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House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, December 22, 2005, at 4 p.m.

Senate

WEDNESDAY, DECEMBER 21, 2005

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the clerk will report the conference report to accompany H.R. 2863.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

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

(The conference report is printed in the House proceedings of December 18, 2005.)

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

The PRESIDING OFFICER. Is there a sufficient second?

NOTICE

If the 109th Congress, 1st Session, adjourns sine die on or before December 22, 2005, a final issue of the Congressional Record for the 109th Congress, 1st Session, will be published on Friday, December 30, 2005, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Thursday, December 29. The final issue will be dated Friday, December 30, 2005, and will be delivered on Tuesday, January 3, 2006. Both offices will be closed Monday, December 26, 2005.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

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By order of the Joint Committee on Printing.

TRENT LOTT, *Chairman.*

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I would like to speak for 30 seconds.

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

Ms. LANDRIEU. Mr. President, I know everyone is anxious to vote. In this underlying bill on defense, I just wish to say that there is $29 billion for coastal restoration, hurricane protection, housing, and business help for the gulf coast. I know it has been a tough, long day, but in this bill there is $29 billion because of the hard work by both sides of the aisle. We are very grateful for the help on this bill.

Mr. BIDEN. Mr. President, I rise to express my surprise and deep-seated opposition to the so-called Public Readiness and Emergency Preparedness Act, which is included in the Defense Department Appropriations bill.

This provision would give the Secretary of Health and Human Services authority to provide almost total immunity from liability to the makers of almost any drug, and to those who administer it.

While the measure's proponents portray it as a simple tool to make sure we have sufficient vaccine available in the case of an avian flu pandemic, the actual language of the provision is far broader than that, and it therefore poses a danger to all Americans.

The actual provision permits immunity for the makers of virtually any drug or medical treatment. All the secretary need do is declare that it is a ''countermeasure'' used to fight an epidemic. One solitary person gets to decide what is a countermeasure and what is an epidemic. There is nothing to prevent the declaration of immunity for, say, Tylenol. There is nothing to prevent a declaration that, say, arthritis is an epidemic.

What's more, this is no typical grant of immunity. No, the breadth of this provision is staggering. A drug maker can be grossly negligent in making or distributing a drug, and still escape liability. It can even make that drug with wanton recklessness and escape scott-free after harming thousands of people.

In fact, under this provision, the only way a victim could still recover compensation from a drug maker for a dangerous drug or vaccine would be to prove ''willful misconduct,'' and then only by ''clear and convincing evidence.'' What this means is that, for a victim to be able to be compensated by the company that harmed him, he must prove that they committed a crime. And even if he can do that, the company can still avoid liability simply by notifying the authorities within 7 days that someone was harmed by their product. In other words, so as long as you ''confess'' to your bad behavior, you can get away with it!

Is this the sort of justice system that Americans desire?

The answer to this question seems clear from the way this provision was inserted in the larger bill. No hearings were held on this language; no Committee vote was taken; no bill passed the House or the Senate. Not even the House and Senate conferees had a chance to give input on this provision. Indeed, I'm told it was inserted in the dead of night, after conferees had already signed the conference report!

Perhaps the folks who secretly inserted this provision in the dead of night knew that it was overly broad, as I've discussed; perhaps they knew that it was constitutionally suspect, as has been noted by at least one prominent law professor; or perhaps they just knew that, if this provision ever saw the light of day, the American people would not stand for such secrecy and injustice.

This should not be how we conduct the business of the American people, and we will all suffer if this provision is permitted to go forward.

Mr. BYRD. Mr. President, the Senate is now on its way to passing the Defense appropriations bill, which will provide essential funds to our troops. The U.S. Armed Forces are comprised of some of the finest men and women our country has to offer. Each of these brave individuals has made the commitment to serve our country, during times of war or peace, and each is deserving of the support of a grateful nation.

I particularly wish to salute the fine members of the West Virginia National Guard who have time and again demonstrated their commitment to serving our State and our Nation. These citizen-soldiers have served in all corners of the world while balancing their obligations to their families, to their employers, and to their communities. The Defense appropriations bill is important to our National Guard and all the members of our military. I am proud to have worked with my colleagues to expedite passage of this essential legislation.

The Senate is proceeding in a wise course after the cloture vote this morning. The most controversial part of the conference report will be removed, clearing the way for the Defense appropriations bill to pass the Senate and be sent on its way to the White House. It is unfortunate that the deletion of the most controversial provision that was attached to the bill in conference will also result in eliminating needed funds for hurricane relief, LIHEAP, homeland security, and border security. Congress should not delay in providing additional funds for these purposes. There are emergency needs in each of these areas that must be met with quick action.

While the ANWR provision will be removed from the bill, I continue to have serious concerns about the avian flu-related liability provisions that were slipped into the conference report without debate. These liability provisions did not appear in either the House- or the Senate-passed bill. These provisions were not in the materials presented to the conference committee during its deliberations. It was not until the dead of night on this past Sunday, after signatures had already been collected on the conference report, that the Republican majority slipped these provisions into the bill before the Senate today. What an insult to the legislative process.

It makes sense for Congress to take steps to encourage companies to develop and manufacture lifesaving flu vaccines. Manufacturers and health professionals acting in good faith to protect the public health, by developing and distributing critical vaccines, should not be unfairly penalized for their efforts to protect the American people from the horrors of a pandemic disease.

However, our country has a moral obligation to look out for those who may become seriously ill as a result of these vaccines. We are talking about the lives of real American people. There ought to be compensation available to those persons who may suffer adverse effects from these kinds of vaccines.

But the liability amendment slipped into the bill does not contain any meaningful provisions establishing a fair compensation system to protect vaccine recipients. Americans who pull up their sleeves to receive an emergency flu vaccine must be provided with some assurance that they would not face economic catastrophe should they be harmed.

All of this comes as our country is coming to grips with the threat that the avian flu might spread to our shores. A flu pandemic is one of the most dangerous threats the United States faces today. Medical experts warn that a global, cataclysmic pandemic is not a question of if but when. Like any natural disaster, it could hit at anytime. And when it does, it could take the lives of tens of millions of people.

According to the Congressional Budget Office, an avian flu pandemic would deliver a devastating $675 billion blow to the U.S. economy. This administration has failed to adequately respond to safeguard the American people and limit the human and economic cost of such a pandemic.

In the event of a flu pandemic, hundreds of millions of Americans will need to be vaccinated as quickly as possible. Yet our current public health infrastructure is alarmingly ill-equipped for this threat. This administration and the Republican-led Congress have weakened the health care infrastructure of this country by starving it of needed funding. The administration has been engaged in a relentless campaign to arbitrarily cut Medicaid and other vital safety-net programs that protect the health of the poor and disabled.

I am also disappointed that the majority chose to limit funds for vaccines, medicines, and other tools to combat

the avian flu to just $3.8 billion. That level of funding is $4.3 billion below the level that the Senate approved just 2 months ago.

The American people deserve better from their elected representatives. They deserve a coherent plan to combat the looming threat of a flu pandemic with significant resources devoted to protecting the public's health.

Finally, Mr. President, I regret that so little attention has been paid during the recent debate on this bill to the most important issue facing our country. The ongoing war in Iraq has so far cost the lives of 2,155 members of the U.S. Armed Forces. Including the so-called ''bridge fund'' of $50 billion that is appropriated in this bill, our Nation will have dedicated $259 billion to carry out the war in Iraq. What an enormous sum. More than a quarter of a trillion dollars has been spent on this war that should never have begun.

What is more, the newspapers are full of stories that the President is going to ask Congress for another $100 billion in the coming months to pay for the wars in Iraq and Afghanistan.

These huge sums of money are being requested and spent for the war in Iraq with no idea of how the White House intends to get our troops out of that country. The President has taken to the speaking circuit to try to rally support for the war, but his statements are simply variations on a theme: stay the course, stay the course, stay the course.

Americans are asking questions that the White House has so far refused to address. How much longer will our troops be in Iraq? How many more Americas will perish in this costly war? How many more billions will be spent to support the administration's misguided policies in Iraq?

Instead of getting answers to these questions, and instead of changing course in the war in Iraq, this appropriations bill includes $50 billion to continue the wars in Iraq and Afghanistan, despite the fact that the President did not request a single dime in his budget for these costs. Let me say again: the Congress is appropriating billions more for the war in Iraq without a request from the President. Is this any way to pay for a war?

Although Senators must do our part in providing for our troops serving in harm's way, I do not think that our troops are served by having Congress appropriate funds for the war in Iraq without any explanation by the President or the Secretary of Defense about how these funds are to be used. If the administration wants additional funds to prosecute the war in Iraq, the administration should answer the tough questions about its policy for getting our country out of Iraq.

Mrs. CLINTON. Mr. President, I would like to take this opportunity to object to insertion of a provision in the Department of Defense appropriations bill that would provide sweeping immunity protections to pharmaceutical manufacturers. I know that this provision is being billed as a simple liability protection to help those who would manufacture avian flu vaccine, but it is nothing of the sort. I support limited liability protections for manufacturers to help cover their risks in developing products that our Nation will need in case of emergency. However, this provision would grant immunity to all claims of loss, including death and disability, for a broad range of products, including any drug that the Secretary designated as one that would limit the harm caused by a pandemic—a definition so broad as to encompass nearly any drug.

This immunity is not subject to judicial review. It preempts any State laws that provide different liability protections or that may provide stronger consumer safety protections for pharmaceutical products. In fact, the only exception to this immunity is for actions of ''willful misconduct,'' which is so narrowly defined that it would only apply to cases where a company intentionally set out ''to achieve a wrongful purpose . . . in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.'' The provision requires the Secretary and the Attorney General to narrow the scope of willful misconduct even further and states that for any FDA-approved product, willful misconduct will not apply unless the Government is already taking action against the manufacturer for such misconduct.

If the Government is providing complete immunity to manufacturers, how are those who may be injured to seek compensation in case of injury? This provision sets up a ''Covered Countermeasure Process Fund,'' but fails to provide any money for this fund. We all recognize that in a public health emergency, we may need to seek whatever protections we can find to prevent widespread death and disease—but those who are asked to take these products are told that if they are injured, their only recourse is to seek compensation from a fund which currently has no money to award.

I am also gravely concerned by the fact that this provision was included in the appropriations bill without following the process for passing legislation used by this Chamber. This authorizing—authorizing, not appropriating—language was never considered, let alone agreed to by the Senate. It was never agreed to by the HELP or Judiciary Committees, which have jurisdiction over this matter. It is a mockery of the legislative process. I believe that the American people are ill-served by Congress when controversial and potentially harmful provisions can simply be inserted without undergoing the open deliberations and debate that are fundamental to the democratic process and are designed to protect our citizens from special interests and back-room dealings. This provision should be stripped from the bill.

Mr. DODD. Mr. President, this week, the Senate considers conference reports on two pieces of legislation—the Defense Authorization and Appropriations Acts that are critical to the security of our Nation. These conference reports contain important measures for keeping our troops safe and secure, particularly provisions to upgrade body armor and protective equipment, resources to ramp-up vital construction of U.S. military ships, aircraft, and ground vehicles, and funding for research on vital defense technologies of the future.

The conference agreements also promote important quality-of-life improvements for our troops and their families, including a 3.1 percent pay raise for all military personnel and increases in compensation for survivors of military personnel killed since the onset of the wars in Afghanistan and Iraq.

These two bills could not come before the Senate at a more urgent time. Our Nation is at war, and our troops desperately need these resources to complete their missions in Iraq and Afghanistan.

This Congress owes America's fighting men and women its unconditional support for these critical defense priorities. But this year, the administration and Members of the majority in Congress have fallen far short of meeting this responsibility. They have allowed a handful of powerful special interests to impede the critically important process of funding our national defense, including America's highest security priorities. The Republican leadership's decisions to open up the Arctic National Wildlife Refuge for oil companies' exploitation and to shield drug and vaccine makers from any accountability have absolutely nothing to do with national security and have no place in bills like the defense appropriations conference report. Their willingness to risk funding for our troops in favor of these parochial priorities is indefensible.

Let me say a few words about these two specific measures.

I have consistently opposed opening the Arctic National Wildlife Refuge, ANWR, to oil drilling because I am unconvinced that the small amount of recoverable oil there outweighs the permanent damage that we would do to the area and the nearly 200 species of wildlife that live there. The process entails a web of oil platforms, pipelines, production facilities, power facilities, support structures, and roads across the entire area. I strongly believe we need to ensure our Nation's economic and energy security, but any recoverable oil in the Refuge would not begin flowing for at least 10 years. What is the urgency to include this legislation now in a bill it has no business being part—of especially when the impact of such a measure could be so remote and so damaging? There is significantly less job creation than proponents would have us believe, there is minimal

recoverable oil available, drilling in ANWR would have no impact on current energy prices or supply or even on our foreign oil dependence, and it would leave a web of infrastructure that would permanently ruin the pristine nature of the land and habitat. Moreover, if we took just a few modest steps to use energy more efficiently—such as properly inflating vehicle tires or raising engines' fuel efficiency—we would save more oil than currently exists in the ANWR. It is simply irresponsible to move forward with this legislation.

Just as irresponsible is an equally non-germane provision shielding vaccine producers from liability. This language provides sweeping legal immunity to a few companies, and relieves them of responsibility for their reckless and negligent actions. Rather than encouraging companies to make safe and effective medicines, it will provide a perverse incentive by protecting those companies that make ineffective or harmful products. That is unwise—not to mention unfair—to companies that strive for excellence, a number of which are located in Connecticut. And rather than encouraging Americans to be vaccinated or to take needed medication, it will discourage them from doing so by failing to provide even rudimentary compensation for the few who will inevitably be injured by these products. Make no mistake about it: this plan fails to protect the American people from the risk of a flu pandemic or from other biohazards.

Senator KENNEDY and I spent the past several months negotiating with Senators ENZI, BURR, GREGG, FRIST, and others on the Health, Education, Labor, and Pensions Committee to try to reach a bipartisan compromise on this issue. Senator KENNEDY and I made several proposals, modeled on past Congressional action, to protect manufacturers from frivolous lawsuits while providing fair and adequate compensation to those who are injured. Both sides worked in good faith, and we made significant progress.

Unfortunately, my understanding is that a decision was made by leaders of the Republican caucus to forego this bipartisan process. Instead, this non-germane provision was slipped in the final hours of this session of Congress into the Defense Appropriations Conference Report. Furthermore, it is my understanding that this language was inserted after members had agreed to the Conference Report with the understanding that this language was not included. I am disturbed and disappointed by this blatant abuse of power and disregard for Senate procedures. I can only assume that the supporters of this provision are using this tactic because they know that their plan would not stand up to public scrutiny and Senate debate.

In terms of some of the germane provisions of this bill, I must also express my disappointment with the conferees' decisions to weaken important measures that were actually inserted in the Senate's defense bills to support and protect our troops. For example, I originally authored amendments to both of these bills that would ensure that our troops would be reimbursed for purchasing their own critical safety and protective gear that the Defense Department failed to provide for use in Iraq and Afghanistan. The Senate approved this measure without any dissent, having recognized the administration's inadequate compliance with current law. After failing to implement a program under a law enacted last year, the Pentagon only established the reimbursement initiative as this body considered the new provisions to extend this benefit to all military personnel deployed to Iraq and Afghanistan. Most appalling to me is that there remains little evidence that the Pentagon has acted to ensure that our soldiers, sailors, airmen, and marines receive the information that they need to take advantage of this important program. Given that the Defense Department is failing to meet its commitment to adequately equip our military personnel, the least that it can do is inform our brave men and women of the compensation due to them. In the end, I was deeply troubled that the final version of this legislation did not include adequate language to address many of the concerns originally raised on this floor just two months ago. In particular, as part of an agreement worked out with both Chairmen of the Defense Appropriations Subcommittee and Senate Armed Services Committee, we had agreed to extend the reimbursement program to troops who made purchases up until the end of the 2006 fiscal year. In both final conference reports, this deadline was cut short to April 1, 2006.

In the final analysis of the underlying bills, I can only take solace in the fact that other critically important measures in these conference reports could have been weakened even further. We in this body managed to avert grave problems posed by misplaced priorities by the administration and the Republican leadership. For example, it is my understanding that the administration's allies in the House actually attempted to slip another measure—this time, related to campaign finance—into the Defense Authorization Act after the conferees had already signed the conference report—without any hearing or public review by the appropriate committees of jurisdiction. It was only after the chairman and ranking member of the Senate Armed Services Committee intervened that this utter abuse of power was averted.

In another case, the administration and its allies in Congress sought to thwart the final approval of Senator MCCAIN's amendment that would set standards for the interrogation of detainees in the custody of the United States, and prohibit the cruel, inhuman, or degrading treatment of these detainees. I strongly support Senator MCCAIN's amendment because it upholds the values on which our country is based, it helps strengthen the rule of law, and most importantly, it serves to protect American troops and civilians who are currently serving and living abroad.

I regret, however, that the Bush administration attempted for so long to block adoption of this amendment. Indeed, the administration only accepted it in the face of overwhelming congressional support and in the wake of international condemnation resulting from allegations of secret CIA prisons in Europe. While I am certainly pleased that the McCain amendment was included in this conference report, I hope that the administration's stonewalling has not undermined the very things that this amendment aims to protect—American values and American lives.

In the end, it is our solemn duty as members of this institution to promote policies that will safeguard America's critical security interests. That is why I am so deeply offended by the tactics which the majority used to weaken many of these efforts. After all, most of the germane provisions of these two Defense-related conference reports will support our defense needs and protect U.S. military personnel deployed in harm's way. For example, within these germane provisions, I am particularly proud that the bills build on Connecticut's unique strengths in contributing to America's defense needs. From increases in Black Hawk helicopters to production of a new Virginia Class submarine, our troops will be better prepared to meet the security challenges of the 21st century.

Under these bills, the Army and Navy will receive 83 much needed Black Hawk helicopters to perform a variety of critical missions including medical evacuations, air assaults, and special operations. In the shipbuilding accounts, in addition to funding the procurement of another Virginia submarine, these bills will ensure that the Navy remains committed to developing new undersea technologies—including development of new submarine designs—an important element of our nation's pertinent efforts to maintain undersea dominance as countries such as China and Russia expand their own submarine fleets.

To address immediate concerns for our soldiers and marines, these bills finally contribute meaningful resources for countering the most serious threats facing our troops in Iraq—the so-called improvised explosive devices or IEDs. Devoting $1 billion to the Joint Improvised Device Defeat Task Force will help accelerate American development of new technologies and tactics for detecting, jamming, or de-activating these roadside bombs which continue to plague U.S. combat operations in Iraq. In addition, I am truly pleased with the conferees' decision to add an additional $610 million to the Administration's otherwise slow attempts at reinforcing American ground vehicles

in Iraq with state-of-the-art body armor and other protective gear. This Congress has few higher priorities than the safety and wellbeing of our troops deployed in harm's way. And I believe these measures truly are steps in the right direction.

But we must remain dedicated to such critical force protection measures, particularly as our forces battle insurgents in Iraq and Afghanistan. The Republican majority's attempts to ensnare these defense bills with unrelated political schemes gravely threatened our ability to meet this commitment and amounted to an utter abuse of power.

The United States is at war. Our troops and the American people expect that our nation's defense policy will be unfettered by special interests and untainted by political gamesmanship. I can only hope that, as we return to Capitol Hill to begin the New Year a few weeks from today, the leaders of the majority party will resolve to put national interests over narrow interests.

Mr. LEAHY. When the Department of Defense authorization bill passed the Senate on November 15, I spoke of my concerns about an amendment that limits the rights of detainees in U.S. custody at Guantanamo Bay, Cuba, to file habeas corpus petitions in federal court. That amendment was modified in conference to further erode these rights, and then identical text was added to the conference report on Defense appropriations to ensure that the language was enacted into law in one bill or the other.

Debates over the treatment of detainees have dominated our discussions of both the Defense authorization and appropriations bills. Senator MCCAIN waged a battle with the White House and his own party to ensure that his amendment requiring the humane treatment of detainees was retained in the conference reports. I commend Senator MCCAIN and the members of the Congress who have fought to address these issues. Despite calls from many of us over recent years, the legislative branch has not met its obligation of oversight and policymaking in this area. I am encouraged that more than 18 months after the revelation of atrocities at Abu Ghraib, we are finally willing to confront this issue.

The administration fought this provision for months, with the President vowing to veto any bill that contained it. But after months of threats and backdoor lobbying, the White House finally recognized that it could not win with a policy that granted itself the authority to use torture or cruel and inhumane treatment in interrogations.

Unfortunately, the positive steps we take today in adopting the McCain amendment are undercut by the modified Graham-Levin amendment in the conference report. As I just noted, I expressed concerns about the Graham-Levin text, and voted against it, when it passed the Senate. At that time, it reflected a modest improvement over an earlier version offered by Senator GRAHAM. Now, it has come almost full circle, and is deeply troubling.

The Graham-Levin amendment as it passed the Senate would deny prisoners that the administration claims are unlawful combatants the right to challenge their detention in a petition for a writ of habeas corpus. At no time in the history of this Nation have habeas rights been permanently cut off from a group of prisoners. Even President Lincoln's suspension of habeas was temporary. The Supreme Court has held numerous times that enemy combatants can challenge their detention. The new version of this text, the text that was added to the conference report, goes even further. It prohibits any lawsuit against the United States brought by a Guantanamo detainee for any reason. This means that while the McCain Amendment requires humane treatment of detainees, the substituted text of the Graham-Levin Amendment provides no remedy whatsoever when detainees are mistreated. The result is that Guantanamo could become the legal black hole that the administration has long argued it should be. The Supreme Court rejected that argument in Rasul v. Bush in 2004.

I am also deeply troubled by other provisions added in conference. The conference report allows a combatant status review tribunal, an administrative review board, or a similar tribunal to consider statements obtained as a result of coercive interrogation, so long as the tribunal assesses the ''probative value'' of the statement. With the passage of the McCain amendment, I had hoped that the Congress was finally prepared to acknowledge that statements obtained by coercion have no value.

A prime example of how abusive interrogation techniques elicit bad intelligence was reported on December 9, 2005, in The New York Times. The article states that the ''administration based a crucial prewar assertion about ties between Iraq and al Qaida on detailed statements made by a prisoner while in Egyptian custody who later said he had fabricated them to escape harsh treatment.'' Just last week, at a speech in Philadelphia, a member of the audience asked the President why the administration continually seeks to link the 9/11 attacks with the invasion of Iraq in spite of the fact that Iraq was not involved in the events of 9/11.

It is beneath the values of this Nation to allow the use of coerced statements in the trials or review panels conducted on the status of detainees. It is also beneath us to strip detainees of habeas rights. Filing a petition for a writ of habeas corpus is often the detainee's only opportunity to openly challenge the basis for his detention. Providing detainees this right is not about coddling terrorists. It is about showing the world that we are a nation of laws and that that we uphold the principles that we urge other nations to follow. It is about honoring and respecting the values that are part of our heritage as Americans and that have shone as a beacon to the rest of the world. Allowing a detainee to file a habeas petition provides legitimacy to our detention system and quells speculation that we are holding innocent people in secret prisons without any right to due process.

Some members of the Senate have argued that these prisoners should be tried in the military justice system. I think that we could all agree on such a course if the administration had worked with Congress from the start and established with our approval procedures that are fair and consistent with our tradition of military justice. The Graham-Levin amendment does allow the Court of Appeals for the District of Columbia to review some of the military commission's final decisions. I am in favor of Federal court review, but Congress seems to have missed the critical step of authorizing the administration to use military commissions. I introduced a bill in the 107th Congress to do just that. So did Chairman SPECTER. If the administration wanted to use military commissions to try detainees, it should have sought and obtained the explicit authorization of Congress. It did not do so. The system that has been established by the administration to try individuals held at Guantanamo does not provide due process or independent review. It is not a system that reflects our tradition of justice.

Since the Graham-Levin amendment would not retroactively apply to pending cases, the Supreme Court will still have the opportunity to determine the legitimacy of the military commissions, as being litigated in case of Hamdan v. Rumsfeld. If the military commission process is rejected by the Court, I hope that the administration will work with Congress to establish a fair system for trying suspects who are captured in the war on terror. Working in this way, we can restore the reputation of our Nation for upholding the rule of law.

Everyone in Congress agrees that we must capture and detain terrorist suspects, but it can and should be done in accord with the laws of war and in a manner that upholds our commitment to the rule of law. The Judiciary Committee held a hearing on detainee issues in June. At that hearing, Senator GRAHAM said that once enemy combatant status has been conferred upon someone, ''it is almost impossible not to envision that some form of prosecution would follow.'' He continued, ''We can do this and be a rule of law nation. We can prove to the world that even among the worst people in the world, the rule of law is not an inconsistent concept.'' I agree with Senator GRAHAM, but I strongly believe that in order to uphold our commitment to the rule of law, we must allow detainees the right to challenge their detention in Federal court.

As Chairman SPECTER noted on the floor last month, there are existing procedures under habeas corpus that have been upheld by the Supreme Court that do not invite frivolous claims and that are appropriate. The Graham-Levin amendment would not only restrict habeas in a manner never done before in our Nation, but, as the chairman of the Judiciary Committee said last week, it would open a Pandora's box.

The chairman is right. We must not rush to change a legal right that predates our Constitution. Creating one exemption to the Great Writ only invites more. The Judiciary Committee has jurisdiction over habeas corpus, and it should have the first opportunity to review any proposed changes carefully and thoroughly. Although congressional action on the issue of foreign detainees is long overdue, we must not act hastily when the Great Writ—something that protects us all—is at stake.

I ask unanimous consent to place in the RECORD an article entitled, ''Qaeda-Iraq Link U.S. Cited Is Tied to Coercion Claim,'' from the December 9, 2005, New York Times.

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

[From the New York Times, Dec. 9, 2005]

QAEDA-IRAQ LINK U.S. CITED IS TIED TO COERCION CLAIM

(By Douglas Jehl)

WASHINGTON.—The Bush administration based a crucial prewar assertion about ties between Iraq and Al Qaeda on detailed statements made by a prisoner while in Egyptian custody who later said he had fabricated them to escape harsh treatment, according to current and former government officials.

The officials said the captive, Ibn al-Shaykh al-Libi, provided his most specific and elaborate accounts about ties between Iraq and Al Qaeda only after he was secretly handed over to Egypt by the United States in January 2002, in a process known as rendition.

The new disclosure provides the first public evidence that bad intelligence on Iraq may have resulted partly from the administration's heavy reliance on third countries to carry out interrogations of Qaeda members and others detained as part of American counterterrorism efforts. The Bush administration used Mr. Libi's accounts as the basis for its prewar claims, now discredited, that ties between Iraq and Al Qaeda included training in explosives and chemical weapons.

The fact that Mr. Libi recanted after the American invasion of Iraq and that intelligence based on his remarks was withdrawn by the C.I.A. in March 2004 has been public for more than a year. But American officials had not previously acknowledged either that Mr. Libi made the false statements in foreign custody or that Mr. Libi contended that his statements had been coerced.

A government official said that some intelligence provided by Mr. Libi about Al Qaeda had been accurate, and that Mr. Libi's claims that he had been treated harshly in Egyptian custody had not been corroborated.

A classified Defense Intelligence Agency report issued in February 2002 that expressed skepticism about Mr. Libi's credibility on questions related to Iraq and Al Qaeda was based in part on the knowledge that he was no longer in American custody when he made the detailed statements, and that he might have been subjected to harsh treatment, the officials said. They said the C.I.A.'s decision to withdraw the intelligence based on Mr. Libi's claims had been made because of his later assertions, beginning in January 2004, that he had fabricated them to obtain better treatment from his captors.

At the time of his capture in Pakistan in late 2001, Mr. Libi, a Libyan, was the highest-ranking Qaeda leader in American custody. A Nov. 6 report in The New York Times, citing the Defense Intelligence Agency document, said he had made the assertions about ties between Iraq and Al Qaeda involving illicit weapons while in American custody.

Mr. Libi was indeed initially held by the United States military in Afghanistan, and was debriefed there by C.I.A. officers, according to the new account provided by the current and former government officials. But despite his high rank, he was transferred to Egypt for further interrogation in January 2002 because the White House had not yet provided detailed authorization for the C.I.A. to hold him.

While he made some statements about Iraq and Al Qaeda when in American custody, the officials said, it was not until after he was handed over to Egypt that he made the most specific assertions, which were later used by the Bush administration as the foundation for its claims that Iraq trained Qaeda members to use biological and chemical weapons.

Beginning in March 2002, with the capture of al Qaeda operative named Abu Zubaydah, the C.I.A. adopted a practice of maintaining custody itself of the highest-ranking captives, a practice that became the main focus of recent controversy related to detention of suspected terrorists.

The agency currently holds between two and three dozen high-ranking terrorist suspects in secret prisons around the world. Reports that the prisons have included locations in Eastern Europe have stirred intense discomfort on the continent and have dogged Secretary of State Condoleezza Rice during her visit there this week.

Mr. Libi was returned to American custody in February 2003, when he was transferred to the American detention center in Guantánamo Bay, Cuba, according to the current and former government officials. He withdrew his claims about ties between Iraq and Al Qaeda in January 2004, and his current location is not known. A C.I.A. spokesman refused Thursday to comment on Mr. Libi's case. The current and former government officials who agreed to discuss the case were granted anonymity because most details surrounding Mr. Libi's case remain classified.

During his time in Egyptian custody, Mr. Libi was among a group of what American officials have described as about 150 prisoners sent by the United States from one foreign country to another since the Sept. 11, 2001 attacks for the purposes of interrogation. American officials including Ms. Rice have defended the practice, saying it draws on language and cultural expertise of American allies, particularly in the Middle East, and provides an important tool for interrogation. They have said that the United States carries out the renditions only after obtaining explicit assurances from the receiving countries that the prisoners will not be tortured.

Nabil Fahmy, the Egyptian ambassador to the United States, said in a telephone interview on Thursday that he had no specific knowledge of Mr. Libi's case. Mr. Fahmy acknowledged that some prisoners had been sent to Egypt by mutual agreement between the United States and Egypt. ''We do interrogations based on our understanding of the culture,'' Mr. Fahmy said. ''We're not in the business of torturing anyone.''

In statements before the war, and without mentioning him by name, President Bush, Vice President Dick Cheney, Colin L. Powell, then the secretary of state, and other officials repeatedly cited the information provided by Mr. Libi as ''credible'' evidence that Iraq was training Qaeda members in the use of explosives and illicit weapons. Among the first and most prominent assertions was one by Mr. Bush, who said in a major speech in Cincinnati in October 2002 that ''we've learned that Iraq has trained Al Qaeda members in bomb making and poisons and gases.''

The question of why the administration relied so heavily on the statements by Mr. Libi has long been a subject of contention. Senator Carl Levin of Michigan, the top Democrat on the Senate Armed Services Committee, made public last month unclassified passages from the February 2002 document, which said it was probable that Mr. Libi ''was intentionally misleading the debriefers.''

The document showed that the Defense Intelligence Agency had identified Mr. Libi as a probable fabricator months before the Bush administration began to use his statements as the foundation for its claims about ties between Iraq and Al Qaeda involving illicit weapons.

Mr. Levin has since asked the agency to declassify four other intelligence reports, three of them from February 2002, to see if they also expressed skepticism about Mr. Libi's credibility. On Thursday, a spokesman for Mr. Levin said he could not comment on the circumstances surrounding Mr. Libi's detention because the matter was classified.

Mr. LEAHY. Late Sunday night, Republican leadership slipped language into a lengthy appropriations conference report that will immunize drug companies against reckless misconduct and will impede our ability to protect our citizens from the threatened avian flu pandemic. This provision is a gift to the drug manufacturers and will likely have a devastating effect on our ability to protect our constituents.

Under the guise of a threatened pandemic, this legislation goes far beyond the scope of vaccine preparedness and includes language that is far more sweeping than any language previously passed by the House or the Senate. Instead of focusing on protecting American families from avian flu or ensuring that victims of any untested vaccine will be compensated for their injuries, the provision simply shields drug companies from any culpability for injuries caused by its actions. The scope of this immunity is so expansive that once the Secretary of Health and Human Services has declared a public health emergency even for a future threat, drug companies would not be held accountable for any injuries or deaths caused by the drugs they manufacture, including drugs that are not specifically used in a pandemic context. This is disgraceful and will deter Americans from taking vaccines and drugs if we ever experience a health crisis.

The only exception to the broad immunity given to drug companies in this proposal is the possibility that a victim could prove that the company

acted with ''willful misconduct.'' Knowingly committing health violations would not even suffice to state a claim. Knowing violations as well as gross negligence would be immunized from accountability. Even if the drug company acted with the intent to harm people, it would nevertheless be immune from criminal conduct unless the Attorney General or Secretary of Health and Human Services initiates an enforcement action against a drug company that is still pending at the time a personal claim is filed. That is unbelievable. I question whether such a role for the Secretary of HHS is even constitutional. Since when do we in Congress allow a political appointee of the administration to determine when, and if, someone injured by willful misconduct can be compensated for their injuries? Professor Erwin Chemerinsky sent a letter yesterday that outlines his concerns regarding the constitutionality of the provision and I ask that his letter be made part of the RECORD.

Passage of the Defense appropriations bill is of vital importance to all of us, but the inclusion of provisions that excuse even gross and deadly negligence on the part of drug companies makes it impossible for many of us to vote for this bill in good conscience. I urge my colleagues to strike the unjustified and extraneous provisions from the Defense appropriations bill in order to act quickly on this important bill.

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

DECEMBER 20, 2005.

DEAR SENATOR: I understand that the Congress is considering legislation that has been denominated as the ''Public Readiness and Emergency Preparedness Act.'' This legislation would give the Secretary of Health and Human Services extraordinary authority to designate a threat or potential threat to health as constituting a public health emergency and authorizing the design, development, and implementation of countermeasures, while providing total immunity for liability to all those involved in its development and administration. In addition to according unfettered discretion to the Secretary to grant complete immunity from liability, the bill also deprives all courts of jurisdiction to review those decisions. Sec. (a)(7). I write to alert the Congress to the serious constitutional issues that the legislation raises.

First, the bill is of questionable constitutionality because of its broad, unfettered delegation of legislative power by Congress to the executive branch of government. Under the nondelegation doctrine, Congress may provide another branch of government with authority over a subject matter, but ''cannot delegate any part of its legislative power except under the limitation of a prescribed standard.'' *United States v. Chicago, M., St. P. & P.R. Co.*, 282 U.S. 311, 324 (1931). Recently, the Supreme Court endorsed Chief Justice Taft's description of the doctrine: ''the Constitution permits only those delegations where Congress 'shall lay down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform.' '' *Clinton v. City of New York*, 524 U.S. 417, 484 (1998)(emphasis in original), quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928). The breadth of authority granted the Secretary without workable guidelines from Congress appears to be the type of ''delegation running riot'' that grants the Secretary a ''roving commission to inquire into evils and upon discovery correct them'' of the type condemned by Justice Cardozo in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 553 (1935)(Cardozo, J., concurring).

Second, the bill raises important federalism issues because it sets up an odd form of federal preemption of state law. All relevant state laws are preempted. Sec. (a)(8). However, for the extremely narrow instance of willful (knowing) misconduct by someone in the stream of commerce for a countermeasure, the bill establishes that the substantive law is the law of the state where the injury occurred, unless preempted. Sec. (e)(2). The sponsors appear to be trying to have it both ways, which may not be constitutionally possible. The bill anticipates what is called express preemption, because the scope of any permissible lawsuits is changed from a state-based to a federally based cause of action. See *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003).

Usually, that type of ''unusually 'powerful' '' preemptive statute provides a remedy for any plaintiff's claim to the exclusion of state remedies. *Id.* at 7 (citation omitted). Here, rather than displace state law in such instances, the bill adopts the different individual laws of the various states, but amends them to include a willful misconduct standard that can only be invoked if the Secretary or Attorney General initiates an enforcement action against those involved in the countermeasure and that action is either pending at the time a claim is filed or concluded with some form of punishment ordered.

Such a provision raises two important constitutional concerns. One problem is that this hybrid form of preemption looks less like an attempt to create a federal cause of action than an direct attempt by Congress to amend state law in violation of *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 (1938) and basic principles of federalism. Although Congress may preempt state law under the Supremacy Clause by creating a different and separate federal rule, see *Crosby* v. *Nat'l Foreign Trade Counc.*, 530 U.S. 363, 372 (2000), it may not directly alter, amend, or negate the content of state law as state law. That power, the Erie Court declared, ''reserved by the Constitution to the several States.'' 304 U.S. at 80. It becomes clear that the bill attempts to amend state law, rather than preempt it with a federal alternative, when one realizes that States will retain the power to enact new applicable laws or amend existing ones with a federal overlay that such an action may only be commenced in light of a federal enforcement action and can only succeed when willful misconduct exists. The type of back and forth authority between the federal and state governments authorized by the bill fails to constitute a form of constitutionally authorized preemption.

The other problem with this provision is that the unfettered and unreviewable discretion accorded the Secretary or Attorney General to prosecute an enforcement action as a prerequisite for any action for willful misconduct violates the constitutional guarantee of access to justice, secured under both the First Amendment's Petition Clause and the Fifth Amendment's Due Process Clause. See *Christopher* v. *Harbury*, 536 U.S. 403, 415 n.12 (2002). In fact, the Court has repeatedly recognized that ''the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances.'' *Bill Johnson's Restaurants* v. *NLRB*, 461 U.S. 731, 741 (1983), citing *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U.S. 508, 510 (1972). First Amendment rights, the Supreme Court has said in a long line of precedent, cannot be dependent on the ''unbridled discretion'' of government officials or agencies. See, e.g., *City of Lakewood* v. *Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988). At the same time, the Due Process Clause guarantees a claimant an opportunity to be heard ''at a meaningful time and in a meaningful manner.'' *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). The obstacles placed before a claimant, including the insuperable one of inaction by the Secretary or Attorney General, raise significant due process issues. The Supreme Court has recognized that official inaction cannot prevent a claimant from being able to go forth with a legitimate lawsuit. See *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422 (1982). The proposed bill seems to reverse that constitutional imperative.

Third, the complete preclusion of judicial review raises serious constitutional issues. The Act, through Sec. 319F–3(b)(7), expressly abolishes judicial review of the Secretary's actions, ordaining that ''[n]o court of the United States, or of any State, shall have subject matter jurisdiction,'' i.e., the power, ''to review . . . any action of the Secretary regarding'' the declaration of emergencies, as well as the determination of which diseases or threats to health are covered, which individual citizens are protected, which geographic areas are covered, when an emergency begins, how long it lasts, which state laws shall be preempted, and when or if he shall report to Congress .

The United States Supreme Court has repeatedly stressed that the preclusion of all judicial review raises ''serious questions'' concerning separation of powers and due process of law. See, e.g., *Johnson* v. *Robison*, 415 U.S. 361 (1974); see also, *Oestereich* v. *Selective Service System Local Board No. 14*, 393 U.S. 233 (1968); *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991); *Reno* v. *Catholic Social Services*, 509 U.S. 43 (1993). Judicial review of government actions has long regarded as ''an important part of our constitutional tradition'' and an indispensable feature of that system, *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973).

The serious constitutional issues raised by this legislation deserve a full airing and counsels against any rush to judgment by the Congress. Whatever the merits of the bill's purposes, they may only be accomplished by consideration that assures its constitutionality.

ERWIN CHEMERINSKY.

Mr. DORGAN. Mr. President, the conference report on the Defense appropriations bill contains $29 billion in disaster relief funding related to hurricanes Katrina and Rita. As part of that emergency package, $49 million is being made available to the National Park Service and the U.S. Fish and Wildlife Service to reimburse cleanup costs and facility repair and restoration costs arising from the hurricanes. As the ranking member of the Interior and Related Agencies Subcommittee, which has jurisdiction over these agencies, I fully support this appropriation. There are, however, two aspects of the funding provision which concern me.

First, the $49 million being provided is less than a quarter of the $220 million in damages suffered by our gulf coast parks and refuges. But not funding these expenses does not make them go away. What I fear will end up happening is that every other park and

every other refuge in the Nation is going to have its 2006 budget reduced as a way of making up the $170 million Congress is not providing. Every park superintendent and every refuge manager in this Nation is struggling to keep up with fixed costs and working to address the maintenance backlog. Taking more money away from them is simply not helpful.

Secondly, I strongly disagree with the instructions that are being given to the National Park Service and the Fish and Wildlife Service with respect to how these funds are to be spent. The funding in this bill is provided through each Agency's construction account. Under Federal law, that is the only purpose for which those funds can be used. They cannot legally be spent on operational expenses, which are funded through different accounts. However, the Statement of Managers, which is the report that accompanies the bill and explains in detail how all of the appropriated dollars are to be spent, explicitly says that the money is available for ''un—reimbursed overtime [pay] and operational costs.''

I think it was a mistake for the administration to forgo asking for reimbursement of operational expenses. Both agencies have incurred substantial costs in that area that must be paid for. But the administration's error should not be compounded by having Congress encourage a Federal agency to violate the law. We could have very easily divided the funding between the operational accounts and the construction accounts, which would have allowed the agencies to properly and legally repay some of their operational costs. But that idea was soundly rejected by the majority in the House of Representatives. And so we are left with a situation where we are explicitly encouraging Federal agencies to use appropriated dollars for purposes other than what they were intended. That, Mr. President, is simply the wrong thing to do.

Mr. KOHL. Mr. President, today I joined many of my colleagues in opposing cloture on the Defense appropriations bill. Regrettably, I was forced to try and slow this bill down because language unrelated to our Nation's defense was inserted into the bill. In a cynical attempt to authorize drilling in the Arctic National Wildlife Refuge, language that in the past has been filibustered, was included in the Defense bill. Using our men and women in the military as a shield, the ANWR bill was put in the Defense bill in a parliamentary game of chicken. Supporters of drilling in ANWR believed that if they included this language in the Defense bill, opponents of drilling in ANWR would never vote to hold up the Defense bill. They were wrong.

I do not enjoy opposing a Defense bill while we have troops in harm's way, but the principle at stake here was too important. We will be sorry if we set the precedent that unpopular provisions can just be rolled into the bill that funds our defense. In the long run, letting that cynical strategy proliferate will hurt our country and the institution of the Senate.

So today, when I opposed cloture, it was not a reflection of my support of our military. I believe in our men and women in uniform and believe that this bill should have been passed months ago. Instead, I opposed cloture because I believe that we should not use the Defense bill as a Trojan Horse to slip through legislation that would not be able to survive under the normal rules of the Senate.

Mr. OBAMA. Mr. President, I rise to speak about the bill before us today.

If any of you are wondering why the American people are so frustrated with the legislative process, why they believe that politics always trumps substance and nothing ever gets done in Washington, this is what they are talking about.

Every single member of this body wants our military to have the funding and the resources it needs to fight the war in Iraq and the war on terror. We all agree on that.

Yet somehow an otherwise noncontroversial bill gets bogged down because some have chosen to use it as a political opportunity to slip in proposals they couldn't get passed through the normal channels of debate and deliberation. The idea here is to add anything you want to a Defense bill, no matter how surprising or controversial, figuring that it will pass since no one would dare cast a vote against our troops.

They may think this is shrewd politics, but it is terrible policy, and it is disrespectful to both our brave men and women in the field and the American people back home.

Now, I have great respect for the Senator from Alaska, and I also respect his passion towards the ANWR debate, even if I disagree with his position. But I strongly believe that if he and other ANWR supporters wish to convince us of that position, they should do so by arguing the merits of the proposal itself, not by sneaking it into a bill none of us want to vote against. Not only does that go against the best traditions of the United States Senate, it goes against the best expectations of the American people when they sent us here.

Aside from critical defense funding for our troops, there are other elements of this bill that this country desperately needs to have passed. There is funding for gulf coast recovery efforts and resources that will help our Nation prepare for a possible avian flu pandemic. I am also pleased that Senator MCCAIN's amendment opposing torture, which was overwhelmingly passed by the Senate, appears in this bill.

Unfortunately, all of this critical funding is being jeopardized by one Senator's desire to ram through a provision that is personally important to him. That is not the way Congress should be conducting its business.

There will be a time and a place for debate on this topic as there has been before. But now is not that time. Not with 180,000 troops in harm's way who need important resources and supplies; not with families from the gulf coast who want a place to go home to; not with the danger of pandemic influenza threatening our shores. Now is the time to respect the legislative process and pass a bill that does not play politics with our troops, so that we can finally return home to our constituents and let them know that we truly did the people's work.

Mr. President, I want to express my strong support for the reauthorization of the Department of Defense, DOD, 1207 program. The 1207 program is designed to ensure that the DOD Federal contracting process does not support or subsidize discrimination. This program must be extended through September 2009 so that the tremendous progress we have made in leveling some of the playing ground for Federal contracting is not lost.

We here in Congress know that there is a long history of keeping out the little guys in government contracting. In the aftermath of Hurricane Katrina, minority-owned and economically disadvantaged companies have had a near impossible time trying to secure some of the billions of dollars of gulf coast reconstruction contracts. Meanwhile, big multinational contractors were given no-bid contracts in the weeks immediately following the hurricane. This double standard is unfortunately all too common, and it is the duty of Congress to ensure that this discrimination does not continue.

Ever since the DOD's 1207 program was first adopted in 1986, racial and ethnic discrimination—both overt and subtle—have continued to erect significant barriers to minority participation in Federal contracting, but the 1207 program helps to correct the problems of discrimination without imposing an undue burden on larger businesses. Without programs like the 1207 program, many contractors would simply revert to their old practices, denying contracts to small companies owned by minorities or the economically disadvantaged. It is clear that the 1207 program is still needed to monitor and secure the gains made and perhaps encourage even greater opportunity for these small businesses.

I am pleased that this bill includes an extension of this important program. I have a letter from a minority-woman owned business detailing some of her experiences with the Department of Defense, and I ask that this letter also be printed in the RECORD.

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

ELYON INTERNATIONAL,
Vancouver, WA, December 20, 2005.

DEAR SENATOR, My name is Carmen Nazario. I am a Hispanic woman business owner and Veteran, working in the Information Technology industry. I have been in

business for more than eight years and our company has successfully completed contracts in the private and public sector. I personally have worked in this industry as a practicing professional for over 30 years. My initial entry into the computer technology profession commenced while serving in the army during the Vietnam-era war. I graduated as an honor student from the Adjutant General School on two different occasions while attending various types of computer training and continued in that career path after leaving the military.

I am writing to you because I believe that it is terribly important that you understand that discrimination is still pervasive in the contracting markets across this country. Where I live in Washington State I confront discrimination on a regular basis as I attempt to run my business and earn a living.

I understand that Congress is currently reauthorizing the Department of Defense's 1207 program. This program is of special interest to me because I have attempted to get work with the Defense Department over the past several years to no avail. I feel strongly that discrimination and stereotyping are part of the reason that it is difficult for me, and for other minority business owners. to fully participate in our nation's economy.

I would like to give you some examples of the types of discrimination I have confronted just in the last few years. For the past eight years I have engaged tirelessly in marketing the services of ELYON International. I have experienced an unfavorable business climate towards a Hispanic woman professional, both in the public and private sector in spite of the fact that I have wonderful references and the clients I have previously supported have been very happy with our services.

I have been trying to work with Washington State agencies for over seven years and find it very difficult because Washington State has no minority procurement goals. Although we have been on board with various agencies as pre-qualified vendors by way of the RFP process, I find that the state tends to award contracts to large firms and companies they have been working with for years. As an example, I submitted a well qualified candidate, a minority, who was interviewed as a finalist but not selected and I found out that the work was awarded to another company who had an established track record with the state. (I requested the winning bid.) Washington State's procurement awards to minority companies has drastically decreased to less that 1 percent since implementation of the 1–200 initiative which removed minority procurement goals from State government purchasing. I find this discriminatory in the sense that 99 percent of contracting opportunities are going to non-minority companies. The state is not distributing its wealth to its constituents.

This year we submitted a response to a small business set-aside for Tactical Network Services at Fort Lewis, WA. We had Microsoft as a sub-contractor and used some of their past performance as well as ours. Much of the technology for this response involved Microsoft products. When I requested the winning vendor information I found out it was awarded to a newly formed company, service disabled, who had only been in existence for a few months and whose owners had been previously employed by the incumbent and were partnering with BAE who had acquired the incumbent, DigitalNet (a large company).

Deployable Data Systems, who won the bid, priced it at $2,468,075 and ours was $2,298.107. Ours was $169,968 lower. I requested a debriefing but was given bogus reasons and I also requested a copy of the winning solicitation response but was denied any further information other than price and name of company that received the award. I find these actions totally discriminatory . . . Ft Lewis decision makers knew all along who they where going to award that contract to.

MBEs are being squeezed out of the supply chain for larger deals. Many government contracting opportunities have now been bundled making it only possible for primary suppliers to respond to these larger long-term contract opportunities. In the past I have also proposed to establish a working relationship as a subcontractor to IBM, Anteon, Unisys, Best Consulting, Anderson Consulting (for GSA contract), DMO, Emerald Solutions and many other large established computer technology firms.

A scenario where I proposed to establish a working relationship as a subcontractor, involved IBM. In September of 2002 I requested a list of companies planning to bid on ACES RFP 2002–035–9275, a multi-million dollar RFP, that was up for re-compete for a maximum period of 10 years (IBM previously held contract). I contacted Mary Brennan, Washington's State Department of Social & Health Services RFP coordinator. She first did not want to release the names of the companies bidding and I called the DSHS's Office of Equal Opportunity to express my concern that a 10 year RFP was being released and I wanted to have an opportunity to contact vendors bidding and propose subcontracting services as a MWBE IT vendor. Mary Brennan finally released the information and I contacted all of the companies planning to bid on this RFP (there were only three, primarily out of state companies). IBM was the only one potentially interested in working with my company. They released an email request for me to provide information and resumes of candidates with the requirements that they needed to satisfy. After much effort on my part to coordindate available candidates and submit their information, I received an email from Jack Tompkins dated October 21, with the following message:

''Carmen, I wanted to thank for you responsiveness to our requests for a WebSphere Administrator and Data Manager. For now, we have filled the requirements we had for our proposal. I do not have an immediate need for any of your candidates, but was pleased to see some promising resumes. As we fill positions in the future I'll make certain that you are made aware of our openings.

''Thank again,

''Jack A. Tompkins

''IBM Global Services—State of Washington''

IBM submitted the proposal to the state, but my company was not included as one of its subcontractors even though I received very positive feedback. Of course the State of Washington had no MBE/WBE requirements in the RFP, nor language encouraging prospective bidders to utilize minority firms. Because of the scope of work involved with this RFP and the number of years (ten)—this procurement probably will hit triple digit multi-million dollar expenditure by the State of Washington, yet there was no opportunity for companies such as mine to participate in the state expenditure. The State of WA ended up awarding this multi-million dollar contract to IBM in 2003 and the winning bid had no minority participation. As of today, we have never been contacted by IBM for any sub-contracting work.

This experience as well as several others I had with large Defense/Federal vendors has led me to believe that perhaps it looks good for them on paper to submit information on their MWBE subcontractor utilization (to comply with minority goals) but their intent may not be to really give us subcontract work.

I appreciate the opportunity to share my stories with you. I know that many, many business owners in similar situations confront very similar problems. Still, many business owners are afraid to speak out for fear of losing business or other types of retaliation. Sadly, discrimination is not yet a part of the past in the United States. Until it is, it is very important that you continue to support and enforce programs intended to level the playing field for women and minority contractors.

Thank you for your time and attention.

Sincerely,

CARMEN NAZARIO,
President.

Mr. BROWNBACK. Mr. President, I rise to speak to speak on a free-standing provision in title IV of the pending DOD appropriations bill, subtitle A, the Hurricane Education Recovery Act, which prohibits discrimination ''on the basis of . . . sex.'' (Section 107(m)(1)(A)). I want to ensure that this provision will be applied in an abortion-neutral manner—such as parallel provisions that have long governed all educational institutions receiving Federal funds—even though it contains no explicit clarifying language.

Over two decades ago, Federal regulators and others misused statutory language against ''discrimination on the basis of sex'' to argue that procedures, such as abortion, which apply only to women must be treated like any routine health procedure. To end this misinterpretation, abortion-neutral language amending title IX of the Education Amendments of 1972 was enacted as part of the Civil Rights Restoration Act in 1988, 20 U.S.C §1688. When Congress passed the D.C. School Choice Incentive Act of 2003 in January, it incorporated this clarification by reference, Sec. 308(b)(3) of Pub. L. 108–199.

It is therefore important to be clear that nothing in this bill is designed to change this legal status quo in any way. At a time when schoolchildren in so many States are in desperate need of temporary assistance to continue their educations, no one should be seizing upon this emergency legislation as a vehicle for changing current law on abortion. Nor should the devastation wrought by Hurricane Katrina and other disasters be used to justify filing sex discrimination suits against private and public schools that do not facilitate abortions for minor children in their charge. I am confident that Congress had no such intent in crafting this bill and that the U.S. Department of Education will not construe the bill's provision on discrimination ''on the basis of sex'' to require any new policy or practice on abortion in schools.

Mr. NELSON of Florida. Mr. President, while I wholeheartedly support robust funding for our troops, several measures slipped into the Defense appropriations bill were totally extraneous to our military missions. Two such provisions—oil drilling in the Arctic National Wildlife Refuge and complete liability protection for drug companies that manufacture vaccines—

were added to this bill behind closed doors and in the dead of the night.

If unrelated and unpopular measures can be slipped into our Nation's military spending bill at the last moment, without being included in either the House or Senate, open debate on issues and all control over spending has been lost. Lawmakers behind this move held funding for our troops hostage to achieve the interests of the oil and drug industries.

Largely for this reason, dozens of Senators voted for more debate on the Defense appropriations conference report. We hope these unwanted and extraneous provisions will be removed.

As I have stated, I voted to oppose closing off debate on the Defense appropriations bill for several reasons—including the bill's insertion of oil drilling in the Arctic National Wildlife Refuge and liability protection for drug companies that manufacture vaccines. In addition, to my opposition to these specific provisions, I believe the disaster relief provided for in the bill is woefully inadequate for Florida.

Florida was hit by four hurricanes again in 2005. Hurricanes Dennis, Katrina, Rita and Wilma wreaked havoc in South Florida, the Panhandle and even parts of central Florida. These storms caused over $2 billion in agricultural losses. That surpasses the losses from the 2004 hurricane season.

Florida's Agriculture Commissioner, Charles Bronson, said that he has ''never witnessed such extensive devastation to our state's agriculture sectors as that caused by Hurricane Wilma.''

Despite this devastation, the disaster relief in the Defense appropriations bill fails to provide any financial relief to the citrus, sugar, vegetable, tropical fruit or livestock industry.

It is estimated that Florida lost 47 percent of the grapefruit crop and 15 percent of the orange crop—for a total loss of $180 million.

The vegetable industry took a $311 million hit because the fall and winter vegetable crops were growing when Wilma hit.

The sugar industry suffered more than $370 million in losses. One-hundred mile per hour winds not only flattened the cane, but also caused significant structural damage to critical infrastructure such as storage bins and the mill.

Literally, millions of Floridians are still struggling due to these hurricanes; and this bill does little to help them recover.

When this bill goes back to the conference committee, I hope this disaster relief package can be reworked to provide relief for all those who suffered damage in this year's hurricanes.

Mr. KERRY. Mr. President, the fiscal year 2006 Defense Appropriations Act is a vitally important piece of legislation. It funds the operations of the Department of Defense and, in this particular case, the wars in Iraq and Afghanistan.

It is disgraceful that this bill was delayed until the end of the year by an administration that was more interested in lobbying for the right to torture than in meeting the needs of our troops. Now at this late hour, it was further delayed by those who sought to take a bill they knew people would support—funding our troops—and load it up with favors for special interests. With these issues resolved, I am pleased this important legislation has finally passed.

The fiscal year 2006 Defense Appropriations Act includes funding for everything from boots to beans to bullets—everything our Armed Forces need to keep America safe. This bill funds the national defense program at $453.28 billion, including $50 billion in emergency appropriations for on going operations in Iraq and the war on terror.

The legislation funds recent and pending increases in Army end strength, provides a 3.1 percent pay raise to all members of the U.S. military, and increases housing allowances.

It funds the readiness programs that maintain our military's ability to conduct operations around the world, whether that means flying hours for pilots, steaming days for Navy crews, spare parts, training, or maintenance.

The legislation funds major acquisition programs in every service—whether the C–17, PAC–3 missiles, the Army's Stryker, or the Navy's DD–X program. It also funds $72.1 billion in research development test and evaluation. That includes future systems—whether air, land, space or sea systems—as well as important medical research that will bring our soldiers the most advanced medical treatment on future battlefields. The future American military, its capabilities, and its personnel are all funded in this legislation.

The $50 billion emergency appropriation included in this legislation funds on going operations in Iraq, Afghanistan, and wherever the war on terror takes American forces. That total includes money for combat pay, death gratuities, and other allowances. It includes $142.8 million for body armor and other personal protection equipment and $1.4 billion for the Joint Improvised Explosive Device Task Force. It funds important programs to replace lost or damaged helicopters and ground vehicles and restocks ordinances used in operations. It also includes $1 billion to meet immediate equipment deficiencies in the National Guard and Reserves.

The Defense appropriations bill is one of the most important pieces of legislation the Congress enacts each year. It is always tempting to some to try to attach riders to it that have nothing to do with the defense of our country or the courageous Americans who make up the U.S. military. I am pleased that, at long last, the Senate finally moved this vital legislation that is so important to our troops.

Mr. President, I know there will be some who criticize this legislation because of the way it was ultimately enacted. I share those frustrations. I wish that we could have passed a clean defense appropriations act 3 or 4 months ago to avoid the challenges we have seen in the last days. It is regrettable that we did not, but I am happy that this legislation has finally passed so that our troops receive the resources they need to protect this country.

Mr. LIEBERMAN. Mr. President, we are in a period of extended debate to resolve the remaining issues related to the Defense appropriations bill, so I wanted to take a minute to address the serious avian flu issue that is before us. While I am concerned that we will need the full funding request the administration sought, if we approve the avian flu proposal, we will at least be advancing some $3 billion. I want to stress the importance of global wild bird surveillance systems as part of my comprehensive flu plan.

I am pleased that the avian flu provisions include authorizing language and funds to set up a wild bird surveillance network as well as other essential elements of avian flu public health preparedness. If passed by Congress and signed by the President, this will assure that we have a comprehensive approach to what may become a real world threat. We do not want to have piecemeal solutions or be simplistically reactive when it comes to the public's health.

The avian flu provision we have been considering today states that part of $150 million is designated to carry out global and domestic disease surveillance, which includes international surveillance to track influenza strains as a way of focusing limited resources on at-risk populations. The conferees have pointed out specifically the importance of migratory bird tracking in predicting the spread of avian influenza and encourage the CDC to ensure that this important activity is part of its surveillance activities. I am pleased with this language that acknowledges a key part of the preparedness puzzle to which, frankly, few people have given attention—wild bird sentinels and the intimate connection between animal and human health. We cannot separate the two.

As we all know, the potential for an influenza pandemic is increasing as the H5N1 virus has now moved swiftly across Asia, Russia, Turkey, and now the EU, killing millions of domestic poultry and over 60 humans to date. History and science tell us that wild birds and movements of poultry have the potential to spread deadly avian influenza viruses. The 1918 influenza epidemic that killed an estimated 40 million people worldwide was an avian-origin viral strain. We must act now to ensure that this does not happen again. We have the tools to track the movement of this virus. We just need to increase and strengthen them.

In October, I introduced a bill, S. 1912, to do exactly this. This month, Representatives DELAURO and LOWEY, with the cosponsorship of Representative CASE, introduced an identical bill

in the House of Representatives, H.R. 4476, to provide funds supporting an early warning system and real-time data network for global avian influenza surveillance. Senator BROWNBACK has also been supportive of these efforts to urge Congress to examine ways to boost our prevention and preparedness efforts via an international surveillance network.

In fact, the Senate passed appropriations for such an effort in the Senate Labor-HHS appropriations bill for fiscal year 2006. This was work from our colleagues Senators SPECTER and HARKIN, who again realized the importance of fighting the threat of avian flu from multiple fronts including funds for vaccines and antivirals but also with the establishment of an international wild bird surveillance network.

The surveillance network contemplated by the avian flu proposals we have been considering should be designed to be an early warning and tracking system to monitor avian viruses and their mutations and reassortments, as carried by wild birds. The provision would require expansion the Centers for Disease Control and Prevention's Influenza Branch's wild bird surveillance program, which currently is small. Specifically, it is our intent that the Centers for Disease Control and Prevention's Influenza Branch, CDC, with expertise in analyzing ornithological and animal samples for infectious diseases, and other national partners, such as the US Agency for International Development, USAID, with expertise in working with international partners and coalitions, would partner with one or more nongovernmental organizations that meet the following criteria: have extensive global wildlife health experience in tracking disease in wild birds, including free-ranging, captive, and wild-bird species using an international and extensive field program and network with projects in 50 or more countries to allow for the collection and dissemination of data around the world; have proven ability in identifying avian influenza, specifically H5N1 and other infectious diseases, in wild birds; and have accredited zoological facilities in the United States, with the capacity to analyze, store, and interpret samples and compile data.

Such tracking allows us to predict the spread of the virus and then to focus limited resources and prepare communities in the flight path of wild birds, as the conference report notes. Potential interventions include providing available antivirals or vaccines to those at-risk, enhancing biosecurity at poultry farms, and even keeping people indoors should surveillance information warrant it. By tracking wild birds, as these provisions require, we may even be able to produce an avian flu vaccine faster by understanding which variant of avian influenza virus is the killer. The current H5N1 virus is potentially not the one that could cause widespread devastation to humans. Again, the conference report recognizes the importance of tracking viral strains and has provided the CDC with funding to do so.

Just as we track hurricanes as they begin as a tropical storm, we must track wild birds and the viral storms they carry over oceans and continents and share that data with the world.

At least $10 million of the funds available in this proposal in 2006 should be available to the CDC to work with a national partner such as USAID and one or more eligible NGOs with the expertise and the criteria previously outlined and other supporting international partners to establish a strong global wild bird surveillance system.

This proposal would help ensure we have an organized, near real-time, virtual library that would allow U.S. Government agencies, wildlife conservation organizations, and public health organizations to track both the spread of avian viruses and their reassortments and mutations, which are integral to understanding how a virus might change to permit human to human transfer.

Ten million dollars is a small sum in comparison to the tens of billions of dollars required for vaccine research and antiviral stockpiling. Vaccines and stockpiling are our current focus and we should be thinking about them—but it is equally important to think about being prepared for outbreaks and preventing a pandemic from ever becoming a reality.

As we speak, information is being collected and analyzed all over the United States and the world. But while we are collecting piles of data, it is not being stored in the kind of organized manner needed to make it available for easy study and response. The information we have, I fear, is scattered like books with no library to contain them and no librarian to locate them.

Again, I would like to thank leaders in the Senate and the House, including Senators SPECTER, HARKIN, and BROWNBACK, and Representatives DELAURO, LOWEY, and CASE, for their work in preparing our Nation for a possible pandemic. We must address the treatment, surveillance, and prevention but, also, critically the global wildfowl surveillance; this addresses a big gap that is easy to forget about. It is the big bird in the room.

Wild birds can spread this virus and could potentially carry it to the United States. I thank and urge my colleagues to continue supporting flu legislation with essential provisions such as this one, which surveys wild birds with NGOs who have the international networks and the capacity to connect all the dots, so when a flu pandemic does or does not happen, we are better prepared.

Mr. DURBIN. Mr. President, I rise to speak about the Detainee Treatment Act of 2005, which is included in the Defense Appropriations conference report.

I will submit a similar statement into the RECORD for the Defense authorization conference report because the Detainee Treatment Act of 2005 is also included in the Defense authorization bill.

The Detainee Treatment Act includes two provisions that were adopted in the Senate version of the Defense Authorization bill: the McCain Antitorture amendment and the Graham-Levin Detainee amendment.

I was an original cosponsor of the McCain Antitorture amendment. I have spoken at length about the vital importance of this amendment on several other occasions. At this time, I simply want to reiterate a couple of points.

Twice in the last year and a half, I have authored amendments to affirm our Nation's longstanding position that torture and cruel, inhuman, or degrading treatment are illegal. Twice, the Senate unanimously approved my amendments. Both times, the amendments were killed behind the closed doors of a conference committee—at the insistence of the Bush administration.

I am pleased that the administration has changed its position. As a result, it will now be absolutely clear that under U.S. law all U.S. personnel are prohibited from subjecting any detainee anywhere in the world to torture or cruel, inhuman, or degrading treatment.

The amendment defines cruel, inhuman, or degrading treatment as any conduct that would constitute the cruel, unusual, and inhumane treatment or punishment prohibited by the U.S. Constitution if the conduct took place in the United States. Under this standard, abusive treatment that would be unconstitutional in American prisons will not permissible anywhere in the world.

Let me give you some examples of conduct that is clearly prohibited by the McCain amendment.

''Waterboarding'' or simulated drowning is a technique that was used during the Spanish Inquisition. It is clearly a form of torture. It creates an overwhelming sense of imminent death. It amounts to a clear-cut threat of death akin to a mock execution, which is expressly called ''mental torture'' in the U.S. Army Field Manual.

Sleep deprivation is another classic form of torture which is explicitly called ''mental torture'' in the U.S. Army Field Manual. It has been banned in the United Kingdom and by a unanimous Israeli Supreme Court, and the U.S. Supreme Court has repeatedly declared it unconstitutional, once citing a report that called it ''the most effective form of torture''.

The amendment also clearly bans so-called stress positions or painful, prolonged forced standing or shackling. Again, the U.S. Army Field Manual expressly calls these techniques ''physical torture.'' Moreover, one of the most recent Supreme Court cases on the extent of the prohibitions on ''cruel and unusual'' punishments expressly

outlawed the use of painful stress positions, denouncing their ''obvious cruelty'' as ''antithetical to human dignity.''

The amendment bans the use of extreme cold, or hypothermia, as an interrogation tactic. Hypothermia can be deadly. Clearly it is capable of causing severe and lasting harm, if not death, and consequently is banned by both the Field Manual and the Constitution.

The amendment bans punching, striking, violently shaking or beating detainees. Striking prisoners is a criminal offense and clearly unconstitutional. Moreover, while assaults like slapping and violent shaking, may not seem as dangerous as beatings, shaking did, in fact, kill a prisoner in Israel, and the tactic has been banned by the Israeli Supreme Court. Numerous U.S. Supreme Court cases likewise prohibited striking prisoners.

The amendment bans the use of dogs in interrogation and the use of nakedness and sexual humiliation for the purpose of degrading prisoners.

No reasonable person, given the text of the amendment, the judicial precedents, and common sense, would consider these techniques to be permitted. Any U.S. official or employee who receives legal advice to the contrary should think twice before defying the will of the Congress on this issue.

The McCain antitorture amendment will make the rules for the treatment of detainees clear to our troops and will send a signal to the world about our Nation's commitment to the humane treatment of detainees.

I want to express again my opposition to the Graham-Levin amendment.

The amendment would essentially eliminate habeas corpus for detainees at Guantanamo Bay. In so doing, it would apparently overturn the Supreme Court's landmark decision in Rasul v. Bush.

No one questions the fact that the United States has the power to hold battlefield combatants for the duration of an armed conflict. That is a fundamental premise of the law of war.

However, over the objections of then-Secretary of State Colin Powell and military lawyers, the Bush administration has created a new detention policy that goes far beyond the traditional law of war. The administration claims the right to seize anyone, including an American citizen, anywhere in the world, including in the United States, and to hold him until the end of the war on terrorism, whenever that may be. They claim that a person detained in the war on terrorism has no legal rights. That means no right to a lawyer, no right to see the evidence against him, and no right to challenge his detention. In fact, the Government has argued in court that detainees would have no right to challenge their detentions even if they claimed they were being tortured or summarily executed.

U.S. military lawyers have called this detention system ''a legal black hole.''

Defense Secretary Rumsfeld has described the detainees as ''the hardest of the hard core'' and ''among the most dangerous, best trained, vicious killers on the face of the Earth.'' However, the administration now acknowledges that innocent people are held at Guantanamo Bay. In late 2003, the Pentagon reportedly determined that 15 Chinese Muslims held at Guantanamo are not enemy combatants and were mistakenly detained. Almost 2 years later, those individuals remain in Guantanamo Bay.

Last year, in the Rasul decision, the Supreme Court rejected the administration's detention policy. The Court held that detainees at Guantanamo have the right to habeas corpus to challenge their detentions in Federal court. The Court held that the detainees' claims that they were detained for years without charge and without access to counsel ''unquestionably describe custody in violation of the Constitution, or laws or treaties of the United States.''

The Graham amendment would protect the Bush administration's detention system from legal challenge. It would effectively overturn the Supreme Court's decision. It would prevent innocent detainees, like the Chinese Muslims, from challenging their detention.

However, I do want to note some limitations on the scope of the Graham-Levin amendment.

A critical feature of this legislation is that it is forward looking. A law purporting to require a Federal court to give up its jurisdiction over a case that is submitted and awaiting decision would raise grave constitutional questions. The amendment's jurisdiction-stripping provisions clearly do not apply to pending cases, including the Hamdan v. Rumsfeld case, which is currently pending before the Supreme Court. In accordance with our traditions, this amendment does not apply retroactively to revoke the jurisdiction of the courts to consider pending claims invoking the Great Writ of Habeas Corpus challenging past enemy combatant determinations reached without the safeguards this amendment requires for future determinations. The amendment alters the original language introduced by Senator GRAHAM so that those pending cases are not affected by this provision.

The amendment also does not legislate an exhaustion requirement for those who have already filed military commission challenges. As such, nothing in the legislation alters or impacts the jurisdiction or merits of the Hamdan case.

Nothing in the legislation affirmatively authorizes, or even recognizes, the legal status of the military commissions at issue in Hamdan. That is the precise question that the Supreme Court will decide in the next months. Right now, the military commissions are legal under a decision of the DC Circuit, and this amendment reflects, but in no way endorses that present status. It would be a grave mistake for our allies around the world to think that we are endorsing this system at Guantanamo Bay—a system that has produced not a single conviction in the 4 years since the horrible attacks of September 11, 2001.

This provision attempts to address problems that have occurred in the determinations of the status of people detained by the military at Guantanamo Bay and elsewhere. It recognizes that the Combatant Status Review Tribunal, CSRT, procedures applied in the past were inadequate and must be changed going forward. As the former chief judge of the U.S. Foreign Intelligence Surveillance Court found, in In Re Guantanamo Detainee Cases, the past CSRT procedures ''deprive[d] the detainees of sufficient notice of the factual bases for their detention and den[ied] them a fair opportunity to challenge their incarceration,'' and allowed ''reliance on statements possibly obtained through torture or other coercion.'' Her review ''call[ed] into serious question the nature and thoroughness'' of the past CSRT process. The former CSRT procedures were not issued by the Secretary of Defense, were not reported to or approved by Congress, did not provide for final determinations by a civilian official answerable to Congress, did not provide for the consideration of new evidence, and did not address the use of statements possibly obtained through coercion.

To address these problems, this provision requires the Secretary of Defense to issue new CSRT procedures and report those procedures to the appropriate committees of Congress; it requires that going forward the determinations be made by a Designated Civilian Official who is answerable to Congress; it provides for the periodic review of new evidence; it provides for future CSRTs to assess whether statements were derived from coercion and their probative value; and it provides for review in the D.C. Circuit Court of Appeals for these future CSRT determinations.

Mr. FEINGOLD. Mr. President, the annual Defense Appropriations bill is rightly considered a priority most years, and Congress typically completes its work on this important bill early in the year. This year, however, progress on this bill was suspended largely because of Republican political maneuvering. I supported the Senate version of this bill, but a very different bill emerged from conference. That conference report was hijacked by the Republican leadership in a cynical effort to try to pass controversial provisions that have nothing to do with our defense. By jeopardizing funding for our brave men and women in uniform, and attempting to circumvent the rules that govern the Senate, those leaders placed their own narrow interests above those of the country and this institution.

The most blatant abuse was the insertion into the conference report of a

provision that appeared in neither bill to open the Arctic National Wildlife Refuge to drilling. I have already addressed the Senate twice this week on why that provision had no place in this conference report and I am pleased that my colleagues have joined me in sending a clear message that we will not tolerate attempts to hold vital funding hostage to unrelated special interest provisions.

While we were successful in removing the Arctic provisions, I remain very troubled about provisions included in the emergency funds slated for pandemic influenza preparedness. While I have long advocated for pandemic influenza preparedness funding, and while I am pleased that $3.8 billion is provided for this purpose, I am deeply concerned about the inclusion of far-reaching liability protections for health care providers and vaccine manufacturers in this conference report. It is an abuse of the appropriations process to incorporate such sweeping legal protections into a measure providing funds for the military.

The provisions inserted in the conference report would exempt vaccine producers from civil liability for injuries caused by vaccines, unless the health care provider or vaccine manufacturer acted with willful misconduct. This language is extremely far-reaching. Plaintiffs would need to prove that the health care providers or vaccine manufacturers acted intentionally, acted without justification, and disregarded known or obvious risks that the harm would outweigh the benefit. This will be extremely difficult for plaintiffs to establish. Furthermore, disregarding the advice of public health experts, the language fails to provide meaningful injury compensation provisions to help those injured by vaccines. These protections for health care providers and vaccine manufacturers are unparalleled, and it is painfully clear that our leadership in Congress and in the White House is not listening to the concerns of first responders, families, or public and global health experts. They are listening only to the businesses and industries that would use the threat of pandemic influenza as an opportunity to help their own profit margins.

Mr. President, I also object to the inclusion of certain provisions of the Hurricane Education Recovery Act in the Department of Defense Appropriations bill. More than 370,000 elementary and secondary students have been displaced as a result of Hurricane Katrina. Schools across the country, including some in Wisconsin, have opened their doors to these students. I strongly support efforts to assist the schools that are welcoming these students as they continue to work to make this transition and school year go as smoothly as possible.

But I am troubled by key provisions of the legislation. For example, Section 107 of the Act would allocate Federal funding to go directly through State agencies to local school districts where displaced students have enrolled in public or private schools. The local school districts, which are government agencies, would then be responsible for issuing direct payments to public and private schools educating displaced students. Earlier this year, the Senate soundly defeated a proposal to provide vouchers directly to parents with little in the way of civil rights protections. The Senate subsequently passed a measure that, like the measure now before this body, would have passed taxpayer money to private schools through local public school districts. I had grave concerns about that provision, and I am even more troubled that the provisions before us do not include even the modest attempts at civil rights and other protections that were included in the Senate passed language. While I believe the supporters of this act are well-intentioned, I am concerned that Senate passage of this measure would create a troubling precedent with regard to taxpayer-funded school vouchers.

I oppose school vouchers because such programs funnel taxpayer money away from the public schools that this funding is intended to support and instead direct this funding to private schools that do not have to adhere to the same Federal, State, and local accountability and civil rights laws and regulations that apply to public schools. I strongly support providing assistance to the students and schools that have been affected by Hurricane Katrina, but we should do so within existing Federal laws that allow local public school districts to provide specific educational services—rather than direct funding—to private schools.

Mr. President, I also object to the across-the-board cut to discretionary programs, including education programs, that was inserted in this conference report. The Labor-HHS-Education appropriations bill already cuts or allows for only nominal increases in funding for education. This across-the-board cut would magnify the damage done by that appropriations bill, which awaits final action. If both the across-the-board cut and the Labor-HHS-Ed appropriations bill are adopted, total Federal education funding would be cut for the first time in a decade, Funding would be cut for No Child Left Behind, at a time that we are still requiring States to comply with testing all students in reading and math in grades 3–8 for the first time this school year. Title I funding would be cut for the first time in 13 years, hurting children that are currently eligible to receive Title I services. The Federal share of special education costs would be cut for the first time in a decade forcing States and local school districts to pick up the slack. And I regret that the maximum Pell Grant award would be frozen for the fourth year in a row at $4,050.

Mr. President, reducing funding for our nation's schools is not the message we should be sending to our youth. We need to find ways to provide an excellent K-12 education for all of America's children and find ways to make college more affordable for young people now and in the future. Cutting funding for these various programs is not the answer and this across-the-board cut is particularly regrettable. I strongly support reducing our budget deficit and have long promoted measures, such as PAYGO, that would help us toward that goal. But cutting funding for those most in need is not the solution.

I am pleased that the conference report sends such a strong message to the administration about the treatment of detainees by adopting the amendment of the senior Senator from Arizona. The lack of a clear policy regarding the treatment of detainees has been confusing and counter-productive. It has left our men and women in uniform in the lurch with no clear direction about what is and is not permissible. This failure on the part of the administration has sullied our reputation as a Nation, and hurt our efforts to promote democracy and human rights in the Arab and Muslim worlds. I have been proud to support Senator MCCAIN's amendment on interrogation policy because it should help to bring back some accountability to the process and restore our great Nation's reputation as the world's leading advocate for human rights.

I am disappointed with the mixed messages that the Senate continues to send to the administration and the country on issues related to the detainees held at Guantanamo Bay. In addition to the important McCain amendment on torture, the conference report also includes the Graham amendment, which remains deeply troubling because of the restrictions it places on judicial review of detainees held at Guantanamo. However, it is important to note that the provision is limited in critical ways. The provision on judicial review of military commissions covers only ''final decisions'' of military commissions, and only governs challenges brought under that provision. In addition, the language in Section 1405(e)(2) that prohibits ''any other action against the United States'' applies only to suits brought relating to an ''aspect of detention by the Department of Defense.'' Therefore, it is my understanding that this provision would not affect the ongoing litigation in Hamdan v. Rumsfeld before the Supreme Court because that case involves a challenge to trial by military commission, not to an aspect of a detention, and of course was not brought under this provision. Furthermore, it is important to make clear that this provision should not be read to endorse the current system of trial by military commission for those at Guantanamo Bay. This provision reflects, but certainly does not endorse, the existing status of those military commissions, which is that they are currently legal under a decision of the D.C. Circuit.

However, the Supreme Court has not yet addressed the legality of such military commissions, and this amendment should not be read as any indication that Congress is weighing in on that issue. While I would have strongly preferred that this amendment not be included in the conference report, I think it is important to note these limitations on its practical effect.

In closing, Mr. President, I am pleased that I was able to vote for a bill to provide our brave men and women in uniform with the funding they need. But I am disappointed with the long and winding road that it took to get to this point. I hope that Republican leaders are on notice that the Senate will not turn a blind eye when they break the rules and put their own narrow interests above those of the country and the troops.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Arizona (Mr. CHAFEE), the Senator from South Carolina (Mr. DEMINT), the Senator from New Hampshire (Mr. GREGG), and the Senator from Arizona (Mr. MCCAIN).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT), would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. DODD), and the Senator from Iowa (Mr. HARKIN) are necessarily absent.

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

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

[Rollcall Vote No. 366 Leg.]

YEAS —93

Akaka	Domenici	McConnell
Alexander	Dorgan	Mikulski
Allard	Durbin	Murkowski
Allen	Ensign	Murray
Baucus	Enzi	Nelson (FL)
Bayh	Feingold	Nelson (NE)
Bennett	Feinstein	Obama
Biden	Frist	Pryor
Bingaman	Graham	Reed
Bond	Grassley	Reid
Boxer	Hagel	Roberts
Brownback	Hatch	Rockefeller
Bunning	Hutchison	Salazar
Burns	Inhofe	Santorum
Burr	Inouye	Sarbanes
Byrd	Isakson	Schumer
Cantwell	Jeffords	Sessions
Carper	Johnson	Shelby
Chambliss	Kennedy	Smith
Clinton	Kerry	Snowe
Coburn	Kohl	Specter
Cochran	Kyl	Stabenow
Coleman	Landrieu	Stevens
Collins	Lautenberg	Sununu
Conrad	Leahy	Talent
Cornyn	Levin	Thomas
Craig	Lieberman	Thune
Crapo	Lincoln	Vitter
Dayton	Lott	Voinovich
DeWine	Lugar	Warner
Dole	Martinez	Wyden

NOT VOTING —7

Chafee	Dodd	McCain
Corzine	Gregg	
DeMint	Harkin	

The conference report was agreed to.

VITIATION OF VOTE—H.R. 1815

The PRESIDING OFFICER. Under the previous order, the cloture vote on the conference report on H.R. 1815 is vitiated.

Mr. WARNER. Mr. President, I am proud to bring the Conference Report on the National Defense Authorization Act for Fiscal Year 2006 before the Senate for final passage. This has been a long and difficult conference, but we have achieved our goal of providing the necessary authorities and resources for our men and women in uniform to defend the freedom of America.

I thank my colleague and partner for these 27 years we have served together in the Senate, the senior Senator from Michigan, CARL LEVIN, for his consistently constructive help and leadership in bringing this important legislation to the floor.

An undertaking of this magnitude is ultimately a bipartisan, bicameral effort. Consequently, there are many people deserving of recognition. I want to thank all of our subcommittee chairs and ranking members for their tireless efforts. I also want to thank Chairman DUNCAN HUNTER and Congressman IKE SKELTON for their leadership and teamwork in producing this conference agreement.

This conference agreement could not have been reached without our dedicated, professional staff. I especially want to recognize the unwavering leadership of the Committee Staff Director, Charlie Abell and the Democratic Staff Director, Rick DeBobes, together with their staff, in bringing this process to a successful conclusion.

As we consider this legislation, we remain a nation at war. This year marks the fourth year in the global war on terrorism. On September 11, 2001, our Nation awakened to a terrorist attack. From this dark hour, our Nation quickly emerged stronger and more united because our Armed Forces, like the generations that preceded them, responded to the call of duty in Operation Enduring Freedom, Operation Iraqi Freedom, and elsewhere around the world in the cause of freedom.

Hundreds of thousands of soldiers, sailors, airmen, marines, active and Reserve components, and countless civilians continue to serve valiantly around the world—from Iraq and Afghanistan to the Persian Gulf, Europe, Africa, and Korea—to secure peace and freedom. All Americans are proud of what our military has accomplished. Their sacrifices and service have removed obstacles to freedom and democracy in the regions of the Middle East and Asia.

We remain mindful that the defense of our homeland begins on distant battlefields. To the extent that we can prevent or contain the threats on these battlefields or potential battlefields, the less likely that we will experience a threat here at home. The threats to our Nation and the ongoing war on terrorism demand increased investment in our national security.

As we begin this debate, I remain mindful that no military victory is gained without significant sacrifice. I ask that we pause to remember those who died in the defense of our freedom, and the many others who were wounded. We honor their sacrifices and service. On behalf of a grateful Nation, we salute you. They and their families deserve our gratitude and unwavering support.

This year, the House and Senate conferees confronted especially difficult challenges affecting our Nation's security. These issues included U.S. policy on Iraq, detainee policy, and the Navy shipbuilding budget. With respect to these issues, I believe that the conferees reached a balanced agreement.

Overall, the conferees authorized funding of $441.5 billion in budget authority for defense programs in fiscal year 2006, an increase of $20.9 billion—or 3.1 percent in real terms—above the amount authorized by the Congress for fiscal year 2005.

The conference report underscores some key defense priorities critical to our national security, including authorities and resources to win the global war on terrorism and support for the men and women of the Armed Forces who are fighting so bravely in the global war on terrorism. Specifically, the conferees added $586.4 million over the President's budget request for combating terrorism. The conferees also authorized $50.0 billion in emergency supplemental funding for fiscal year 2006 for activities in support of operations in Iraq, Afghanistan, and the global war on terrorism.

The conferees further agreed to enhance congressional oversight of ongoing military operations in Iraq, Afghanistan, and the global war on terrorism, including uniform standards for interrogation operations, while removing the burden of litigation from vital intelligence activities. The conference report also includes a 3.1 percent pay raise for all military personnel.

In addition, the conference report contains some provisions of which I am very proud that emphasizes our commitment to homeland defense, force protection, recruiting and retention of military personnel, quality of life programs, and modernization and transformation efforts.

To enhance the ability of the Department of Defense to fulfill its homeland defense responsibilities, the conferees agreed to: authorize $115.2 million for homeland defense and counterterrorism, including $19.8 million for specially trained and equipped teams to support civil or military authorities in the event of a chemical, biological, radiological, nuclear or high-explosive