an anonymous Republican placed a hold on the bill and prevented the Senate from working its will. As a result, the bill can't go forward. Vital intelligence operations are on hold while the bill languishes. And the men and women who selflessly serve are left wondering whether the Congress understands how vital their work is to this Nation's security.

I hope the Republican-led Congress will eventually get its act together and get this bill passed before we adjourn for the year.

In the meantime, to the men and women of the intelligence agencies, I say: Senate Democrats stand with you. We are proud of your bravery and your patriotism, and we thank you for your sacrifice working in silence and in the shadows against the threats America faces.

USA PATRIOT ACT

Mr. SALAZAR. Mr. President, I wanted to take this opportunity today to speak yet again on reauthorization of the PATRIOT Act.

I spoke earlier in the day on my dedication to fighting terrorism and in my support for giving law enforcement the tools to fight terrorism, the need and desire to reauthorize the PATRIOT Act, the political games surrounding extension of the PATRIOT Act, and the true patriotism of my colleagues in striving to uphold the Constitution and its liberties.

The President acts irresponsibly when he refuses—for purely political purposes—to allow the extension of the PATRIOT Act.

If the PATRIOT Act expires at the end of 2005, the responsibility lies with

the President alone and with those Members of the Senate and the House who rubberstamp his irresponsible direction.

We can act today to resolve this impasse over the PATRIOT Act. It simply requires good faith. Surely in the final few days before Christmas we can come together, set aside political posturing, and pass another extension of the PATRIOT Act so that we can continue in good faith to fix it.

But what we are witnessing with the PATRIOT Act is something more troubling—the abuse of absolute power.

It is an age-old self-portrait of America that we are a nation and people governed by the ''rule of law.''

Since before the American Revolution, we have held ourselves out to the world as a country and as a people different from all others. We have rejected for our country the tyranny of the powerful, the despotic kingships and the dictatorships that have oppressed mankind throughout its history.

The ''rule of law'' also of course includes the ''rules of law''—how we create laws at every level of government.

In our country, the rule of law protects the rights of those not in control of the levers of power—from the Bill of Rights to the rules of the Senate, our laws and rules aim to protect those out of power from the abuses of those who are in power.

But notwithstanding the ideal of our Nation—that we are governed by the rule of law and not by the whims of the powerful—all too often in our history the convictions that ''might makes right'' degrades the rule of law.

Earlier this year, those in power threatened to break the rules of the Senate to force their will on the Senate. It is happening again this week.

I have witnessed over the last few days the naked display of ''might makes right'' and the corrupting influence of absolute power.

Instead of an honest debate on differences of opinion between patriots on the reauthorization of the PATRIOT Act, our commitment to fighting terrorism is questioned.

In the closing hours of the session of Congress, we witness the amazing switch of ANWR from the budget reconciliation bill to the Defense Appropriations bill and the trashing of Senate rules. And why? Simply because those in power believe that might makes right.

We have an administration that has admitted it ignored our intelligence surveillance laws because it found them to be inconvenient.

When people dare to question the legality of these actions, they are called unpatriotic and obstructionist.

That is wrong.

Now Mr. President, let me turn my attention in more detail to the PATRIOT Act.

In March of this year, I joined a group of three Republicans and three Democrats in introducing legislation known as the SAFE Act. This legislation would have extended every single one of the expiring portions of the PATRIOT Act, while at the same time imposing reasonable checks on those powers.

In keeping with that spirit of compromise, the Senate Judiciary Committee worked tirelessly this spring and summer to draft a reauthorization bill that could garner broad support. With the participation of two of the original cosponsors of the SAFE Act, members of that committee, in conjunction with our colleagues on the Senate Intelligence Committee, worked together to make tough choices and hammer out a bipartisan compromise.

The legislation passed unanimously out of the Judiciary Committee—a group not known for its ability to achieve complete consensus on many issues—and it passed the Senate with the support of all 100 Senators—Republicans, Democrats, and Independents alike.

We stood together behind the principle that we can give law enforcement officers the tools they need without sacrificing our basic freedoms—freedoms that Americans are fighting and dying for in Iraq and Afghanistan, freedoms that Americans have fought and died to establish and preserve throughout our history.

But, once again, we were faced with the need to find compromise—this time, with the House. And again, my colleagues and I did not expect to get everything we wanted.

It is worth repeating that the Senate bill passed with the support of all 100 Senators, while the House bill passed in the face of stiff opposition.

It is also worth noting that, in separate votes, a bipartisan majority in the House supported stronger civil liberties protections than were included in the final conference report.

Unfortunately, after the House delayed for months in appointing conferees, the conference committee filed legislation that failed to provide the modest—but critical—civil liberties protections that Americans deserve.

Once again, I joined with the cosponsors of the SAFE Act—this time in a final effort to bring the conference committee back from the brink and to pass reauthorization legislation worthy of broad, bipartisan support.

Our requests were modest. We asked the conference committee to address four specific provisions: section 215 of the PATRIOT Act itself, which allows the government to obtain sensitive personal and business records without any meaningful limitation and no ability to challenge the permanent automatic gag order; national security letters, which allow the government to obtain certain categories of records without prior judicial approval, again without the ability to challenge the gag order; the need for periodic congressional review of these authorities; and sneak-and-peek searches, where the government can wait up to 30 days before notifying the target of a property search.

Last week, my colleagues and I introduced legislation to extend the PATRIOT Act by three months to give Congress time to make the final changes to the conference report necessary to protect civil liberties.

That proposal was summarily rejected by the majority leadership and by the White House.

When we have repeatedly this week attempted to propose extending the PATRIOT Act to allow for necessary improvements, those efforts have been again summarily rejected.

When the minority leader even attempted yesterday to propose the Senate simply re-pass its version of the PATRIOT Act reauthorization, that effort was rejected by the very same Senators who supposedly supported the Senate version the first time around.

It is eminently clear that those of us who have worked to improve the PATRIOT Act over the course of the past days, weeks, and months are entirely focused on extending these important powers as we continue to fight the war on terror. But, given that we have been labeled ''obstructionists'' and told that we are putting the nation at greater risk, it is worth examining some of the arguments over the bill's substance in greater detail.

Over the past few days, some on the other side of this debate have asserted that the changes we have proposed are unnecessary, because intelligence investigations authorized under the PATRIOT Act are no different from the routine law enforcement investigative activities that occur throughout our Nation thousands of times a day.

At the heart of this disagreement is section 215 of the PATRIOT Act, which revises substantially the authority under the Foreign Intelligence Surveillance Act, FISA, for seizure of business records, including third party records of individuals' transactions and activities.

Section 215 broadened the authority to seize business records under FISA in two ways. First, it expanded the scope of the kinds of records the government may obtain using this authority from ''records'' to ''any tangible things.'' Second, it eased the requirements for obtaining an order. Previously, FISA required the government to present to the secret FISA court ''specific articulable facts giving reason to believe'' that the subject of an investigation was a ''foreign power or the agent of a foreign power.'' Under section 215, the government is required only to assert that the records or things sought are needed ''to protect against'' international terrorism—in effect, that they are relevant in some way to a terrorist investigation. There is no requirement for an evidentiary or factual showing and the judge has no real discretion in reviewing an application. If the judge finds that ''the application meets the requirements'' of the section, he or she must issue an order as requested ''or as

modified.'' In addition, section 215 prevented the recipient of a search order from disclosing the fact that the FBI has sought or obtained records, and prohibited the recipient from challenging that gag order.

Both the SAFE Act and the Senate reauthorization bill retained the PATRIOT Act's expanded scope of the FISA records provision, but both restored a standard of individualized suspicion, and permitted the recipient of a search order to challenge that order in court.

National security letters have also been at the center of this debate. NSLs allow the government to obtain certain narrow categories of records without the prior approval of a judge. The PATRIOT Act expanded the use of national security letters, and authorized a much larger number of government officials to issue them. It has been asserted that the number of NSLs has exploded since passage of the PATRIOT Act, possibly by as many as 30,000 a year. In addition, as with section 215 orders, the act prohibited the recipient of an NSL from disclosing information about the order, and from challenging that order in court.

In contrast, the Senate bill would have permitted recipients of an NSL to challenge the gag order and to receive meaningful review of that order in court. Although many of my colleagues and I would have preferred to require a standard of individualized suspicion before an NSL was issued—as would have been required by the SAFE Act—we understood that NSLs are distinct from section 215 orders in that they are much more limited in scope, and supported the Senate compromise.

As I mentioned previously, supporters of the conference report have argued against the changes in the Senate bill on the grounds that the government already has the authority to obtain broad categories of third-party records without the prior approval of a judge, and without having to demonstrate even relevance to an investigation, let alone individualized suspicion.

In fact, it has been asserted that there are 335 specific cases in which the government is authorized to subpoena information without the prior approval of a judge.

It is important to point out that a vast majority of the administrative subpoena powers the government possesses are related to the ability of regulatory agencies to obtain records to ensure compliance by the industry being regulated. This is vastly different than government intelligence agents seeking information about U.S. citizens engaged in lawful activities. Moreover, the administrative subpoena powers not related to regulatory enforcement are far narrower than the authorities provided by the PATRIOT Act.

Secondly, and more importantly, intelligence investigations are inherently different from criminal investigations, because criminal investigations are limited to cases involving unlawful conduct.

In contrast, intelligence investigations may focus on lawful activity by law-abiding Americans.

Accordingly, it is inappropriate—and just plain wrong—to compare the authority provided to the government for intelligence investigations with the subpoena powers the government currently possesses with respect to regulatory enforcement, or under the criminal code.

Mr. President, there is still time to get this right. I am confident that, by working in the same spirit of bipartisanship and compromise that the cosponsors of the SAFE Act have exemplified all year, we will get this right.

That, Mr. President, is my goal.

Mr. BAUCUS. Mr. President, I rise today to speak briefly about the PATRIOT Act. I voted against cloture for the PATRIOT Act because I do not feel that this bill is good for our country. The conference report invades our most treasured civil liberties—the right to be left alone without the Government invading our personal space. I know the people of Montana value this freedom. So does the rest of the country. We can be safe from terrorism and at the same time be free from Government restrictions on our basic civil liberties. The conference report does not strike this essential balance. Instead, it infringes on the rights we hold most dear.

The Senate bill I supported in July was a joint effort, between Republicans and Democrats, which took important steps to protect the freedoms of innocent Americans. At the same time, the Senate bill made sure that the Government had the power it needed to investigate potential terrorists and terrorist activities. I am deeply disappointed in the conference report which retreats too far from the bill I supported in the Senate. The conference report fails to make some vitally important reforms to the PATRIOT Act that we, in Senate, agreed to in July. My colleagues have spoken at length about the broad, intrusive powers of section 215. I share these concerns on the expansive powers given to the Government in the conference report. I am also seriously disturbed by the recent news of the Government's ability to spy on innocent U.S. citizens and listen to our private conversations.

This conference report is flawed. And it needs work. Let me make myself clear. I am not opposed to reauthorization of the PATRIOT Act.

We need to work together to make the necessary improvements on this very important piece of legislation. We must put aside our party lines and come to an agreement that gives our law enforcement officers the ability to do their jobs. But we must also preserve our freedoms in the process. We can protect the country from terrorism while at the same time protecting all innocent Americans from unnecessary Government intrusion. The safety of our country depends on it.

Mr. JEFFORDS. Mr. President, I rise today to make some comments and share my concerns about the provisions of the Department of Defense appropriations conference report that open the Arctic National Wildlife Refuge to oil drilling. I do not support drilling in the Refuge. But even if I did, I would not support the language in this bill. It is inappropriate to make management decisions regarding one of our Nation's largest and most ecologically important wildlife refuges in a closed conference. Doing so restricts the ability of the Senate and the administration to ensure that drilling is done in an environmentally sound way. It is particularly troubling that a military spending conference report is being used as the vehicle to sneak this unrelated, controversial, and reckless legislation through the Senate.

As ranking member of Environment and Public Works Committee, I feel I must make clear to the Senate that the language in that this conference report has not passed the Senate before. It does not just open the Refuge to oil drilling, it does so in the least environmentally sensitive way possible. And, Mr. President, it does so in a manner that treats the Arctic Refuge differently than any other Federal lands or wildlife refuges.

Arctic Refuge drilling proponents repeatedly profess that oil development in the Refuge would be done in an environmentally sensitive way. As the ranking member of the Environment and Public Works Committee, I want to inform the Senate that this bill is actually riddled with clauses that weaken existing environmental standards, exempt drilling from key rules, or otherwise allow oil development activities to sidestep environmental protection laws. First, for example, the conference report exempts parts of the proposed Arctic oil and gas leasing program from environmental review requirements. In particular, it declares that the Department of Interior's Environmental Impact Statement EIS prepared in 1987 satisfies the requirements of the National Environmental Policy Act, NEPA, for preparation of the regulations that will guide the leasing program and any preleasing exploration or other activities. NEPA is supposed to ensure that public and Federal decisionmakers have the most recent, accurate information concerning the environmental impacts of projects, but this clause seems to ensure the opposite. In fact, as long ago as 1991, a Federal court found that due to new scientific information, Interior should have supplemented this very same 1987 EIS analysis before recommending to Congress that it allow development on the Coastal Plain.

In 2002, some 15 years after the 1987 EIS, the U.S. Geological Survey released a significant report detailing 12 years of study about the potential impacts of oil drilling on the wildlife of

the Arctic Refuge. This information can, and should, be incorporated as the Interior Department's consideration of drilling.

Many now question whether the existing final legislative environmental impact statement, prepared in 1987 to comply with the National Environmental Policy Act, NEPA, is adequate to support development now or whether a Supplement or a new EIS should be prepared. As I mentioned, a court in a declaratory judgment action in 1991 held that the Interior Department should have prepared a supplemental invironmental impact statement SEIS at that time to encompass new information about the Coastal Plain in connection with the Department's recommendation that Congress legislate to permit development. Therefore, without the language of this bill, it seems clear that either an SEIS or a new EIS would have to be prepared before drilling could begin.

But, in this provision, we change the law and the legal precedent. The bill before us states that the Congress finds the 1987 EIS adequate to satisfy the legal and procedural requirements of NEPA with respect to the actions authorized to be taken by the Secretary of the Interior in developing and promulgating the regulations for the establishment of the leasing program. This language explicitly eliminates the need to redo or update the EIS for the leasing regulations.

The Secretary is only directed to prepare an EIS with respect to actions other than the preparation of the regulations. This is noteworthy because only the smaller document, an environmental assessment, might not normally be sufficient, given on the magnitude of the action involved. The rest of that paragraph sets out limitations on the alternatives that the Secretary must consider as to leasing, as though this paragraph relates only to the leasing stage, rather than to all actions. But, the language is unclear and may curtain environmental review at all stages. The section goes on to say that the Secretary is to identify only a preferred action for leasing and a single alternative and analyze only those two choices and to consider public comment only on the preferred alternative. Public comments must be submitted within 20 days of publication of the environmental analysis, and the Secretary may only consider public comments that specifically address the preferred action. Compliance with this law is stated as satisfying all requirements for consideration and analysis of environmental effects.

There is no question that this language substantially weakens environmental review requirements. It significantly diminishes the comprehensive analysis traditionally required by NEPA, by stating that the Secretary of Interior need consider only its preferred action and a single leasing alternative. The ''alternatives analysis,'' which is all but eliminated by this section of the bill, is the heart of NEPA. Senators supporting this provision should be fully aware that these limitations strike at the core of our country's environmental review process and requirements.

Further, this language undermines the U.S. Fish and Wildlife Service's authority to impose conditions on leases. It states that the oil and gas leasing program are ''deemed to be compatible'' with the purposes of the Arctic Refuge. According to the Congressional Research Service, this provision ''appears to eliminate the usual compatibility determination process for purposes of refuge management.'' CRS notes that without the compatibility process, the authority of the Fish and Wildlife Service to impose conditions on leases is called into question.

Finally, this language changes judicial review of leasing decisions. Judicial review is limited to ''whether the Secretary has complied'' with this legislation. It also states the only appropriate legal venue is the DC Circuit Court of Appeals. The judicial review provisions undermine drilling proponents' claims that the language will result in sufficient environmental protection. A leasing program that is truly ''environmentally sound'' would be at no risk from judicial review.

We can do better, and we should. This debate will never lead us to actually fix these problems because a conference report cannot be amended. And putting this provision in a conference report constrains the way in which Senators who are concerned about these issues and who do not serve on the Appropriations Committee are able to address those issues on the floor.

I would caution all Members of the Senate who have committed to support Arctic drilling only in certain cases, or only if certain other legislative or regulatory actions take place, to closely examine the language in this conference report.

Finally, I oppose including this in a conference report because I believe it is being used to limit consideration of a controversial issue. The American people have strongly held views on drilling in the Refuge, and they want to know that the Senate is working to pass legislation to manage the area appropriately in a forthright and open process.

Mrs. FEINSTEIN. Mr. President, I rise today to state my opposition to this cynical effort to add a very controversial provision to allow drilling in the Arctic National Wildlife Refuge and also adds a provision to grant unprecedented liability protection to vaccine manufacturers to a critical Defense appropriations bill.

Holding funding for our troops and relief for Hurricane Katrina victims hostage in this manner is just plain wrong and a violation of at least two Senate rules—XXVIII and a budget point of order—and cynical.

Rule XXVII prevents Senators from adding provisions that have not been included in either the House or Senate bill from being added to the conference report. Neither the House nor the Senate included any language on ANWR, so according to the Senate rules, it should not have been included in the conference report.

The provision also appears to violate section 311 of the Budget Act. The budget resolution which we passed in April assumed that the Treasury Department would raise about $2 billion from opening the Arctic for drilling. Yet the appropriations bill spends $5 billion of revenue from ANWR.

As far as I know, opening ANWR to drilling has not been rescored, so the score from earlier this year is still in effect. As a result, this provision is subject to a budget point of order.

It makes a mockery of the rules and procedures of the Senate and strikes a blow at the heart of collegiality.

The ANWR provision was originally added to the budget reconciliation bill. Courageous House Republicans stood up and said no. So when this route was closed, it was added to this important appropriations bill, in violation of at least one Senate Rule and the Budget Act.

To make matters worse, the vaccine proposal was added to the bill after the House-Senate Conference Committee concluded its meeting. This is outrageous.

I believe it is all being done with a cynical attitude that says unless we accept it, we are going to run the risk that we will vote against a major bill which funds all military operations at a critical time in our history.

ANWR is an issue that arouses great passion on both sides of the issue. There are strong arguments that underlie the belief that the opening of these critical 1.5 million acres of pristine wilderness is small from an oil production perspective and damaging environmentally.

First, the Artic Refuge's Coastal Plain, where the drilling would occur, is the ecological heart of the refuge.

It is the center of wildlife activity and the home of nearly 200 wildlife species, including polar bears, musk oxen, and porcupine caribou.

If ANWR were opened up for drilling, the wilderness would be crisscrossed by roads, pipelines, power plants, and other infrastructure.

In fact, the Department of the Interior estimated that 12,500 acres would be directly impacted by drilling.

I believe that destroying this wilderness does very little to reduce energy costs, nor does it do it very much for oil independence.

I also believe deeply that we cannot drill our way out of our Nation's over dependence on oil.

ANWR will produce too little oil to have a real impact on prices or overall supply. And it would offer a number of false hopes:

First, to those seeking lower gasoline prices: opening the Refuge would only lower gasoline prices only 1 cent per gallon 20 years from now.

Second, to those seeking a major boost in oil supply: the United States now consumes 20 million barrels of oil per day, a number that will climb every year unless we learn to conserve and recognize that we must find alternatives to fossil fuels.

On average, ANWR is expected to produce about 800,000 barrels per day. And in 2025, this 800,000 barrels per day would represent only 3 percent of the projected 25 million barrel a day U.S. daily consumption.

So, in essence, we would be sacrificing this cherished wilderness to obtain about 10.4 billion barrels of oil over the 35-year projected ANWR lifetime. This amounts to a little more than one year's supply of oil for the United States.

There are other things we can do to meet our energy needs, including raising fuel economy standards and drilling at alternative sites.

First, just changing the mileage of SUVs and light trucks from 21 to 27.5 miles per gallon would save the United States 1 million barrels of oil a day and reduce our dependence on oil imports by 10 percent.

This would save more oil in 1 day—1 million barrels—than ANWR would produce in one day 800,000 barrels.

Second, there are other important supplies of domestically produced oil.

The Minerals Management Service, MMS, has reported that there are 36.9 billion barrels of undiscovered, technically recoverable oil that exists in the Gulf of Mexico, much of which would likely be found under the 8,043 already leased blocks in the Gulf.

These already leased blocks can be drilled right now, without delay, if the oil companies were willing.

In addition, there are new technologies to produce oil from ''depleted'' oil fields throughout the United States.

According to scientists, using enhanced oil recovery could allow the United States to produce an additional 32 billion barrels of technically recoverable oil from already existing wells.

The bottom line is that it is hardly worthwhile to damage the Nation's only refuge that encompasses a complete range of arctic ecosystems and provides an essential habitat for many species for less than 1 percent of the world's oil output.

Drilling will not give us more energy security, but it will carry huge environmental costs.

We can start to address high energy prices, energy security and global warming by increasing fuel economy standards, encouraging energy efficiency, promoting the development of new and alternative fuels, and supporting the invention and commercialization of new vehicle technologies. Drilling in ANWR is not the answer.

Before I close, I also want to say a few words about another problematic provision in the bill.

I was quite surprised to discover yesterday that after the conference on Sunday had been closed, new liability protections for pharmaceutical companies were added to the conference report.

Over 30 pages of new language were included that provide essentially complete immunity from civil liability for drug companies and medical device manufacturers even when there is reckless disregard or gross negligence in developing or manufacturing these products—so long as the Secretary of HHS has made a ''Declaration.''

In addition, pharmaceutical and medical device companies are protected even when there are criminal violations of FDA standards so long as the administration has not taken action to enforce the violations.

The bill does appear to allow for a lawsuit if an injured patient can demonstrate willful misconduct on the part of the company.

However, the language is unclear as to whether the Secretary has to first approve regulations before even these suits may go forward.

In addition, the bill literally directs the Secretary to promulgate regulations to further restrict the definition of willful misconduct—a decision that is usually left up to a court.

Even more disturbing is that none of the Secretary's decisions are subject to review by a court, essentially wiping out individual's access to an impartial forum.

I am also concerned that this legislation preempts State laws. If States have stronger laws to protect consumers from defective drugs or devices those laws are pre-empted, as we do in California, those laws are wiped out.

Finally, the bill does create a trust fund to pay patients who cannot meet these severely restrictive standards based on the Smallpox Emergency Personnel Protection Act.

However, that act is meant as a supplemental benefits program for health care workers administering the potentially deadly smallpox vaccine. And more importantly, there is no money for the trust.

I am very disturbed that this egregious provision was added to the conference report. I am disturbed both by the process in which it was added, and by the substantive impact it could have if enacted into law.

It is with a heavy heart that I will vote against cloture on this bill. I support the military 100 percent. I support our efforts to help the victims of Hurricane Katrina 100 percent. But I cannot support the manner in which this important bill was hijacked in an effort to get several very controversial provisions enacted despite widespread opposition.

In an article that appeared in the Fairbanks Daily News-Miner, Senator STEVENS was quoted saying that if a Senate filibuster over ANWR stops this bill, the legislation can be modified and passed so it has no impact on military finances. He said, ''If we lose, then we'll reconstitute the conference and ANWR will be out.'' I would hope that is the result. It would be the best course for this Congress and the Nation.

Mr. KENNEDY. Mr. President, I support the Defense authorization bill as a strong expression of our support in the Senate for our Armed Forces at this difficult point in our history. We are proud of the courage of our troops in Iraq and their extraordinary dedication in carrying out their mission.

But I strongly object to the action of the conferees in including a last-minute rider to the bill that received little debate and that would drastically restrict the fundamental right to habeas corpus for aliens detained by the Department of Defense at Guantanamo Bay, Cuba. Section 1405 of the bill amends the habeas corpus statute in the U.S. Code by adding these words: ''Except as provided in section 1405 of the National Defense Authorization Act for Fiscal Year 2006, no court, justice, or judge shall have jurisdiction to hear'' any habeas corpus claim or any other action relating to the detention of an alien at Guantanamo.

For centuries, the writ of habeas corpus has been a cornerstone of the rule of law in Anglo-American jurisprudence. Since the Second Magna Carta in 1679, it has served as the primary means to challenge unlawful government detention. Literally, the writ means ''have the body,'' i.e. the person detained, brought before a court or judge to consider the legality of detention. The writ was used to prevent indefinite detention, and ensured that individuals could be held no longer than 3 to 6 months without indictment or trial for felony or treason. In other words, it requires the Government to provide a court with a legal basis for its decision to deprive persons of their liberty.

This provision strikes at one of the basic principles of liberty enshrined in the Anglo-Saxon system of government that the executive may not arbitrarily deprive persons of liberty for an indefinite period. As Blackstone wrote in his commentaries:

> To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm or tyranny throughout the whole kingdom. But confinement of a person, by secretly hurrying him to gaol, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government.

This principle was so important to the Framers that ''the great writ'' was the only common law writ enshrined in the Constitution. Article I, section 9 of the Constitution states, that ''The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the public safety may require it.''

Any changes to the writ of habeas corpus, this most fundamental of rights, should be made carefully, through open debate, and with a full understanding of the implications of the change. The Senate did not hold a

single hearing on the need for this drastic change. In fact, the sponsor of the amendment, Senator GRAHAM, admitted that some of his comments during the debate were not accurate statements of law. Senator SPECTER, the chairman of the Judiciary Committee, opposed the provision, and spoke eloquently on the lack of appropriate process for its consideration. The provision was adopted by the Senate with less than 2 hours of debate. Since its passage, all negotiations on this provision have occurred in back rooms, without the involvement of the vast majority of Congress, and without even consulting most of the conferees. Such a cavalier treatment of the basic right to habeas corpus is appalling.

The constitutional writ of habeas corpus deserves better than that. Justices Scalia and Stevens, dissenting in the recent case of Hamdi v. Rumsfeld, acknowledged the power of Congress to suspend the writ of habeas corpus, but they noted the limits on that power embedded in the Constitution. In this dissent, they said:

> To be sure, suspension is limited by the Constitution to cases of rebellion or invasion. But whether the attacks of September 11, 2001, constitute an ''invasion,'' and whether those attacks still justify suspension several years later, are questions for Congress.

Here, neither the legislation nor the report language makes any findings that would satisfy the requirements of the Suspension clause. Without such a record, it would be preposterous for Senators to claim that somehow their actions fulfilled the constitutional requirement for suspending habeas corpus. Section 1405, therefore, can be treated only as a modification of the statutory provisions for habeas corpus in the U.S. Code. In Rasul v. Bush, for example, decided last year, the Supreme Court made clear that it was considering the statutory right to habeas corpus, not the constitutional right. They did not determine whether the constitutional right to habeas corpus was reached. Since Congress cannot act in violation of the Constitution to prohibit judicial review, the courts still have the power to determine whether the constitutional right of habeas corpus is available in cases where section 1405 deprives a detainee of the statutory right. So this unseemly action may well not have achieved its purpose.

Some may claim that the right of habeas corpus does not apply to Guantanamo because Section 1405 defines the United States specifically to exclude Guatanamo Bay, Cuba. But as the Supreme Court found in Rasul, the common law right of habeas corpus is not limited to the formal territorial boundaries of a nation, but is defined by ''the practical question of 'the exact extent and nature of the jurisdiction or dominion exercised in fact by the Crown.' '' It is this common law right which our founders enshrined in the Constitution. Thus, the scope of the constitutional right to corpus habeas is the same as the common law right. In Rasul, the Supreme Court stated that the United States ''exercises 'complete jurisdiction and control' over Guanatanamo Naval Base, and may continue to exercise such control permanently. . .''

Supporters of this provision argue that after stripping the courts of jurisdiction for habeas corpus claims, the provision adds back limited appeal rights for detainees in two classes: No. 1, those who have had a Combatant Status Review Tribunal, which serves as an initial designation of enemy combatant status but is not a final judgment; and No. 2, those who have received a final decision from a military commission. Over 500 detainees in the first category, those who have had a CSRT—many of them have already filed a petition to challenge their designation as enemy combatants. We are not aware of any detainees in the second category.

For the first category, section 1405 does not apply the habeas-stripping provision to pending cases, so the courts retain jurisdiction to consider these petitions—in addition to pending military commission cases—consistent with Lindh v. Murphy. During deliberations on the floor for this provision, the Senate specifically rejected language from the original Graham amendment, which would have brought these categories of cases within its reach.

Section 1405 also leaves completely undisturbed a challenge to the military commission process now pending in the Supreme Court in the case of Hamdan v. Rumsfeld. The sponsors of the original amendment made it clear on the floor of the Senate that the provision has prospective application only, which is what my colleagues and I understood to be the drafters' intent.

When Congress authorizes a procedure to challenge military commissions or the tribunals, Congress is clearly not endorsing or authorizing the use of commissions or tribunals themselves. The Senate has numerous bills before it to authorize military commissions, and it has not acted on any of them.

In addition, section 1405 in no way endorses the amorphous and unlimited definition of enemy combatant currently used by the Bush administration. We all hope that the administration will soon provide Congress and the American people with a definition of who is an ''enemy combatant,'' with clear limits on who is subject to such a designation and is subject to indefinite detention as a result.

Sadly, section 1405 also undermines the giant step forward we took in giving such overwhelming support to the McCain amendment and its prohibitions on abusive interrogation techniques. Yet section 1405 appears to undermine that amendment. We have established clear rules, but the Graham amendment is a flagrant attempt to prevent their enforcement. That is not what we intended when nearly all of us voted for Senator MCCAIN's prohibition and that is not the message we intend to send to the world when we did so. In this devious maneuver, Congress has slammed the front door on torture, then surreptitiously opened a back door to it. This legislation obviously raises larger policy concerns in addition to its ambiguous statutory language and the constitutional concerns. America was founded on the principle that no one, especially not the President, is above the law.

Section 1405, however, sends exactly the wrong message. By barring claims from the detainees, it creates a legal black hole in Guantnanamo where detainees can be abused and tortured. We can't continue to turn a blind eye to the treatment of detainees at Guantanamo. The actions of our Government, wherever they are taken, should be limited by the rule of law.

Yet this provision attempts to put Guantanamo above the rule of law. As we try to build democratic societies in Iraq and Afghanistan, how can we possibly prove to them that arbitrary imprisonment is wrong and that all persons are entitled to humane treatment, when Congress so blatantly refuses to practice what it preaches? The hypocrisy is as breathtaking as it is shameful.

It is an outrage that the conferees have included this irresponsible provision in this must-pass bill, and I hope the Senate will do all it can to remove it in the new session that begins in January.

DEFENSE CONTRACTING

Mr. KENNEDY. Mr. President, I commend the House and Senate conferees for their agreement to extend the Defense Department program to prevent defense contracting firms supporting or subsidizing the kind of discrimination that has long been a problem in such contracting. The extension through September 2009 is clearly needed to achieve that important goal.

Defense contracting has long been dominated by old-boy networks that make it very difficult for African-Americans, Latinos, Asians, and Native Americans to participate fairly in these opportunities, or even obtain information about them. Minorities historically have been excluded from both public and private construction contracts in general, and from Federal defense contracts in particular. Since its adoption, the Defense Department's effort, called the 1207 program, has helped level the playing field for minority contractors. Extending the program was a priority, since it's clear there is much more to do.

Since the program was first enacted in 1986, racial and ethnic discrimination has continued to be a substantial obstacle to minority participation in Federal contracts. In some cases, overt discrimination prevents minority-