

EXECUTIVE SESSION

NOMINATION OF JOHN D. NEGROPONTE TO BE DIRECTOR OF NATIONAL INTELLIGENCE—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume executive session and proceed to a vote on the nomination, which the clerk will report.

The legislative clerk read the nomination of John D. Negroponte, of New York, to be Director of National Intelligence.

Mr. COCHRAN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of John D. Negroponte, of New York, to be Director of National Intelligence? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 98, nays 2, as follows:

[Rollcall Vote No. 107 Ex.]

YEAS—98

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

NAYS—2

Harkin Wyden

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT, 2005—Continued

The PRESIDING OFFICER. The Senator from Nevada is recognized.

AMENDMENT NO. 487

Mr. ENSIGN. Mr. President, I yield back my time on the amendment.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment.

The amendment (No. 487) was agreed to.

Mr. COCHRAN. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ENSIGN. Mr. President, in the decade before 9/11, al Qaeda studied how to exploit gaps and weaknesses in the borders of the United States.

A few months ago, intelligence officials confirmed that the terrorist Zarqawi plans to infiltrate America through our borders. He plans to attack targets such as movie theaters, restaurants, and schools.

A year-long investigation recently concluded with authorities arresting 18 people who planned to smuggle grenade launchers, shoulder-fired missiles, and other Russian military weapons into our country.

Let's face it—the dual threat of illegal border crossing by people who wish to kill us and the weapons they need to do it is very real.

We are not dealing with rational people. We are not dealing with people who respect life or freedom. It would be irresponsible to sit idly by and not treat these threats seriously. We must continue to be diligent in our fight to defeat terror and protect our homeland.

Before 9/11, INS had only 9,800 border patrol agents. With the agency focused on immigration and narcotics, no major counterterrorism effort was underway.

More than 3 years after the devastating terrorist attacks, the men and women who serve on the border's front-line of defense are still overwhelmed. The Commissioner of the U.S. Customs and Border Protection has admitted they need more agents.

Our agents catch only about one-third of the estimated 3 million people who cross the border illegally each year. Three and half years ago it only took 19 to change the course of this country.

The 9/11 Commission addressed this very problem. They recommended banning terrorists from traveling to our country. This is exactly what my amendment attempts to accomplish.

We must commit resources to block terrorists who attempt to enter our country. Last year, I sponsored an amendment to the National Intelligence Reform Act that authorized the hiring of 10,000 new agents to patrol our borders over the next 5 years. And last month, the Senate approved a Budget which funded the hiring and training of 2,000 new border patrol agents next year.

Border security requires a serious commitment by Congress. There is no question that we need to hire new

agents. Our security depends on it. But it will take more than simply hiring agents. Congress needs to increase funding for training and equipment. I hope we will remember this during the regular appropriations process.

We cannot wait another year to improve our border security. This is an emergency. The amendment that I am offering will put new agents on the ground in the next few months.

My amendment begins to fulfill the commitment Congress made last year. It provides \$147 million to hire and train 400 new border patrol agents by October; 400 new agents is the maximum number of new agents that the Department of Homeland Security can train before the end of this fiscal year.

My amendment does not require any new spending. It is completely offset.

The 9/11 Commission found that many of the 19 hijackers could have been placed on watch lists. They were vulnerable to detection by border authorities. Without adequate staff and coordinated efforts, the terrorists were allowed to enter the United States. Once here they learned how to fly airplanes at American flight schools. They conducted surveillance to assess our weaknesses. And they attacked.

In order to prevent another terrorist attack on American soil, we must improve every aspect of our nation's security. Our security is truly only as strong as our weakest link.

For too long, the lack of funding for border agents has been a weak link. By funding additional agents, we protect both our southern and our, often neglected, northern border. This will make it harder for terrorists to enter the United States and attack us.

The world has changed dramatically since 9/11 when the terrorists used our open and trusting society against us. We can not allow a repeat of that tragedy. This amendment will help those who guard our frontiers by providing necessary tools to ensure the safety of our citizens.

AMENDMENT NO. 520

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on Bayh amendment No. 520.

Mr. WARNER. Mr. President, I had the opportunity to speak to the distinguished Senator from Alaska, Mr. STEVENS, and I know he was anxious to address the Senate with regard to his desire to obtain time to speak in opposition to the Bayh amendment. Might I ask, what is the parliamentary situation with regard to that? Hopefully, we can see the appearance of the Senator from Alaska.

The PRESIDING OFFICER (Mr. CHAFEE). Under the previous order, there are 2 minutes equally divided prior to the vote on the Bayh amendment.

Mr. WARNER. Will the Chair kindly repeat that?

The PRESIDING OFFICER. There are 2 minutes evenly divided prior to the vote on the Bayh amendment.

Mr. WARNER. Mr. President, on behalf of the senior Senator from Alaska,

I ask that an additional 10 minutes be allocated to the senior Senator from Alaska.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, do I understand currently there are 2 minutes to be equally divided, and now the Senator from Virginia has asked for 10 minutes for one side on this debate? I have no objection, obviously, to whatever time the Senator from Alaska wants. I object unless those of us who have a differing view have an opportunity to express ourselves.

Mr. WARNER. I misunderstood. I thought the senior Senator from Massachusetts and his colleague from Indiana had adequate opportunity to speak. I am perfectly willing to ask for 15 minutes equally divided between the senior Senator from Massachusetts and the senior Senator from Alaska.

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

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum, with the time to be equally divided.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. STEVENS. Mr. President, I oppose the Bayh-Kennedy amendment on the uparmored humvees. The validated global war on terror requirement for this is 10,079. I do hope the Senate will listen. This is very serious.

We received a letter last week from two senior Army general officers, the Army's G-8 Deputy Chief of Staff for Programs and the Army's G-3 Deputy Chief of Staff for Operations and Plans, which states the total requirement for these vehicles is 10,079 and that industry will meet that requirement in less than 2 months with funds previously provided.

Keep in mind the pre-emergency throughput of these vehicles was 40 a month. We are now producing at the rate of 550 a month, and we will reach the maximum in June because we paid more to speed up this production.

We appropriated funds and reprogrammed to meet the total requirement. We have now met it. As a matter of fact, we produced 266 more vehicles than the Army wanted. This amendment is not about taking care of troops. I spent my career, and the Senator from Hawaii with me, to ensure the service men and women have the equipment they need, the support they need. This is about the production unit of a defense contractor, not about the people who are wearing the uniform in Iraq.

This manufacturer is currently producing these at the capacity, as I said, of 550 a month. Every month, 550 new humvees are going into Iraq. We will have more there by June than we need.

There is no need for this. The sponsors want you to believe the Army wants and needs these, but that is not true. The Army's requirement will be met in June, and we have provided some money for all of them. In Iraq, we are meeting the requirements of the commanders in the field, and they have certified to that.

The additional funding of this amendment was not requested by the Department, and the commanders are receiving other vehicles now, for instance, the Striker, which is a different system and is providing more protection for the people in the field. They are going in there now.

Some people argue the need for these is going up. That is not true. The need for Strikers is going up, and we are sending Strikers in from Germany, from Hawaii, from Alaska, from Seattle. We are meeting the needs they demanded, and that is for the Strikers. This requirement is not increasing with the continued operations in Iraq.

A major difference now is, after February of this year, all vehicles operating outside the protective compound are armored, and we have met that need.

This is an emergency appropriations bill. I believe we should focus on the needs of validated requirements of the Department for the total global war, but this is not one of them.

I urge my colleagues to vote "no" on this amendment. I yield to my friend, the chairman of the Armed Services Committee, so he might be heard on the matter. I thank the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, first, I commend Senators KENNEDY and BAYH. They have really fought the battle through the years, and it has been since fiscal year 2003 we have been dealing with the need for the uparmor.

As my colleague from Alaska said, and I add this, from fiscal year 2003 to 2005, the Congress added—that is additional funds—added \$1.2 billion to the President's request to increase uparmored humvee production, and almost \$1.9 billion was added to the President's budget request to increase the production of ballistic add-on armor for tactical-wheeled vehicles in the Army and the Marine Corps.

I think we have clearly met the demand, and it is largely owing to these two Senators who have been out on the point on this issue. But right now these additional funds, I say to my colleague from Alaska, if the Senate were to approve the amendment, would have to be taken out of other modernization programs for the Army; am I not correct?

Mr. STEVENS. Mr. President, that is correct. This money comes out of this supplemental for these purposes which is beyond the needs on this vehicle and reduce the amount of money for other items that are needed.

Mr. WARNER. I yield the floor.

Mr. STEVENS. I yield back the remainder of our time. I thank the Chair for his courtesy.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, point No. 1, this is additional money. Point No. 2, the House of Representatives added \$233 million. Why? For the very reason that was in this letter from the Department of the Army that says "to sustain production at the maximum capacity through the end of fiscal year 2005, the Army would need the additional funding of approximately \$213 million." That is what the Department of Defense says it needs. That is what the House has done.

With all respect to the estimates that have been made, under the current request, the Department of Defense has testified nine times at the Armed Services Committee in terms of the needs of uparmored humvees. Every time they have been wrong. That is not just me talking. That is the GAO. This April, a GAO report says there are two primary causes for the shortages—shortages, that is the GAO, shortages—of the uparmored vehicles and add-on kits. One, a decision was made to pace production rather than use the maximum available capacity and, secondly, funding allocations did not keep up rapidly with increasing requirements.

That is the GAO in April of this year. "Army officials have not identified any long-term efforts to improve the availability of uparmored humvees." That is the GAO.

The House took it. The GAO says it is necessary. The Department of Defense says so, too. Let us just include that and not leave the men and women who need the uparmored Humvees at risk in dangerous places around the world.

Mr. DOMENICI. Would the Senator yield for a question?

Mr. KENNEDY. How much time is remaining? I believe I have used my time.

The PRESIDING OFFICER. There is 5 minutes remaining.

Mr. DOMENICI. I ask for 10 seconds. I ask the Senator, is this the first time the Senator from Massachusetts has been for something that the Republican House of Representatives is for?

Mr. KENNEDY. That is a good question. I think I can think back and maybe find one. I will think back and find one. Saint Patrick's Day address.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. Mr. President, with reference to the House, I say to our colleague from New Mexico with reference to the House, even a broken clock is right twice a day. So there is a first time for everything.

It is rare that this body votes on a matter that will affect the life and limbs of soldiers fighting as we speak in a theater of war. Now is such a time. As my colleague, Senator KENNEDY, mentioned, the Army has chronically underestimated the need for uparmored vehicles in the Iraqi theater. Nine consecutive times they have gotten it wrong. We now have a letter saying that finally they have gotten it right.

Walter Reed Army Hospital and the other military hospitals of this Nation are filled with the young men and women who have paid the price for these errors. When will we err on the side of doing more rather than less to protect the troops? Now is that time.

I conclude by saying this: Do my colleagues remember the young soldier who stood up when the Secretary of Defense visited Iraq and spoke about hillbilly armor? Do my colleagues remember him speaking about rum-maging through the garbage to find metal to weld onto the side of the vehicles? Do my colleagues remember the round of applause he got from his fellow soldiers?

The troops know what is going on. The press knows what is going on. Apparently the House of Representatives knows what is going on. It is time that the Senate took a stand as well to do something about this, to give the troops the protection they need. Rum-maging through the garbage—that is an outrage. Here is our chance to bring it to a stop. I ask my colleagues for their support.

Mr. STEVENS. Is all time yielded back?

Mr. KENNEDY. I yield back the balance of our time.

The PRESIDING OFFICER (Mr. CORNYN). All time is yielded back.

Mr. STEVENS. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been previously ordered on the amendment.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 61, nays 39, as follows:

[Rollcall Vote No. 108 Leg.]

YEAS—61

Akaka	Dorgan	Mikulski
Alexander	Durbin	Murray
Allen	Feingold	Nelson (FL)
Baucus	Feinstein	Nelson (NE)
Bayh	Harkin	Obama
Biden	Hutchison	Pryor
Bingaman	Jeffords	Reed
Boxer	Johnson	Reid
Burns	Kennedy	Rockefeller
Byrd	Kerry	Salazar
Cantwell	Kohl	Santorum
Carper	Landrieu	Sarbanes
Chafee	Lautenberg	Schumer
Clinton	Leahy	Snowe
Coleman	Levin	Specter
Collins	Lieberman	Stabenow
Conrad	Lincoln	Talent
Corzine	Lott	Thune
Dayton	Lugar	Wyden
DeWine	Martinez	
Dodd	McCain	

NAYS—39

Allard	DeMint	Inouye
Bennett	Dole	Isakson
Bond	Domenici	Kyl
Brownback	Ensign	McConnell
Bunning	Enzi	Murkowski
Burr	Frist	Roberts
Chambliss	Graham	Sessions
Coburn	Grassley	Shelby
Cochran	Gregg	Smith
Cornyn	Hagel	
Craig	Hatch	
Crapo	Inhofe	

Stevens
Sununu

Thomas
Vitter

Voinovich
Warner

The amendment (No. 520) was agreed to.

CHANGE OF VOTE

Mr. BURNS. Madam President, on today's vote No. 108, I voted "nay." My intention was to vote "yea." I ask unanimous consent to change my vote. It will not affect the outcome of the vote on the amendment.

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

(The foregoing tally has been changed to reflect the above order.)

The PRESIDING OFFICER. The Senator from Kansas is recognized.

EXECUTIVE SESSION

NOMINATION OF LIEUTENANT GENERAL MICHAEL V. HAYDEN, UNITED STATES AIR FORCE, TO BE GENERAL AND DEPUTY DIRECTOR OF NATIONAL INTELLIGENCE

Mr. ROBERTS. Mr. President, a unanimous consent has been agreed to by both sides for the Senate to immediately proceed to executive session to consider the following nominations on today's Executive Calendar: PN 421, LTG Michael V. Hayden, to be General, reported by the Armed Services Committee today; and No. 70, which is the confirmation of General Hayden to be the Deputy Director of National Intelligence.

I further ask unanimous consent the nominations be confirmed en bloc, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be general

Lt. Gen. Michael V. Hayden.

EXECUTIVE OFFICE OF THE PRESIDENT

Lieutenant General Michael V. Hayden, United States Air Force, to be Principal Deputy Director of National Intelligence. (New Position.)

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT, 2005—Continued

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENTS NOS. 389, 421, AS MODIFIED; NO. 484, AS MODIFIED; NO. 502, AS MODIFIED; NO. 565, AND 566, EN BLOC

Mr. STEVENS. Mr. President, last evening, as we were finishing up this bill, we had a series of amendments that were offered as amendments, and we were in the process of changing them to sense-of-the-Senate resolutions. There are a couple others we failed to offer, approved by both sides. I ask unanimous consent they now be offered en bloc and have them considered en bloc.

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

Mr. STEVENS. I ask unanimous consent the amendments be agreed to.

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

The amendments were agreed to, as follows:

AMENDMENT NO. 389

(Purpose: To reaffirm the authority of States to regulate certain hunting and fishing activities)

On page 231, after line 6, add the following:

SEC. 6047. STATE REGULATION OF RESIDENT AND NONRESIDENT HUNTING AND FISHING.

(a) SHORT TITLE.—This section may be cited as the "Reaffirmation of State Regulation of Resident and Nonresident Hunting and Fishing Act of 2005".

(b) DECLARATION OF POLICY AND CONSTRUCTION OF CONGRESSIONAL SILENCE.—

(1) IN GENERAL.—It is the policy of Congress that it is in the public interest for each State to continue to regulate the taking for any purpose of fish and wildlife within its boundaries, including by means of laws or regulations that differentiate between residents and nonresidents of such State with respect to the availability of licenses or permits for taking of particular species of fish or wildlife, the kind and numbers of fish and wildlife that may be taken, or the fees charged in connection with issuance of licenses or permits for hunting or fishing.

(2) CONSTRUCTION OF CONGRESSIONAL SILENCE.—Silence on the part of Congress shall not be construed to impose any barrier under clause 3 of Section 8 of Article I of the Constitution (commonly referred to as the "commerce clause") to the regulation of hunting or fishing by a State or Indian tribe.

(c) LIMITATIONS.—Nothing in this section shall be construed—

(1) to limit the applicability or effect of any Federal law related to the protection or management of fish or wildlife or to the regulation of commerce;

(2) to limit the authority of the United States to prohibit hunting or fishing on any portion of the lands owned by the United States; or

(3) to abrogate, abridge, affect, modify, supersede or alter any treaty-reserved right or other right of any Indian tribe as recognized by any other means, including, but not limited to, agreements with the United States, Executive Orders, statutes, and judicial decrees, and by Federal law.

(d) STATE DEFINED.—For purposes of this section, the term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

AMENDMENT NO. 421, AS MODIFIED

(Purpose: To express the sense of the Senate on funding for the continuing development of the permanent magnet motor)

On page 169, between lines 8 and 9, insert the following: