

fraud, and abuse—numerous reports. There are reports that Halliburton charged for meals never served, that Halliburton overcharged for oil and oil delivery, that Halliburton overcharged and double-charged for shipments of soda pop, that Halliburton overcharged on transportation contracts. I could go on and on.

But for reasons that I cannot fathom, the Department of Justice has not told Congress or the American taxpayer what it is doing to bring these cases to justice. And it seems as though nothing is being done.

I believe we have an obligation to the American taxpayer to be protected against theft or misuse of tax dollars by corrupt contractors. Yet there is no evidence the Justice Department is doing anything about it. So absent this information, I can only conclude that nothing is being done about this corruption. If this is the case, then the recovery of perhaps billions of dollars in taxpayer money is being blocked.

While Congress and the American taxpayer remain in the dark about what the Justice Department is doing to combat contract corruption, False Claims Act cases continue to languish. The way it works is that the False Claims Act cases are automatically sealed. They cannot go to trial; they cannot be publicly disclosed until the Department of Justice makes a decision of whether to join them. Under the statute, these decisions are supposed to be made within 60 days. However, the Department of Justice is allowed to seek additional time where needed. This is appropriate because a lot of times these cases are very complex and require extensive investigation. However, these extensions cannot be allowed to become a form of indefinite delay, stretching out year after year after year. And I fear that is exactly what is happening. As I said, with just one exception, the Department of Justice has refused to take a position on any of the lawsuits related to Iraq and Afghanistan, some of which were filed over 3 years ago. Instead, the Department files for and receives indefinite extensions.

As a result, as I said, with one exception, every single whistleblower lawsuit has been effectively blocked by the Department of Justice. Fraud has gone unpunished, billions of taxpayer dollars continue to be squandered, and courageous whistleblowers who have come forward, often at great personal risk, have been left in a sort of legal limbo. As one attorney representing a whistleblower put it:

The Bush administration has made a conscious decision to sweep the cases under the rug for as long as possible. And the more bad news that comes out of Iraq, the more motivation they have to do so.

This situation is unacceptable. So my amendment would therefore require the Justice Department to report to Congress on a semiannual basis the efforts it is undertaking to ensure that it is investigating in a timely and appro-

priate manner all claims of contractor waste, fraud, and abuse related to the U.S. Government's activities in Iraq and Afghanistan. It would require the Department of Justice to report on similar executive branch interagency efforts. My amendment would prevent the Department of Justice from imposing undue secrecy on false claims civil actions related to Government spending in Iraq and Afghanistan by simply requiring the Department of Justice to tell Congress what it is doing to combat this corruption. Sharing this information with Congress is nothing out of the ordinary, but it is long past due. As a matter of good faith to our troops and to the American taxpayer, we need to move aggressively against corruption and war profiteering in Iraq, Afghanistan, and elsewhere. These cases have gone on too long.

In closing, I quote the British philosopher John Stuart Mill who said: "The proper office of a representative assembly is to watch and control the government."

Mr. President, hopefully this is a nonpartisan amendment. It is all about enabling Congress to provide meaningful oversight of executive branch activity consistent with our duty to do so under the Constitution and the law. It will enable Congress to know the administration's plans for rooting out contractor corruption in Iraq, Afghanistan, and elsewhere, and I urge my colleagues to support the amendment.

Mr. President, I yield the floor.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m. today.

Whereupon, the Senate, at 12:28 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CORNYN).

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007—Continued

The PRESIDING OFFICER. The distinguished Senator from Virginia is recognized.

Mr. WARNER. Mr. President, the pending business is the DOD authorization bill and most specifically the amendments by Senator McCONNELL and Senator BILL NELSON of Florida. The McConnell amendment is to be voted on first, followed by a vote on the second amendment. Am I correct?

The PRESIDING OFFICER. That is correct.

#### AMENDMENT NO. 4272, AS MODIFIED

Mr. WARNER. I shall address the McConnell amendment.

First, the amendments have a great likeness. But I felt, in working with the distinguished Senator from Kentucky, that his amendment—I ask unanimous consent that I be a cosponsor of that amendment.

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

Mr. WARNER. I believe very strongly that a second amendment was needed because of what we have been working toward—the United States and its coalition partners—from the very beginning, and that is to provide the Iraqi people with a sovereign nation in which they can exercise the full range of authorities and responsibilities of a sovereign nation. Therefore, they went about a series of elections. Every Member of this Chamber recognizes the courage of the Iraqi people in three elections. Then there was the formation of a permanent government, a unity government. Having achieved that, they are now beginning to exercise the full responsibilities of a sovereign nation. I was concerned that we, as a legislative body of our Nation, not indicate that we are infringing on their rights of sovereignty.

This whole issue of amnesty is an important one. I do not, in any measure, suggest it is not important. But I think we have to observe that they are a sovereign nation. How they go about it should largely be within the confines of their own wisdom and goals because our whole future is dependent on this Government and the people of Iraq taking back their country such that our forces can come back home. Whatever that Government does that is constructive toward reaching that goal I want to support. So in working on this amendment, I, working with the distinguished Senator from Kentucky, drafted one or two provisions with him which state as follows:

It is the sense of Congress that the goal of the United States and our Coalition partners has been to empower the Iraqi Nation with full sovereignty thereby recognizing their freedom to exercise that sovereignty. Through successive elections and difficult political agreements the unity government is now in place exercising that sovereignty. We must respect that exercise of that sovereignty in accordance with their own wisdom;

History records that governments derived of free elections should not grant amnesty to those who have committed war crimes or terrorist acts, and; [further]

The United States should continue with the historic tradition of diplomatically, economically, and in a humanitarian manner assisting nations and the people whom have fought once a conflict is concluded.

Mr. McCONNELL. Will the Senator from Virginia yield for a question?

Mr. WARNER. I am happy to yield the floor, if the Senator so desires.

Mr. McCONNELL. If the Senator will yield for a question, I say to my friend from Virginia: Is the Senator from Kentucky correct that the genesis of the Nelson amendment is a newspaper story quoting a lower level Government official, since dismissed by the Iraqi Government for suggesting that forces who may have killed American or Iraqi troops would be given amnesty? Is it not correct, I ask my friend from Virginia, chairman of the Armed Services Committee, that that lower level official has since been dismissed from the Iraqi Government?

Mr. WARNER. Mr. President, he was fired.

Mr. McCONNELL. He was fired. Is it not the case, I ask my friend, the chairman of the Armed Services Committee, that the National Security Adviser, Steve Hadley, if you will, of the Iraqi Government, stated shortly thereafter what the policy of the Iraqi Government was?

Mr. WARNER. Mr. President, the Senator is exactly correct.

Mr. McCONNELL. Is the Senator from Kentucky not correct that the policy of the Iraqi Government is not to do exactly what we have been having this discussion about on the Senate floor for lo these several days?

Mr. WARNER. That is correct. Based on my discussions with Senator NELSON, he in good faith read those reports and felt very strongly, as I think many of us do, about the issue of amnesty and came forward with that amendment. Then, we purposely delayed final action on these two amendments last week, such that in the intervening time there would be further clarification. I do believe there has been some further clarification of this matter. I can address that in the context of a communication from the Department of State, I say to my good friend from Kentucky. I was able to obtain this information, which hopefully will be forthcoming momentarily, stating just that: The Iraqi Government understands precisely what the situation is, that an error was made and they have put in place I think adequate corrections.

Mr. McCONNELL. So I ask one final question of my friend from Virginia. Since the Nelson amendment basically addresses a nonexistent problem and the McConnell amendment simply asserts what we already know to be the policy of the Iraqi Government, that it would likely be a good idea for the Senate to go on record as supporting both of these amendments at this juncture?

Mr. WARNER. Mr. President, I think, certainly in my judgment, that would be an acceptable situation because there is clarity in the amendment of the Senator from Kentucky about a point that is very important to me; i.e., sovereignty, exercise of that. With no disrespect to the Senator from Florida, I believed his amendment as originally drafted, and the intent, was to reach across the ocean and have the U.S.A. reach into the Government and try to dictate what was to be done. So I believe the Senator is correct in that, and I join him in that suggestion to our colleagues.

Mr. NELSON of Florida. Will the Senator yield?

Mr. McCONNELL. Mr. President, is the Senator yielding the floor?

Mr. WARNER. Yes, of course.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Kentucky.

Mr. McCONNELL. Let me add, briefly, as I hear the distinguished chairman of the Armed Services Committee, at this juncture the appropriate thing for the Senate to do would be to vote

for both of these amendments. It has been made perfectly clear, by statements by the National Security Adviser of the new Iraqi Government, that it is not the policy of the Iraqi Government to grant amnesty to those who killed American soldiers.

I hope we can move past this reaction to some lower level Iraqi official, since fired from the Iraqi Government, over his ill-advised and basically untrue suggestions about what the policy of the Iraqi Government would be toward those who may have killed American soldiers.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Florida.

Mr. NELSON of Florida. Mr. President, to answer your question—parliamentary inquiry: Under the previous order, I understand 15 minutes were allocated to the majority and 15 minutes to the minority. So under the previous order, is that how the Senator from Florida is being recognized?

The PRESIDING OFFICER. Yes.

Mr. NELSON of Florida. It is true, in the understanding of this Senator, what the distinguished chairman of the Senate Armed Services Committee has said. Over the course of the weekend, as he represented it to this Senator, that he wanted to wait and see what further clarification has happened on this matter since there was such a disturbance about the language put forth on the amendment by this Senator from Florida. Indeed, over the course of the weekend, a number of additional things have occurred that have made it quite clear what very likely is the policy of the Government of Iraq. This Senator quotes from the Los Angeles Times publication over the weekend:

The Iraqi government has crafted a far-reaching amnesty plan for insurgents.

It goes on to say:

The amnesty plan, which apparently would include insurgents alleged to have staged attacks against Americans and Iraqis. . . .

That doesn't sound to me like the Government of Iraq is disclaiming this, that this is not their policy. To the contrary. The Senator from Florida is quite appreciative of the majority whip when he says they are going to support the amendment of the Senator from Florida. I would certainly hope so, given the fact of the tragedy that has been revealed today. I quote directly from CNN:

The bodies of two U.S. soldiers found in Iraq Monday night were mutilated and booby trapped, military sources said Tuesday.

If you turned on the television in the course of the last couple of hours, you have heard described in gruesome terms the condition that the bodies of these two young Americans were found in, which was unrecognizable because of the mutilation.

Is this the kind of stuff that we in any way, in setting forth the sense of the Congress, want in any way, any misunderstanding of what the sense of the Congress is, that the policy of the

Iraqi Government should not be to grant amnesty to those who would do harm to Americans, and have done harm, as witnessed by this most recent tragic example of how people treat prisoners of war?

Sadly, I think the facts speak for themselves. Sadly, we could have dispensed with this at the hour of 2 o'clock on Thursday, after this Senator had offered his amendment. Yet we went on for 2 hours on that day and subsequently the next day. It brings us to the following Tuesday, now, with the comments that have been made, saying that the majority will accept this Senator's amendment.

I am grateful to the majority, and I think the majority has come to the right place. I thank you for recognizing this is the statement that should be the policy, as enunciated by the sense of the Congress.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I was one of those last week who spoke to this amendment by the Senator from Florida. I know now the Senator from Kentucky, the distinguished majority whip, has introduced another amendment and has suggested perhaps it would be appropriate to vote for both of them, since what in effect was a misstatement by a low-level Government employee in Iraq has now been clarified, making it crystal clear that it is not the policy of the new Government in Iraq to grant amnesty to those who have killed Americans.

But I have to scratch my head a little bit and wonder why it is we are having this debate. We are on the Defense authorization bill, an enormously important bill that is being shepherded on the Senate floor by the distinguished chairman—at least this will be the last time he will serve as chairman because of term limits on that committee. But we are essentially having a debate over a nonissue, and we are being asked now to send a message to the new Iraqi Government that you are going to be admonished, in effect, because of some of the missteps of a low-level Government employee.

I am really confused about the message our friends on the other side of the aisle are trying to send our allies in Iraq. On the one hand, we have amendments that are offered suggesting that we leave them in 6 months' time and bring all of our troops home, and whatever happens as a result of that, well, it is not our problem anymore; it is their problem. On the other hand, amendments like these suggest that anytime a low-level government employee misstates the facts and has to be then corrected, and that person is then disciplined through dismissal, do we in essence want to pick a fight where there is no fight and where it is clear what the policy of the new Iraqi Government is?

I think we should give this new Iraqi Government at least the benefit of the

doubt that some would give to Saddam Hussein. There are some who come to the Senate floor and say, no, it was a terrible mistake for us to ever go into Iraq notwithstanding the fact that we know that Saddam Hussein was a mass murderer. I, along with other of my colleagues, have stood on the edge of mass gravesites where at least 400,000 Iraqis lie dead by the hands of this mass murderer Saddam Hussein.

We know the record is clear that al-Qaida in the form of Zarqawi, who was killed just last week, was in Iraq more than 2 years before the United States and our coalition partners took out Saddam Hussein. There are those who said no, no, no. Iraq has no less linkage whatsoever to international terrorism, and now we know the facts are that the worst al-Qaida operative of all, the head of al-Qaida in Iraq, was in fact in Baghdad and was in Iraq more than a year before Saddam Hussein was deposed.

So I guess I am confused by those who would say, no, let's leave the Iraqis on their own, wish them luck, but so much for the loss of lives and lost treasure invested in trying to help the Iraqi people free themselves from this terrible tyrant and get on their own feet and create a stable democracy in Iraq. But then, on the other hand, when this new democracy that has done miraculous things over the last few years has ratified their new constitution and created a unity government and have now finally gotten their permanent government in place, that when a low-level figure makes an unauthorized, incorrect statement, for which he has been disciplined, we want to come to the Senate floor and offer amendments admonishing our friends, the Iraqi Government. They are our allies in what has now become the central front in the global war on terror.

If we don't finish the job and support our Iraqi allies in any way we can as they continue this fight against al-Qaida, against other foreign fighters, against insurgents who want to destabilize the government and put Saddam Hussein back in power, if we don't do everything we can to support them militarily and rhetorically provide them any assistance we can, then we are going to be in a less safe condition because we know that any power vacuum that would be created in Iraq would easily be filled as it was in Afghanistan by the likes of Osama bin Laden and others.

I appreciate the fact that there are those who say, Well, we ought to just vote for both of these amendments. But I really think we are heading down a bad road here by slapping the Iraqi Government on the wrists for what clearly was a misstatement of a low-level government employee for which he has been disciplined and which has not been very much clarified that it is now the policy of the Iraqi Government to provide amnesty for those who have killed Americans in that country.

I yield the floor.

Mr. WARNER. President, first, the distinguished Senator from Florida referred to a Los Angeles Times article. I think that article should be placed in the RECORD following the colloquy between myself and the distinguished Senator from Florida and the Senator from Texas.

Also, I am not sure that we should make decisions here based on one report of one newspaper. I am not impugning the Times; it is an outstanding newspaper. But we just do not have any corroboration of some of the statements.

I point out they refer to the amnesty plan which currently would include insurgents alleged to have staged attacks against Americans and Iraqis.

The second sentence down is the reconciliation plan which is expected to be formally announced soon. So that plan is in the making. There is still some formulation of policy going on.

It is for that reason that I believe a strong vote on both of these amendments sends a subtle message about our concern. Let us assume for the moment that that plan has not been made formal.

I inquired of the Department of State as to whether or not anything had transpired over the weekend. There was one meeting between Prime Minister Maliki and the charges d'affaires of the American Embassy. The charges d'affaires reported back to the Department of State.

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

Mr. WARNER. Has the 15 minutes allocated to the Senator from Virginia expired?

I ask unanimous consent that both sides be extended 5 minutes in this debate.

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

Mr. WARNER. It was stated that there was a meeting between the charges d'affaires at the U.S. Embassy and Prime Minister Maliki on 17 June. Prime Minister Maliki affirmed that any future amnesty would not differentiate between those who killed Iraqis and those who killed coalition forces. None of these people would be pardoned.

Second, Prime Minister Maliki confirmed that there should not be a concern that his reconciliation plan would prohibit Multinational Forces-Iraqi—MNFI—operations or impose a timeline for future Iraqi support of the MNFI, the point being that they are looking at this situation.

I think that these two amendments will send not a message that invades or impairs their exercise of the right of sovereignty but expresses the concern on behalf of all.

The distinguished Senator mentioned the tragic loss of our two servicepersons. It has not, to the best of my knowledge, been confirmed officially, but nevertheless earlier media reports the tragic killing and mutilation of these two brave American soldiers,

which is just an example of the ferocity of this conflict that we are experiencing over there and the enormous risks being taken by the men and women of our Armed Forces.

So I think the message sent by both of these amendments is a timely one.

I urge Senators to vote for both.

I yield the floor.

Mr. NELSON of Florida. Mr. President, will the distinguished Senator yield for a clarification?

Mr. WARNER. If I might on the Senator's time because ours is down to about 1 minute.

Mr. NELSON of Florida. Mr. President, I commend the Senator for his concern. He knows my affection for him as chairman of the committee.

Indeed, CNN is reporting that it is even worse than we had described out here on the destruction of the two soldiers. CNN sources said the two men had suffered "severe trauma."

My question to the distinguished chairman of the Armed Services Committee is, in evaluating the McConnell amendment, I am confused by the language under the sense of Congress, paragraph 1, the last sentence in the paragraph. I quote: "We"—meaning the United States—"must respect the exercise of the sovereignty"—meaning of Iraq—"in accordance with their own wisdom."

The Senator from Florida asks the chairman of the committee: Would we respect their sovereignty if their wisdom said it was their policy to have amnesty against those who would kill Americans?

Mr. WARNER. Mr. President, I think we should visit that issue only if in fact at some point in time that position is made official. The purpose of that language—and I accept full responsibility for that language—is I feel fervently that the ability for us to conclude our operation with our coalition partners in Iraq and to bring our troops home is predicated on the strength of the sovereignty exercised by this government.

The Senator knows full well as do others in this Chamber that there is a high disrespect, unfortunately, among many Iraqis for the United States and its government. If there are any of our fingerprints that we are trying to dictate to that sovereign nation how they must make decisions, I fear it could impede the progress to bring our forces home. That is why that is in there.

Mr. NELSON of Florida. I respect that. This Senator respects the goals that the Senator from Virginia is stating but I am looking at the four corners of the McConnell amendment to wonder if this is something that the Senate wants to vote for when, in fact, in the sense of Congress that is expressed in the McConnell amendment starting on page 2 at line 15 and ending on page 3 at line 9, there is not any statement in the sense of Congress with regard to the policy of not supporting the Iraqi Government if it gives amnesty to people who kill Americans.

Mr. WARNER. Mr. President, I may call the Senator's attention to page 1 of the McConnell-Warner amendment. It says:

Sense of the Congress commending the government of Iraq for affirming its position of no amnesty for terrorists who attack United States Armed Forces.

Could that be any clearer?

Mr. NELSON of Florida. That is in the findings as set forth on page 1 but not in the sense of Congress. Is it the Senator's feeling that the McConnell amendment clarifies the language that says with respect to the exercise of sovereignty we must respect the exercise of sovereignty in accordance with their own wisdom? Does that clarify it?

Mr. WARNER. Mr. President, I am certain that working on the predicate that they are a sovereign nation, they can make decisions. There will be decisions which are inconsistent with the views that we hold in this country. How do we enforce our views without interfering with their sovereignty?

First, let them speak with absolute clarity to this. The McConnell amendment—and the Senator keeps saying within the four corners. Look at corner No. 1. The introductory has very clear and expressed language against the policy.

Will there be times that we disagree with their exercise of sovereignty and their own wisdom? Yes. But if we are to obtain what we hope is our goal of giving that nation its sovereign right, we cannot be dictating to them how they reach their final decision.

Mr. LEVIN. Mr. President, will the Senator yield for a question?

Is it not true that the Senator from Florida would fully agree that we want them to have sovereignty and we don't want to dictate to them what to do, but that his point is, is it not, that we still should strongly urge them not to exercise their sovereignty in a way which provides amnesty in advance since we are in the middle of a war with people who kill American troops? Is that not true? We can urge them without violating their sovereignty. Would the Senator not agree?

Mr. NELSON of Florida. The Senator is exactly correct. The amendment by this Senator, for which the majority has already said that they are urging a vote, will further give specific action; that is, that the President of the United States should immediately notify the Government of Iraq that the Government of the United States opposes granting amnesty to persons who have attacked members of the Armed Forces of the United States? So we clearly set it out in the amendment offered by this Senator.

We want to have time for Senator MENENDEZ to speak. How many minutes does this Senator have remaining?

The PRESIDING OFFICER. There is 7½ minutes remaining.

Mr. NELSON of Florida. I yield 5 minutes to the Senator from New Jersey.

Mr. MENENDEZ. Mr. President, I thank my colleague from Florida for

both yielding time and for the amendment he has offered which I am proud to cosponsor with him.

I am astonished at some of the debate in the Senate. We are twisting and turning not to take a simple position on behalf of the men and women who serve in the uniform of the United States in Iraq and to send a message elsewhere in the world. What is that simple position? It is the sense of Congress that the Government of Iraq should not grant amnesty to persons known to have attacked, killed, or wounded members of the Armed Forces of the United States. What is so difficult, what is so wrong about sending that message?

I heard some of our colleagues say that this is a nonexistent problem. If it wasn't for Senator NELSON's amendment, we would not have had the clarifications that have been forthcoming. I would like to see the Prime Minister of Iraq say that formally, in public, as the position of the Government of Iraq.

Then I hear some of our colleagues saying that we have to respect the Iraqis and their sovereignty. This administration has been telling the Iraqis from day one what they want them to do in a variety of ways. They have been telling them how they have to form their government, how inclusive that government has to be. They have had a whole checklist of things they have been telling the Iraqis they want them to do. And now, when it comes time to defend the men and women of the United States in the Armed Forces by simply sending a sense of the Senate that we want to urge the Government of Iraq not to include in any amnesty plan those who have committed murders of U.S. soldiers or who have injured them, we cannot actually pass a sense of the Senate that says that? This is a nonexistent problem?

Let me state how nonexistent it is and how important it is to send this message. We woke up to the very sad story of two missing soldiers who were found dead, PFC Kristian Menchaca and PFC Thomas L. Tucker. Let me tell the Senate what Private First Class Menchaca's uncle said:

Don't think that it's just two more soldiers. Don't negotiate anything. They [the killers] didn't. They didn't negotiate it with my nephew. They didn't negotiate it with Tucker.

And we are concerned about Iraqi sovereignty when we have been telling the Iraqis what we want them to do, but we are so concerned about Iraqi sovereignty that we won't send a sense of the Senate to make it clear for this and any other future Iraqi Government that it is the Senate position that they should not consider amnesty for those ultimately who have committed the crime of killing American troops? That is beyond my comprehension.

It seems to me the reality is we need to make a very clear statement today, a clear and unequivocal statement of what the position of the United States is as it relates to the protection of our

soldiers and our view that no amnesty program should exist now or in the future that puts the lives of American soldiers in a position to be bargained for, negotiated for, and given amnesty for. The only way to send that very clear, unequivocal message is to support Senator NELSON's amendment.

To suggest we are so concerned about their sovereignty and their wisdom to the extent we would send a message that you can leave American soldiers in harm's way—and yes, we will respect your sovereignty. To the extent we won't do anything about you, ultimately, considering an amnesty plan that would allow the lives of U.S. soldiers to be the subject of forgiveness, that is not what I believe the American people want to see. That is certainly not honoring the lives of those who gave their lives on behalf of their country or honoring their families. Only Senator NELSON's amendment does that.

It should be strong. It should be bipartisan. It should be unanimous.

I yield back the remainder of my time to Senator NELSON.

Mr. NELSON of Florida. Mr. President, how many minutes remain for the majority and minority?

The PRESIDING OFFICER. There is 2½ minutes remaining, and the Senator from Virginia has 1½ minutes remaining.

Mr. NELSON of Florida. Mr. President, we are bringing this in for landing. I ask the distinguished chairman of the committee, had there been discussions on the floor during this debate about the clarification of the McConnell amendment by the words "in accordance with their own wisdom"?

Mr. WARNER. Mr. President, I say to my friend at this point in time that we believe the amendment speaks for itself. The first section of the amendment cites a sense of the Congress commending the Government of Iraq for affirming its position of no amnesty for terrorists who attack U.S. Armed Forces. What could be clearer than that? That sets the tone and the thrust for the entire amendment.

I have said to my colleagues, it seems to me, in the spirit of comity, we have had a good debate, we have seen some further clarification of this issue in the time that has evolved since Thursday and today; secondly, assuming time is a measure of accuracy, this policy is undergoing evaluation in Iraq right now.

These two amendments, side by side, receiving a strong vote of the Senate, should suffice in the mission the Senator from Florida set out on and on which I join him.

Mr. NELSON of Florida. Mr. President, in light of the fact that this Senator only had 2 minutes to close, I ask unanimous consent that each side have 1 additional minute.

Mr. THOMAS. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. NELSON of Florida. An objection is heard to a closing in which I just

granted part of my time to the Senator from Virginia, the chairman of the Senate Committee on Armed Services?

Mr. THOMAS. Some of us have other things to do.

Mr. NELSON of Florida. I am quite surprised. Sadly, on a day in which two more Americans have been mutilated, sadly, on a day in which the CNN story is quoting a claim posted on a Web site that our soldiers were slaughtered "in accordance to God's will," and given the fact that it is pretty clear the amendment of this Senator sets forth the policy that it is the sense of the Congress that the Government of Iraq should not grant amnesty to persons who kill Americans, I think it is self-evident.

I thank the Senator for sharing these thoughts.

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

The PRESIDING OFFICER (Mr. COLEMAN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Under the previous order, the question is on agreeing to the McConnell amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from Alabama (Mr. SHELBY).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

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

The result was announced—yeas 64, nays 34, as follows:

[Rollcall Vote No. 177 Leg.]

YEAS—64

Alexander	DeMint	Lugar
Allard	DeWine	Martinez
Allen	Dodd	McCain
Baucus	Dole	McConnell
Bennett	Domenici	Murkowski
Bingaman	Ensign	Pryor
Bond	Enzi	Roberts
Brownback	Frist	Santorum
Bunning	Graham	Sessions
Burns	Grassley	Smith
Burr	Gregg	Snowe
Cantwell	Hagel	Specter
Chafee	Harkin	Stevens
Chambliss	Hatch	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Talent
Coleman	Isakson	Thomas
Collins	Jeffords	Thune
Conrad	Kerry	Vitter
Cornyn	Kyl	Voinovich
Craig	Landrieu	Warner
Crapo	Lott	

NAYS—34

Akaka	Byrd	Dorgan
Bayh	Carper	Durbin
Biden	Clinton	Feingold
Boxer	Dayton	Feinstein

Inouye	Lincoln	Reid
Johnson	Menendez	Salazar
Kennedy	Mikulski	Sarbanes
Kohl	Murray	Schumer
Lautenberg	Nelson (FL)	Stabenow
Leahy	Nelson (NE)	Wyden
Levin	Obama	
Lieberman	Reed	

NOT VOTING—2

Rockefeller Shelby

The amendment (No. 4272), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 4265

Mr. WARNER. Are the yeas and nays ordered on the Nelson amendment?

The PRESIDING OFFICER. No.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEVIN. Mr. President, parliamentary inquiry: Are we now voting on the Nelson-Menendez amendment?

The PRESIDING OFFICER. Yes.

Mr. LEVIN. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from Alabama (Mr. SHELBY).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

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

The result was announced—yeas 79, nays 19, as follows:

[Rollcall Vote No. 178 Leg.]

YEAS—79

Akaka	Dorgan	Menendez
Alexander	Durbin	Mikulski
Allen	Ensign	Murkowski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Bennett	Frist	Nelson (NE)
Biden	Grassley	Obama
Bingaman	Gregg	Pryor
Boxer	Harkin	Reed
Brownback	Hatch	Reid
Burr	Hutchison	Roberts
Byrd	Inouye	Salazar
Cantwell	Isakson	Santorum
Carper	Jeffords	Sarbanes
Chafee	Johnson	Schumer
Chambliss	Kennedy	Smith
Clinton	Kerry	Smith
Coleman	Kohl	Snowe
Collins	Landrieu	Specter
Conrad	Lautenberg	Stabenow
Craig	Leahy	Sununu
Crapo	Levin	Talent
Dayton	Lieberman	Thune
DeWine	Lincoln	Vitter
Dodd	Lugar	Voinovich
Dole	Martinez	Wyden
Domenici	McConnell	

NAYS—19

Allard	Bunning	Coburn
Bond	Burns	Cochran

Cornyn	Inhofe	Stevens
DeMint	Kyl	Thomas
Enzi	Lott	Warner
Graham	McCain	
Hagel	Sessions	

NOT VOTING—2

Rockefeller Shelby

The amendment (No. 4265) was agreed to.

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

Mr. LEVIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENTS NOS. 4308, 4299, 4349, 4271, 4226, 4350, 4351, 4352, 4353, 4354, 4213, 4210, 4300, 4209, 4215 AS MODIFIED, 4355, 4356, 4217 AS MODIFIED, 4357, 4358, 4359, AND 4360, EN BLOC

Mr. WARNER. Mr. President, the two managers have been working with Members. We have reconciled a series of amendments, and I believe at this point in time I will make the following statement: I have sent a series of amendments to the desk which have been cleared by myself and the ranking member. I ask, therefore, unanimous consent that the Senate consider these amendments en bloc, the amendments be agreed to, and motions to reconsider be laid on the table. Finally, I ask that any statements relating to any of these individual amendments be printed at this point in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Mr. President, reserving the right to object, and I will not object because the amendments have been cleared on our side, I would suggest that if we have a moment here, after the UC is accepted, we read the list of the amendments so people will know their amendments are in here. But if the leaders are ready to send us forward on our next mission, then I would withdraw that suggestion.

Mr. WARNER. Mr. President, we first ask that you act on the unanimous consent request.

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

The amendments were agreed to, as follows:

AMENDMENT NO. 4308

(Purpose: To provide for expansion of the Junior Reserve Officers' Training Corps program)

At the end of subtitle B of title III, add the following:

**SEC. . . . EXPANSION OF JUNIOR RESERVE OFFICERS' TRAINING CORPS PROGRAM.**

(a) IN GENERAL.—The Secretaries of the military departments shall take appropriate actions to increase the number of secondary educational institutions at which a unit of the Junior Reserve Officers' Training Corps is organized under chapter 102 of title 10, United States Code.

(b) EXPANSION TARGETS.—In increasing under subsection (a) the number of secondary educational institutions at which a unit of the Junior Reserve Officers' Training Corps is organized, the Secretaries of the military departments shall seek to organize units at an additional number of institutions as follows:

(1) In the case of Army units, 15 institutions.

(2) In the case of Navy units, 10 institutions.

(3) In the case of Marine Corps units, 15 institutions.

(4) In the case of Air Force units, 10 institutions.

AMENDMENT NO. 4299

(Purpose: To require a report on the feasibility of establishing a scholarship or fellowship program to educate future nuclear engineers at the postsecondary and postgraduate levels)

At the end of subtitle B of title XXXI, add the following:

**SEC. 3121. EDUCATION OF FUTURE NUCLEAR ENGINEERS.**

(a) FINDINGS.—Congress makes the following findings:

(1) The Department of Defense and the United States depend on the specialized expertise of nuclear engineers who support the development and sustainment of technologies including naval reactors, strategic weapons, and nuclear power plants.

(2) Experts estimate that over 25 percent of the approximately 58,000 workers in the nuclear power industry in the United States will be eligible to retire within 5 years, representing both a huge loss of institutional memory and a potential national security crisis.

(3) This shortfall of workers is exacerbated by reductions to the University Reactor Infrastructure and Education Assistance program, which trains civilian nuclear scientists and engineers. The defense and civilian nuclear industries are interdependent on a limited number of educational institutions to produce their workforce. A reduction in nuclear scientists and engineers trained in the civilian sector may result in a further loss of qualified personnel for defense-related research and engineering.

(4) The Department of Defense's successful Science, Math and Research for Transformation (SMART) scholarship-for-service program serves as a good model for a targeted scholarship or fellowship program designed to educate future scientists at the postsecondary and postgraduate levels.

(b) REPORT ON EDUCATION OF FUTURE NUCLEAR ENGINEERS.—

(1) STUDY.—The Secretary of Energy shall study the feasibility and merit of establishing a targeted scholarship or fellowship program to educate future nuclear engineers at the postsecondary and postgraduate levels.

(2) REPORT REQUIRED.—The President shall submit to the congressional defense committees, together with the budget request submitted for fiscal year 2008, a report on the study conducted by the Secretary of Energy under paragraph (1).

AMENDMENT NO. 4349

(Purpose: To require a National Academy of Sciences study on human exposure to contaminated drinking water at Camp Lejeune, North Carolina)

At the end of subtitle D of title III, add the following:

**SEC. 352. NATIONAL ACADEMY OF SCIENCES STUDY ON HUMAN EXPOSURE TO CONTAMINATED DRINKING WATER AT CAMP LEJEUNE, NORTH CAROLINA.**

(a) STUDY REQUIRED.—

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Navy shall enter into an agreement with the National Academy of Sciences to conduct a comprehensive review and evaluation of the available scientific and medical evidence regarding associations between pre-natal, child, and adult exposure to drinking water contaminated with trichloro-

ethylene (TCE) and tetrachloroethylene (PCE) at Camp Lejeune, North Carolina, as well as other pre-natal, child, and adult exposures to levels of trichloroethylene and tetrachloroethylene similar to those experienced at Camp Lejeune, and birth defects or diseases and any other adverse health effects.

(2) ELEMENTS.—In conducting the review and evaluation, the Academy shall review and summarize the scientific and medical evidence and assess the strength of that evidence in establishing a link or association between exposure to trichloroethylene and tetrachloroethylene and each birth defect or disease suspected to be associated with such exposure. For each birth defect or disease reviewed, the Academy shall determine, to the extent practicable with available scientific and medical data, whether—

(A) a statistical association with such contaminant exposures exists; and

(B) there exist plausible biological mechanisms or other evidence of a causal relationship between contaminant exposures and the birth defect or disease.

(3) SCOPE OF REVIEW.—In conducting the review and evaluation, the Academy shall include a review and evaluation of—

(A) the toxicologic and epidemiologic literature on adverse health effects of trichloroethylene and tetrachloroethylene, including epidemiologic and risk assessment reports from government agencies;

(B) recent literature reviews by the National Research Council, Institute of Medicine, and other groups;

(C) the completed and on-going Agency for Toxic Substances Disease Registry (ATSDR) studies on potential trichloroethylene and tetrachloroethylene exposure at Camp Lejeune; and

(D) published meta-analyses.

(4) PEER REVIEW.—The Academy shall obtain the peer review of the report prepared as a result of the review and evaluation under applicable Academy procedures.

(5) SUBMITTAL.—The Academy shall submit the report prepared as a result of the review and evaluation to the Secretary and Congress not later than 18 months after entering into the agreement for the review and evaluation under paragraph (1).

(b) NOTICE ON EXPOSURE.—

(1) NOTICE REQUIRED.—Upon completion of the current epidemiological study by the Agency for Toxic Substances Disease Registry, known as the Exposure to Volatile Organic Compounds in Drinking Water and Specific Birth Defects and Childhood Cancers, United States Marine Corps Base Camp Lejeune, North Carolina, the Commandant of the Marine Corps shall take appropriate actions, including the use of national media such as newspapers, television, and the Internet, to notify former Camp Lejeune residents and employees who may have been exposed to drinking water impacted by trichloroethylene and tetrachloroethylene of the results of the study.

(2) ELEMENTS.—The information provided by the Commandant of the Marine Corps under paragraph (1) shall be prepared in conjunction with the Agency for Toxic Substances Disease Registry and shall include a description of sources of additional information relating to such exposure, including, but not be limited to, the following:

(A) A description of the events resulting in exposure to contaminated drinking water at Camp Lejeune.

(B) A description of the duration and extent of the contamination of drinking water at Camp Lejeune.

(C) The known and suspected health effects of exposure to the drinking water impacted by trichloroethylene and tetrachloroethylene at Camp Lejeune.

AMENDMENT NO. 4271

(Purpose: To enhance the authorities and responsibilities of the National Guard Bureau)

At the end of title IX, add the following:

**Subtitle D—National Guard Bureau Matters**

**SEC. 931. SHORT TITLE.**

This title may be cited as the "National Defense Enhancement and National Guard Empowerment Act of 2006".

**SEC. 9322. EXPANDED AUTHORITY OF CHIEF OF THE NATIONAL GUARD BUREAU AND EXPANDED FUNCTIONS OF THE NATIONAL GUARD BUREAU.**

(a) EXPANDED AUTHORITY.—

(1) IN GENERAL.—Subsection (a) of section 10501 of title 10, United States Code, is amended by striking "joint bureau of the Department of the Army and the Department of the Air Force" and inserting "joint activity of the Department of Defense".

(2) PURPOSE.—Subsection (b) of such section is amended by striking "between" and all that follows and inserting "between—

"(1)(A) the Secretary of Defense, the Joint Chiefs of Staff, and the commanders of the combatant commands for the United States, and (B) the Department of the Army and the Department of the Air Force; and

"(2) the several States."

(b) ENHANCEMENTS OF POSITION OF CHIEF OF THE NATIONAL GUARD BUREAU.—

(1) ADVISORY FUNCTION ON NATIONAL GUARD MATTERS.—Subsection (c) of section 10502 of title 10, United States Code, is amended by inserting "to the Secretary of Defense, to the Chairman of the Joint Chiefs of Staff," after "principal advisor".

(2) GRADE.—Subsection (e) of such section, as redesignated by paragraph (2)(A)(i) of this subsection, is further amended by striking "lieutenant general" and inserting "general".

(3) ANNUAL REPORT TO CONGRESS ON VALIDATED REQUIREMENTS.—Section 10504 of such title is amended by adding at the end the following new subsection:

"(c) ANNUAL REPORT ON VALIDATED REQUIREMENTS.—Not later than December 31 each year, the Chief of the National Guard Bureau shall submit to Congress a report on the requirements validated under section 10503a(b)(1) of this title during the preceding fiscal year."

(c) ENHANCEMENT OF FUNCTIONS OF NATIONAL GUARD BUREAU.—

(1) DEVELOPMENT OF CHARTER.—Section 10503 of title 10, United States Code, is amended—

(A) in the matter preceding paragraph (1), by striking "The Secretary of the Army and the Secretary of the Air Force shall jointly develop" and inserting "The Secretary of Defense, in consultation with the Secretary of the Army and the Secretary of the Air Force, shall develop"; and

(B) in paragraph (12), by striking "the Secretaries" and inserting "the Secretary of Defense".

(2) ADDITIONAL GENERAL FUNCTIONS.—Such section is further amended—

(A) by redesignating paragraph (12), as amended by paragraph (1)(B) of this subsection, as paragraph (13); and

(B) by inserting after paragraph (11) the following new paragraph (12):

"(12) Facilitating and coordinating with other Federal agencies, and with the several States, the use of National Guard personnel and resources for and in contingency operations, military operations other than war, natural disasters, support of civil authorities, and other circumstances."

(3) MILITARY ASSISTANCE FOR CIVIL AUTHORITIES.—Chapter 1011 of such title is further amended by inserting after section 10503 the following new section:

**“§ 10503a. Functions of National Guard Bureau: military assistance to civil authorities**

“(a) IDENTIFICATION OF ADDITIONAL NECESSARY ASSISTANCE.—The Chief of the National Guard Bureau shall—

“(1) identify gaps between Federal and State capabilities to prepare for and respond to emergencies; and

“(2) make recommendations to the Secretary of Defense on programs and activities of the National Guard for military assistance to civil authorities to address such gaps.

“(b) SCOPE OF RESPONSIBILITIES.—In meeting the requirements of subsection (a), the Chief of the National Guard Bureau shall, in coordination with the Adjutant Generals of the States, have responsibilities as follows:

“(1) To validate the requirements of the several States and Territories with respect to military assistance to civil authorities.

“(2) To develop doctrine and training requirements relating to the provision of military assistance to civil authorities.

“(3) To administer amounts provided the National Guard for the provision of military assistance to civil authorities.

“(4) To carry out any other responsibility relating to the provision of military assistance to civil authorities as the Secretary of Defense shall specify.

“(c) ASSISTANCE.—The Chairman of the Joint Chiefs of Staff shall assist the Chief of the National Guard Bureau in carrying out activities under this section.

“(d) CONSULTATION.—The Chief of the National Guard Bureau shall carry out activities under this section in consultation with the Secretary of the Army and the Secretary of the Air Force.”

(4) LIMITATION ON INCREASE IN PERSONNEL OF NATIONAL GUARD BUREAU.—The Secretary of Defense shall, to the extent practicable, ensure that no additional personnel are assigned to the National Guard Bureau in order to address administrative or other requirements arising out of the amendments made by this subsection.

(d) CONFORMING AND CLERICAL AMENDMENTS.—

(1) CONFORMING AMENDMENT.—The heading of section 10503 of such title is amended to read as follows:

**“§ 10503. Functions of National Guard Bureau: charter”.**

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1011 of such title is amended by striking the item relating to section 10503 and inserting the following new items:

“10503. Functions of National Guard Bureau: charter.

“10503a. Functions of National Guard Bureau: military assistance to civil authorities.”

**SEC. 933. REQUIREMENT THAT POSITION OF DEPUTY STATES NORTHERN COMMAND BE FILLED BY A QUALIFIED NATIONAL GUARD OFFICER.**

(a) IN GENERAL.—The position of Deputy Commander of the United States Northern Command shall be filled by a qualified officer of the National Guard who is eligible for promotion to the grade of lieutenant general.

(b) PURPOSE.—The purpose of the requirement in subsection (a) is to ensure that information received from the National Guard Bureau regarding the operation of the National Guard of the several States is integrated into the plans and operations of the United States Northern Command.

AMENDMENT NO. 4226

(Purpose: To clarify the applicability of the Uniform Code of Military Justice during a time of war)

At the end of subtitle C of title V, add the following:

**SEC. 552. CLARIFICATION OF APPLICATION OF UNIFORM CODE OF MILITARY JUSTICE DURING A TIME OF WAR.**

Paragraph (10) of section 802(a) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), is amended by striking “war” and inserting “declared war or a contingency operation”.

AMENDMENT NO. 4350

(Purpose: To modify authorities relating to the composition and appointment of members of the United States Marine Band and the United States Marine Drum and Bugle Corps)

At the end of subtitle A of title IX, add the following:

**SEC. 903. UNITED STATES MARINE BAND AND UNITED STATES MARINE DRUM AND BUGLE CORPS.**

(a) IN GENERAL.—Section 6222 of title 10, United States Code, is amended to read as follows:

**“§ 6222. United States Marine Band; United States Marine Drum and Bugle Corps: composition; appointment and promotion of members**

“(a) UNITED STATES MARINE BAND.—The band of the Marine Corps shall be composed of one director, two assistant directors, and other personnel in such numbers and grades as the Secretary of the Navy determines to be necessary.

“(b) UNITED STATES MARINE DRUM AND BUGLE CORPS.—The drum and bugle corps of the Marine Corps shall be composed of one commanding officer and other personnel in such numbers and grades as the Secretary of the Navy determines to be necessary.

“(c) APPOINTMENT AND PROMOTION.—(1) The Secretary of the Navy shall prescribe regulations for the appointment and promotion of members of the Marine Band and members of the Marine Drum and Bugle Corps.

“(2) The President may from time to time appoint members of the Marine Band and members of the Marine Drum and Bugle Corps to grades not above the grade of captain. The authority of the President to make appointments under this paragraph may be delegated only to the Secretary of Defense.

“(3) The President, by and with the advice and consent of the Senate, may from time to time appoint any member of the Marine Band or of the Marine Drum and Bugle Corps to a grade above the grade of captain.

“(d) RETIREMENT.—Unless otherwise entitled to higher retired grade and retired pay, a member of the Marine Band or Marine Drum and Bugle Corps who holds, or has held, an appointment under this section is entitled, when retired, to be retired in, and with retired pay based on, the highest grade held under this section in which the Secretary of the Navy determines that such member served satisfactorily.

“(e) REVOCATION OF APPOINTMENT.—The Secretary of the Navy may revoke any appointment of a member of the Marine Band or Marine Drum and Bugle Corps. When a member’s appointment to a commissioned grade terminates under this subsection, such member is entitled, at the option of such member—

“(1) to be discharged from the Marine Corps; or

“(2) to revert to the grade and status such member held at the time of appointment under this section.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 565 of such title is amended by striking the item relating to section 6222 and inserting the following new item:

“6222. United States Marine Band; United States Marine Drum and Bugle Corps: composition; appointment and promotion of members.”

AMENDMENT NO. 4351

(The amendment is printed in today’s RECORD under “Text of Amendments.”)

AMENDMENT NO. 4352

(Purpose: To authorize the temporary use of the National Guard to provide support for border security along the southern land border of the United States)

At the end of subtitle E of title X, add the following:

**SEC. 1044. TEMPORARY NATIONAL GUARD SUPPORT FOR SECURING THE SOUTHERN LAND BORDER OF THE UNITED STATES.**

(a) AUTHORITY TO PROVIDE ASSISTANCE.—(1) With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to annual training duty under section 502(a) of title 32, United States Code, to carry out in any State along the Southern land border of the United States the activities authorized in subsection (b) for the purpose of securing such border. Such duty shall not exceed 21 days in any year.

(2) With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform duty under section 502(f) of title 32, United States Code, to provide command, control, and continuity of support for units and personnel performing annual training duty under paragraph (1).

(b) AUTHORIZED ACTIVITIES.—The activities authorized by this subsection are the following:

- (1) Ground surveillance activities.
- (2) Airborne surveillance activities.
- (3) Logistical support.
- (4) Provision of translation services and training.
- (5) Provision of administrative support services.
- (6) Provision of technical training services.
- (7) Provision of emergency medical assistance and services.
- (8) Provision of communications services.
- (9) Rescue of aliens in peril.
- (10) Construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States.
- (11) Ground and air transportation.

(c) COOPERATIVE AGREEMENTS.—Units and personnel of the National Guard of a State may perform activities in another State under subsection (a) only pursuant to the terms of an emergency management assistance compact or other cooperative arrangement entered into between the Governors of such States for purposes of this section, and only with the approval of the Secretary of Defense.

(d) COORDINATION OF ASSISTANCE.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the performance of activities under this section by units and personnel of the National Guard.

(e) ANNUAL TRAINING.—Annual training duty performed by members of the National Guard under this section shall be appropriate for the units and individual members concerned, taking into account the types of units and military occupational specialties of individual members performing such duty.

(f) PROHIBITION ON DIRECT PARTICIPATION IN LAW ENFORCEMENT.—Activities carried out under this section shall not include the direct participation of a member of the National Guard in a search, seizure, arrest, or similar activity.

(g) DURATION OF AUTHORITY.—The authority of this section shall expire on January 1, 2009.

(h) DEFINITIONS.—In this section:

(1) The term "Governor of a State" means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(2) The term "State" means each of the several States and the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(3) The term "State along the southern land border of the United States" means each of the following:

- (A) The State of Arizona.
- (B) The State of California.
- (C) The State of New Mexico.
- (D) The State of Texas.

AMENDMENT NO. 4353

(Purpose: To ensure government performance of critical acquisition functions)

At the end of subtitle A of title VIII, add the following:

**SEC. 812. GOVERNMENT PERFORMANCE OF CRITICAL ACQUISITION FUNCTIONS.**

(a) GOVERNMENT PERFORMANCE OF FUNCTIONS.—

(1) IN GENERAL.—Section 2383 of title 10, United States Code is amended—

(A) by redesignating subsection (b) as subsection (c); and

(B) by inserting after subsection (a) the following new subsection (b):

"(b) GOVERNMENT PERFORMANCE OF CRITICAL ACQUISITION FUNCTIONS.—The head of an agency shall ensure that, at a minimum, for each major defense acquisition program and each major automated information system program, each of the following positions is performed by a properly qualified full-time Federal military or civilian employee:

- "(1) Program manager.
- "(2) Deputy program manager.
- "(3) Chief engineer.
- "(4) Systems engineer.
- "(5) Cost estimator.

(2) DEFINITIONAL MATTERS.—Subsection (c) of such section, as redesignated by paragraph (1)(A) of this subsection, is further amended by adding at the end the following new paragraphs:

"(5) The term 'major defense acquisition program' has the meaning given such term in section 2430(a) of this title.

"(6) The term 'major automated information system program' has the meaning given such term in section 2445a(a) of this title."

(b) EFFECTIVE DATE AND PHASE-IN.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date that is one year after the date of enactment of this Act.

(2) TEMPORARY WAIVER.—During the two years period beginning on the effective date specified in paragraph (1), the head of an agency may waive the requirement in subsection (b) of section 2383 of title 10, United States Code, as amended by subsection (a) of this section, with regard to a specific function on a particular program upon a written determination by the head of the agency that a properly qualified full-time Federal military or civilian employee cannot reasonably be made available to perform such function.

AMENDMENT NO. 4354

(Purpose: To require a report on technologies designed to neutralize or defeat the threat to military rotary wing aircraft posed by portable air defense systems and rocket propelled grenades)

At the end of subtitle G of title X, add the following:

**SEC. 1066. REPORT ON TECHNOLOGIES FOR NEUTRALIZING OR DEFEATING THREATS TO MILITARY ROTARY WING AIRCRAFT FROM PORTABLE AIR DEFENSE SYSTEMS AND ROCKET PROPELLED GRENADES.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act,

the Secretary of Defense shall submit to Congress a report on technologies for neutralizing or defeating threats to military rotary wing aircraft posed by portable air defense systems and rocket propelled grenades that are being researched, developed, employed, or considered by the United States Government or the North Atlantic Treaty Organization.

(b) CONTENT.—The report required under subsection (a) shall include—

(1) an assessment of the expected value and utility of the technologies, particularly with respect to—

(A) the saving of lives;

(B) the ability to reduce the vulnerability of aircraft; and

(C) the enhancement of the ability of aircraft and their crews to accomplish assigned missions;

(2) an assessment of the potential costs of developing and deploying such technologies;

(3) a description of efforts undertaken to develop such technologies, including—

(A) non-lethal counter measures;

(B) lasers and other systems designed to dazzle, impede, or obscure threatening weapon or their users;

(C) direct fire response systems;

(D) directed energy weapons; and

(E) passive and active systems; and

(4) a description of any impediments to the development of such technologies, such as legal restrictions under the law of war, treaty restrictions under the Protocol on Blinding Lasers, and political obstacles such as the reluctance of other allied countries to pursue such technologies.

AMENDMENT NO. 4213

(Purpose: To provide for a review of the legal status of the Junior Reserve Officers' Training Corps program)

At the end of subtitle D of title V, add the following:

**SEC. 569. REVIEW OF LEGAL STATUS OF JUNIOR ROTC PROGRAM.**

(a) REVIEW.—The Secretary of Defense shall conduct a review of the 1976 legal opinion issued by the General Counsel of the Department of Defense regarding instruction of non-host unit students participating in Junior Reserve Officers' Training Corps programs. The review shall consider whether changes to law after the issuance of that opinion allow in certain circumstances for the arrangement for assignment of instructors that provides for the travel of an instructor from one educational institution to another once during the regular school day for the purposes of the Junior Reserve Officers' Training Corps program as an authorized arrangement that enhances administrative efficiency in the management of the program. If the Secretary, as a result of the review, determines that such authority is not available, the Secretary should also consider whether such authority should be available and whether there should be authority to waive the restrictions under certain circumstances.

(b) REPORT.—The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of the review not later than 180 days after the date of the enactment of this Act.

(c) INTERIM AUTHORITY.—A current institution that has more than 70 students and is providing support to another educational institutional with more than 70 students and has been providing for the assignment of instructors from one school to the other may continue to provide such support until 180 days following receipt of the report under subsection (b).

AMENDMENT NO. 4210

(Purpose: Expressing the sense of the Senate on notice to Congress of the recognition of members of the Armed Forces for extraordinary acts of heroism, bravery, and achievement)

At the end of subtitle F of title V, add the following:

**SEC. 587. SENSE OF SENATE ON NOTICE TO CONGRESS OF RECOGNITION OF MEMBERS OF THE ARMED FORCES FOR EXTRAORDINARY ACTS OF BRAVERY, HEROISM, AND ACHIEVEMENT.**

It is the sense of the Senate that the Secretary of Defense or the Secretary of the military department concerned should, upon awarding a medal to a member of the Armed Forces or otherwise commending or recognizing a member of the Armed Forces for an act of extraordinary heroism, bravery, achievement, or other distinction, notify the Committee on Armed Services of the Senate and House of Representatives, the Senators from the State in which such member resides, and the Member of the House of Representatives from the district in which such member resides of such extraordinary award, commendation, or recognition.

AMENDMENT NO. 4300

(Purpose: Relating to multi-spectral imaging capabilities)

At the end of subtitle D of title I, add the following:

**SEC. 147. MULTI-SPECTRAL IMAGING CAPABILITIES.**

(a) FINDINGS.—The Senate makes the following findings:

(1) The budget of the President for fiscal year 2007, as submitted to Congress under section 1105(a) of title 31, United States Code, and the current Future-Years Defense Program adopts an Air Force plan to retire the remaining fleet of U-2 aircraft by 2011.

(2) This retirement would eliminate the multi-spectral capability provided by the electro-optical/infrared (EO/IR) Senior Year Electro-optical Reconnaissance System (SYERS-2) high-altitude imaging system.

(3) The system referred to in paragraph (2) provides high-resolution, long-range, day-and-night image intelligence.

(4) The infrared capabilities of the system referred to in paragraph (2) can defeat enemy efforts to use camouflage or concealment, as well as provide images through poor visibility and smoke.

(5) Although the Air Force has previously recognized the military value of Senior Year Electro-optical Reconnaissance System sensors, the Air Force has no plans to migrate this capability to any platform remaining in the fleet.

(6) The Air Force could integrate such capabilities onto the Global Hawk platform to retain this capability for combatant commanders.

(7) The Nation risks a loss of an important intelligence gathering capability if this capability is not transferred to another platform.

(b) SENSE OF SENATE.—It is the sense of the Senate that the Air Force should investigate ways to retain the multi-spectral imaging capabilities provided by the Senior Year Electro-optical Reconnaissance System high-altitude imaging system after the retirement of the U-2 aircraft fleet.

(c) REPORT REQUIREMENT.—The Secretary of the Air Force shall submit to the congressional defense committees, at the same time the budget of the President for fiscal year 2008 is submitted to Congress under section 1105(a) of title 31, United States Code, a plan for migrating the capabilities provided by the Senior Year Electro-optical Reconnaissance System high-altitude imaging system from the U-2 aircraft to the Global Hawk

platform before the retirement of the U-2 aircraft fleet in 2011.

AMENDMENT NO. 4209

(Purpose: To commend the men and women of the Armed Forces of the United States in Iraq for their on-going service to the United States)

At the the end of subtitle I of title X, insert the following:

**SEC. 1084. SENSE OF CONGRESS REGARDING THE MEN AND WOMEN OF THE ARMED FORCES OF THE UNITED STATES IN IRAQ.**

(a) FINDINGS.—Congress makes the following findings:

(1) In 2003, members of the Armed Forces of the United States successfully liberated the people of Iraq from the tyrannical regime of Saddam Hussein.

(2) Members of the Armed Forces of the United States have bravely risked their lives everyday over the last 3 years to protect the people of Iraq from terror attacks by Al Qaeda and other extremist organizations.

(3) Members of the Armed Forces of the United States have conducted dozens of operations with coalition forces to track, apprehend, and eliminate terrorists in Iraq.

(4) Members of the Armed Forces of the United States have helped sustain political progress in Iraq by assisting the people of Iraq as they exercised their right to choose their leaders and draft their own constitution.

(5) Members of the Armed Forces of the United States have taught over 150,000 soldiers of Iraq to respect civilian authority, conduct counter-insurgency operations, provide meaningful security, and protect the people of Iraq from terror attacks.

(6) Members of the Armed Forces of the United States have built new schools, hospitals, and public works throughout Iraq.

(7) Members of the Armed Forces of the United States have helped rebuild Iraq's dilapidated energy sector.

(8) Members of the Armed Forces of the United States have restored electrical power and sewage waste treatment for the people of Iraq.

(9) Members of the Armed Forces of the United States have established lasting and productive relationships with local leaders in Iraq and secured the support of a majority of the populace of Iraq.

(10) Members of the Armed Forces of the United States have courageously endured sophisticated terror tactics, including deadly car-bombs, sniper attacks, and improvised explosive devices.

(11) Members of the Armed Forces of the United States have paid a high cost in order to defeat the terrorists, defend innocent civilians, and protect democracy from those who desire the return of oppression and extremism to Iraq.

(12) Members of the Armed Forces of the United States have performed their duty in Iraq with an unflagging commitment to the highest ideals and traditions of the United States and the Armed Forces.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the men and women in uniform of the Armed Forces of the United States in Iraq should be commended for their on-going service to the United States, their commitment to the ideals of the United States, and their determination to win the Global War on Terrorism;

(2) gratitude should be expressed to the families of the Armed Forces of the United States, especially those families who have lost loved ones in Operational Iraqi Freedom; and

(3) the people of the United States should honor those who have paid the ultimate sac-

rific and assist those families who have loved ones in the Armed Forces of the United States deployed overseas.

AMENDMENT NO. 4215

(Purpose: To provide for 2 programs to authorize the use of leave by caregivers for family members of certain individuals performing military service, and for other purposes)

At the appropriate place, insert the following:

**SEC. \_\_\_\_ PROGRAMS FOR USE OF LEAVE BY CAREGIVERS FOR FAMILY MEMBERS OF INDIVIDUALS PERFORMING CERTAIN MILITARY SERVICE.**

(a) FEDERAL EMPLOYEES PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) CAREGIVER.—The term “caregiver” means an individual who—

(i) is an employee;

(ii) is at least 21 years of age; and

(iii) is capable of self care and care of children or other dependent family members of a qualified member of the Armed Forces.

(B) COVERED PERIOD OF SERVICE.—The term “covered period of service” means any period of service performed by an employee as a caregiver while the individual who designated the caregiver under paragraph (3) remains a qualified member of the Armed Forces.

(C) EMPLOYEE.—The term “employee” has the meaning given under section 6331 of title 5, United States Code.

(D) FAMILY MEMBER.—The term “family member” includes—

(i) individuals for whom the qualified member of the Armed Forces provides medical, financial, and logistical support (such as housing, food, clothing, or transportation); and

(ii) children under the age of 19 years, elderly adults, persons with disabilities, and other persons who are unable to care for themselves in the absence of the qualified member of the Armed Forces.

(E) QUALIFIED MEMBER OF THE ARMED FORCES.—The term “qualified member of the Armed Forces” means—

(i) a member of a reserve component of the Armed Forces as described under section 10101 of title 10, United States Code, who has received notice to report to, or is serving on, active duty in the Armed Forces in support of a contingency operation as defined under section 101(a)(13) of title 10, United States Code; or

(ii) a member of the Armed Forces on active duty who is eligible for hostile fire or imminent danger special pay under section 310 of title 37, United States Code.

(2) ESTABLISHMENT OF PROGRAM.—The Office of Personnel Management shall establish a program to authorize a caregiver to—

(A) use any sick leave of that caregiver during a covered period of service in the same manner and to the same extent as annual leave is used; and

(B) use any leave available to that caregiver under subchapter III or IV of chapter 63 of title 5, United States Code, during a covered period of service as though that covered period of service is a medical emergency.

(3) DESIGNATION OF CAREGIVER.—

(A) IN GENERAL.—A qualified member of the Armed Forces shall submit a written designation of the individual who is the caregiver for any family member of that member of the Armed Forces during a covered period of service to the employing agency and the Office of Personnel Management.

(B) DESIGNATION OF SPOUSE.—Notwithstanding paragraph (1)(A)(ii), an individual less than 21 years of age may be designated as a caregiver if that individual is the spouse of the qualified member of the Armed Forces making the designation.

(4) USE OF CAREGIVER LEAVE.—Leave may only be used under this subsection for purposes directly relating to, or resulting from, the designation of an employee as a caregiver.

(5) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Office of Personnel Management shall prescribe regulations to carry out this subsection.

(6) TERMINATION.—The program under this subsection shall terminate on December 31, 2007.

(b) VOLUNTARY PRIVATE SECTOR LEAVE PROGRAM.—

(1) DEFINITIONS.—

(A) CAREGIVER.—The term “caregiver” means an individual who—

(i) is an employee;

(ii) is at least 21 years of age; and

(iii) is capable of self care and care of children or other dependent family members of a qualified member of the Armed Forces.

(B) COVERED PERIOD OF SERVICE.—The term “covered period of service” means any period of service performed by an employee as a caregiver while the individual who designated the caregiver under paragraph (4) remains a qualified member of the Armed Forces.

(C) EMPLOYEE.—The term “employee” means an employee of a business entity participating in the program under this subsection.

(D) FAMILY MEMBER.—The term “family member” includes—

(i) individuals for whom the qualified member of the Armed Forces provides medical, financial, and logistical support (such as housing, food, clothing, or transportation); and

(ii) children under the age of 19 years, elderly adults, persons with disabilities, and other persons who are unable to care for themselves in the absence of the qualified member of the Armed Forces.

(E) QUALIFIED MEMBER OF THE ARMED FORCES.—The term “qualified member of the Armed Forces” means—

(i) a member of a reserve component of the Armed Forces as described under section 10101 of title 10, United States Code, who has received notice to report to, or is serving on, active duty in the Armed Forces in support of a contingency operation as defined under section 101(a)(13) of title 10, United States Code; or

(ii) a member of the Armed Forces on active duty who is eligible for hostile fire or imminent danger special pay under section 310 of title 37, United States Code.

(2) ESTABLISHMENT OF PROGRAM.—

(A) IN GENERAL.—The Secretary of Labor may establish a program to authorize employees of business entities described under paragraph (3) to use sick leave, or any other leave available to an employee, during a covered period of service in the same manner and to the same extent as annual leave (or its equivalent) is used.

(B) EXCEPTION.—Subparagraph (A) shall not apply to leave made available under the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

(3) VOLUNTARY BUSINESS PARTICIPATION.—The Secretary of Labor may solicit business entities to voluntarily participate in the program under this subsection.

(4) DESIGNATION OF CAREGIVER.—

(A) IN GENERAL.—A qualified member of the Armed Forces shall submit a written designation of the individual who is the caregiver for any family member of that member of the Armed Forces during a covered period of service to the employing business entity.

(B) DESIGNATION OF SPOUSE.—Notwithstanding paragraph (1)(A)(ii), an individual less than 21 years of age may be designated

as a caregiver if that individual is the spouse of the qualified member of the Armed Forces making the designation.

(5) **USE OF CAREGIVER LEAVE.**—Leave may only be used under this subsection for purposes directly relating to, or resulting from, the designation of an employee as a caregiver.

(6) **REGULATIONS.**—Not later than 120 days after the date of enactment of this Act, the Secretary of Labor may prescribe regulations to carry out this subsection.

(7) **TERMINATION.**—The program under this subsection shall terminate on December 31, 2007.

(c) **GAO REPORT.**—Not later than June 30, 2007, the Government Accountability Office shall submit a report to Congress on the programs under subsections (a) and (b) that includes—

(1) an evaluation of the success of each program; and

(2) recommendations for the continuance or termination of each program.

AMENDMENT NO. 4355

(Purpose: To modify the increase in the fiscal year 2006 general transfer authority)

On page 380, line 18, strike “\$3,750,000,000” and insert “\$5,000,000,000”.

AMENDMENT NO. 4356

(Purpose: To authorize additional emergency supplemental appropriations for fiscal year 2006)

Strike section 1002 and insert the following:

**SEC. 1002. AUTHORIZATION OF ADDITIONAL EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2006.**

(a) **IRAQ, AFGHANISTAN, AND THE GLOBAL WAR ON TERROR.**—Amounts authorized to be appropriated to the Department of Defense for fiscal year 2006 in the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) are hereby adjusted, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization are increased by a supplemental appropriation, or decreased by a rescission, or both, or are increased by a transfer of funds, pursuant to title I of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234).

(b) **HURRICANE DISASTER RELIEF AND RECOVERY.**—Amounts authorized to be appropriated to the Department of Defense for fiscal year 2006 in the National Defense Authorization Act for Fiscal Year 2006 are hereby adjusted, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization are increased by a supplemental appropriation, or decreased by a rescission, or both, or are increased by a transfer of funds, pursuant to title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

(c) **BORDER SECURITY.**—Amounts authorized to be appropriated to the Department of Defense for fiscal year 2006 in the National Defense Authorization Act for Fiscal Year 2006 are hereby adjusted, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization are increased by a supplemental appropriation, or decreased by a rescission, or both, or are increased by a transfer of funds, pursuant to title V of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

AMENDMENT NO. 4217

(Purpose: To require a report on the future aerial training airspace requirements of the Department of Defense)

At the end of subtitle D of title III, add the following:

**SEC. 352. REPORT ON AERIAL TRAINING AIRSPACE REQUIREMENTS OF THE DEPARTMENT OF DEFENSE.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) Access to and use of available and unfettered aerial training airspace is critical for preserving aircrew warfighting proficiency and the ability to test, evaluate, and improve capabilities of both personnel and equipment within the most realistic training environments possible.

(2) The growth of civilian and commercial aviation traffic and the rapid expansion of commercial and general air traffic lanes across the continental United States has left few remaining areas of the country available for realistic air combat training or expansion of existing training areas.

(3) Many Military Operating Areas (MOAs) originally established in what was once open and uncongested airspace are now encroached upon by a heavy volume of commercial and general air traffic, making training more difficult and potentially hazardous.

(4) Some aerial training areas in the upper great plains, western States, and Gulf coast remain largely free from encroachment and available for increased use, expansion, and preservation for the future.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the Department of Defense should—

(1) establish a policy to identify military aerial training areas that are projected to remain viable and free from encroachment well into the 21st century;

(2) determine aerial training airspace requirements to meet future training and airspace requirements of current and next generation military aircraft; and

(3) undertake all necessary actions in a timely manner, including coordination with the Federal Aviation Administration, to preserve, and if necessary, expand those areas of airspace to meet present and future training requirements.

(c) **REPORT.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report setting forth a proposed plan to preserve and, if necessary, expand available aerial training airspace to meet the projected needs of the Department of Defense for such airspace through 2025.

AMENDMENT NO. 4357

(Purpose: To establish a goal of the Department of Defense relating to the use of renewable energy to meet electricity needs)

At the end of subtitle B of title XXVIII, add the following:

**SEC. 2828. USE OF RENEWABLE ENERGY TO MEET ELECTRICITY NEEDS.**

It shall be the goal of the Department of Defense to ensure that the Department—

(1) produces or procures not less than 25 percent of the total quantity of electric energy it consumes within its facilities and in its activities during fiscal year 2025 and each fiscal year thereafter from renewable energy sources (as defined in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)); and

(2) produces or procures such renewable energy when it is life-cycle cost effective to do so (as defined in section 708 of Executive Order 13123 (42 U.S.C. 8251 note; relating to greening the Government through efficient energy management)).

AMENDMENT NO. 4358

(Purpose: To modify the limitation on availability of funds for Department of Defense participation in multinational military centers of excellence)

On page 463, beginning on line 8, strike “paragraph (1) in fiscal year 2007 for the ex-

penses and costs” and insert “paragraph (1)(A) in fiscal year 2007 for the expenses”.

AMENDMENT NO. 4359

(Purpose: To require a report on actions to reduce the consumption of petroleum-based fuel by the Department of Defense)

At the end of subtitle D of title III, add the following:

**SEC. 352. REPORT ON ACTIONS TO REDUCE DEPARTMENT OF DEFENSE CONSUMPTION OF PETROLEUM-BASED FUEL.**

(a) **REPORT REQUIRED.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the actions taken, and to be taken, by the Department of Defense to reduce the consumption by the Department of petroleum-based fuel.

(b) **ELEMENTS.**—The report shall include the status of implementation by the Department of the requirements of the following:

(1) The Energy Policy Act of 2005 (Public Law 109-58).

(2) The Energy Policy Act of 1992. (Public Law 102-486)

(3) Executive Order 13123.

(4) Executive Order 13149.

(5) Any other law, regulation, or directive relating to the consumption by the Department of petroleum-based fuel.

AMENDMENT NO. 4360

(Purpose: To require a report assessing the desirability and feasibility of conducting joint officer promotion selection boards)

At the end of part II of subtitle A of title V, add the following:

**SEC. 521. REPORT ON JOINT OFFICER PROMOTION BOARDS.**

(a) **REPORT REQUIRED.**—Not later than June 1, 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and House of Representatives a report on the desirability and feasibility of conducting joint officer promotion selection boards.

(b) **ELEMENTS.**—The report under subsection (a) shall include—

(1) a discussion of the limitations in existing officer career paths and promotion procedures that might warrant the conduct of joint officer promotion selection boards;

(2) an identification of the requirements for officers for which joint officer promotion selection boards would be advantageous;

(3) recommendations on methods to demonstrate how joint officer promotion selection boards might be structured, and an evaluation of the feasibility of such methods; and

(4) any proposals for legislative action that the Secretary considers appropriate.

Mr. JEFFORDS. Mr. President, I am pleased that my amendment to support military families was accepted today by the Senate by unanimous consent to S. 2766, the National Defense Authorization Act of fiscal year 2007. Let me begin by thanking my good friend, the Senator from Wisconsin, Mr. FEINGOLD, who joined me last year in introducing the legislation upon which this amendment is based, S. 1888, the Military Family Support Act. His advocacy for this issue and for the families of our men and women in uniform is greatly appreciated. I would also like to recognize Senator DAYTON, Senator LAUTENBERG, and Senator MURRAY for their support for this amendment. Of course, the Senate and our Nation benefit greatly from the leadership on national defense issues of the Senator from Virginia, Mr. WARNER, chairman of the

Senate Armed Services Committee, and the Senator from Michigan, Mr. LEVIN. I thank them both and their staff for their assistance with this amendment.

I would also like to acknowledge the cooperation of Senate Homeland Security and Government Affairs Committee Chairwoman COLLINS and Ranking Member LIEBERMAN and the expertise of their staff. They were very helpful in the process that has led to this amendment, and I appreciate their assistance.

At about this time last year, I was contacted by a group of Vermonters who were trying to help their coworkers with family members serving in Iraq as part of the Vermont National Guard. I was impressed by the generosity of Vermonters who wanted to do all they could to help ease the strains of military deployments felt by their friends and neighbors. I was also reminded of how a family's day-to-day life is disrupted by a deployment of a loved one overseas.

This amendment calls for two pilot programs to help with family disruptions due to an overseas deployment. The first pilot program, administered by the Office of Personnel Management, OPM, would authorize Federal employees who have been designated by a member of the Armed Forces as "caregivers", as defined by the Department of Defense, DOD, to use their leave in a more flexible manner. No new leave would be given to any employees. This amendment simply makes leave already available more useful during stressful times for military families. The second pilot program allows the Department of Labor, DOL, to solicit businesses to voluntarily take part in a program to offer more accommodating leave to their employees. This amendment does not include in its scope the Family Medical Leave Act, FMLA, and it does not require any private sector entity to participate.

Mr. President, in closing, this amendment aims to make life a little easier for those who are already giving so much to our country and to their communities.

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

Mr. LEVIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Wyoming.

Mr. ENZI. Mr. President, I ask unanimous consent that the pending amendment be set aside and this amendment be sent to the desk.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Mr. President, reserving the right to object, I am wondering whether we have an order here where we are alternating and, if so, what the situation is.

Mr. WARNER. Mr. President, I would respond that we have concluded all the work at the moment. I believe our leaders are working out a procedure by which the minimum wage amendments are being addressed.

Mr. LEVIN. I wonder, as the alternative now comes to us, whether we could let Senator HARKIN first go before Senator ENZI. On the other hand, if it is your turn in rotation, then we would have no objection.

Mr. WARNER. Mr. President, at this moment I think there has been a request to go off of our bill. Is that the request of the Senator from Wyoming?

Mr. ENZI. No, Mr. President. Senator KENNEDY filed an amendment that dealt with the minimum wage. I actually won't send mine to the desk right now, but I would like to comment on that right now.

Mr. WARNER. The Senator is quite correct, quite correct. We will remain on the bill for the purpose of debate on such amendments relative to minimum wage that may be brought forward, correct. Senator KENNEDY's is at the desk and you wish to speak to it?

Mr. ENZI. That is correct. Of course, I am going to ask that he withdraw that amendment and I do not propose my amendment because they don't have to do with the Department of Defense authorization.

The PRESIDING OFFICER. Does the Senator request to set aside the pending amendment?

Mr. ENZI. The Senator withdraws his request to do that but requests the floor.

The PRESIDING OFFICER. The Senator has the floor.

Mr. ENZI. Mr. President, I know that some people who are following this debate might be wondering how the minimum wage relates to legislation that authorizes national security programs in the Department of Defense and the Department of Energy for the next year, and that is certainly a valid question. The answer is: It doesn't.

The underlying legislation the Senate has been considering for over a week is of tremendous importance to our national security. The bill is bipartisan and was reported out of committee unanimously. As those of us who chair committees know, it isn't easy to obtain unanimous bipartisan support for legislation. Chairman WARNER and Ranking Member LEVIN worked hard to achieve this feat because the subject of the bill is so critically important. Now I believe we owe it to them, as well as to our constituents and every American, to give this national security legislation swift consideration so that it can become law.

The amendment offered by Senator KENNEDY has the opposite effect. It will slow this bill down because it is an entirely different subject than the underlying bill. It will take up valuable debate time that should be spent on the bill's national security provisions. Should it be adopted, the Kennedy amendment would become a thorny

issue for the conference committee, and that will further slow down the bill's enactment.

Even more frustrating, the issue Senator KENNEDY is raising has been considered and voted on by the Senate four times already in this Congress. We voted on the majority and minority plans to raise the minimum wage twice. We voted on the two of them in March, and we voted on them in November. Now, both times, no proposal succeeded.

Amendments offered by the Senate must comply with certain budget rules which, as a member of the Budget Committee, I fully support. Amendments that constitute an unfunded mandate are subject to a point of order which can only be waived with a vote of 60 Senators. Not 1 of the 4 minimum wage amendments has received 60 votes in the Senate this Congress. Yet here we are again, facing the same situation, using up time on the Defense bill. The outcome is likely to be the same as it was the last four times we voted. Knowing this, I find it difficult to understand why those on the other side of the aisle want to bring it up again on this critically important national security bill.

Let us not misuse the time we should be spending debating our national security priorities for the next year by repeating votes that already occurred four times in this Congress. Instead, let's focus on how we should prepare for the many threats we face as a nation. The good men and women who work for the Department of Defense and the Department of Energy need our authorization and our guidance to move forward with their activities that keep us safe. We have always done it before we do the appropriations on those budgets. We should not let them down. We should not let the American people down.

I urge my colleagues on the other side of the aisle not to divert this debate on to an entirely unrelated matter, the outcome of which is clearly determinable. So I urge my colleague, Senator KENNEDY, to withdraw his amendment. I would add that if he does not, I am plenty willing to have the debate again. We want to have the American public making as much money as possible.

I would rise in opposition to the amendment offered by Senator KENNEDY that would increase the Federal minimum wage to \$7.25 over 26 months, which amounts to a 41-percent increase. My amendment would raise the minimum wage by \$1.10 in two 55-cent steps over 18 months. But, more important than the numbers, only my amendment recognizes the enormous burdens a mandate such as this would place on the backs of America's small businesses.

The Senator from Massachusetts has previously referred to the economic effect of the minimum wage proposal as a drop in the bucket in the national payroll. Comments such as this are

precisely why small business owners across the Nation believe that Washington, DC, politicians do not understand their needs. We must always bear in mind that these are the people who create jobs that provide an increasing percentage of employment for all workers, including those entering the workforce for the first time and those who most need to acquire job skills. Those businesses train people with no skills. We are not talking minimum wage; we are talking minimum skills. And a lot of the small businesses that employ people at a minimum wage hire them at a minimum wage with no skills. As they get skills, which in many of those businesses occur in the first month they are hired, they go above the minimum wage to other levels, and as quickly as they learn other skills, they get paid more money or they go elsewhere, which is another option.

It is particularly offensive to those employers doing that training to suggest that a 41-percent increase in their labor costs amounts to a drop in the bucket. A 41-percent increase in labor costs forces a small businessperson to face difficult choices such as whether to increase prices, which they usually can't do or face a potential loss of customers because they raise the price, or whether to reduce spending on health insurance coverage or other benefits for their employees or, the worst of all possibilities, to terminate employees. These choices are far more significant than a drop in the bucket.

Apart from its failure to mitigate the cost of this mandate for small businesses, Senator KENNEDY's amendment also fails to address the root of the problem for our lowest paid workers. Congress, by simply imposing an artificial wage increase, will not meaningfully address the real issue of the lowest paid workers. Regardless of the size of any wage increase Congress might impose, the reality is that yesterday's lowest paid worker, assuming he or she still has any job, will continue to be tomorrow's lowest paid worker as well. There is a spiral effect to these increases when we do them because everybody all up the chain has to have an increase to stay ahead of those with no skills. There are even union agreements that are tied to raises in the minimum wage, which is probably a bigger reason we debate the minimum wage on such a frequent basis around here.

But if everybody gets a raise, something has to happen to cover the cost of that raise. As I mentioned, you either eliminate employees so that you are increasing productivity to handle the same thing or you are raising the price. If you raise the price, you create inflation. If you create inflation, what they were able to buy for minimum wage today they can't afford for tomorrow's minimum wage because the price went up. So a false economy of just demanding by Congress that everybody do this really doesn't affect the econ-

omy the way we think it will. The way that you do that is advancement on the job and earned wage growth. Earned wage growth cannot be legislated. We do a disservice to all concerned, most especially the chronic low-wage worker, to suggest that a Federal wage mandate is the answer.

What we need to focus on is not an artificially imposed number but the acquisition and improvement of job and job-related skills. In this context we should recognize that only 68 percent of the students entering the ninth grade 4 years ago—68 percent of the students entering the ninth grade 4 years ago are expected to graduate this year. Do you know what kind of a job you get if you don't graduate from high school? Well, 68 percent of the kids who entered 4 years ago—not all of them—are going to graduate. For minority students this number hovers around 50 percent. In addition, we continue to experience a dropout rate of 11 percent a year. These noncompletion and dropout rates and the poor earning capacity that comes with them cannot be fixed by a Federal minimum wage policy.

I was in a retail store the other day. I noticed some of the skills have deteriorated to the point where the person at the cash register can't figure out the dollars themselves. I remember when cash registers in stores didn't tell you how much change you had to give the person. You had to figure it out, and kids and adults did that. But there are errors with that, so modern machines took up the disadvantage that was caused by that and we now have cash registers that figure the change for you.

But watch out if you ever change the way you give them the money after they figured it on the computer cash register.

Have you ever had a bill for \$10.81 and you gave the clerk \$11 and then you gave them a penny? That is no skills, if they can't figure out they owe you the 20 cents. No skills. That is what the retailers out there are training people on—basic, rudimentary things for having a job. We don't fix those by legislating.

If we are going to meaningfully address the issue of low-wage workers we have to acknowledge that you do not do that by simply passing a wage law. If that were the case, we could pass a law that made the minimum wage \$20 or \$50 or \$100 an hour. It is just not that simple. In my own State of Wyoming, Governor Freudenthal, a Democrat, this year, in speaking about legislation to raise the minimum wage from the current \$5.15, noted that the real question is how do you enable a worker to become more qualified and thereby able to earn a higher wage? He noted:

How do you make the individual more valuable in the marketplace and demand a higher wage? It's not simply how do you pass a law.

As I mentioned, the Governor of Wyoming is a Democrat, one who understands the reality of this issue in the

workplace and the job market. Low wages may be the effect; low job skills are the cause. Raising the minimum wage does absolutely nothing to enhance job skills for low-wage workers. In fact, to the extent it makes entry into the workforce more difficult, and increases low-skilled unemployment, as a minimum wage hike without economic relief for small business will unquestionably do, it will have precisely the opposite effect.

If we are able to approach this debate in a candid and constructive way, we need to acknowledge certain basic principles of economics. First of all, wages do not cause sales. Sales are needed to produce revenue. And wages don't cause revenue. Revenue drives wages.

Wages can cause productivity, but the productivity has to come first to be able to afford the wages. Wages have to be paid for.

Skills, however, operate differently than wages do. Skills do create sales. Sales do produce revenue. Skills do create productivity. And here is the most important part—skills get compensated with higher wages or else the employee goes somewhere else to get true higher wages to compensate for their increased skills. There is a relationship between skill and how much you make. Dropouts will not make as much as college graduates. Dropouts will not make as much as someone who has been to a technical school. Dropouts will have minimum skills.

Some people who finish school have minimum skills. I know my dad, once, when he was interviewing a person, said the person told him he had 5 years' experience. My dad, after questioning him, said: Unfortunately, he had 1 month of experience 60 times.

Wage increases without increased sales or higher productivity, which are a result of more skills, have to be paid for with higher prices. Higher prices wipe out wage increases. Better skills, not artificial wage increases, produce true net gains in income.

We also need to focus on the goal that the minimum wage should be for all workers and what it is for most, which is a starting point in an individual's lifelong working career if they are not skilled.

Let me say that again. We need to focus on the goal that minimum wage should be for workers who need a starting point in an individual's lifelong working career because they are not skilled. If viewed as a starting point, it is clear the focus needs to be far less on where an individual begins in his or her work career and far more on how an individual can progress—get jobs that have the potential for increase, get jobs that teach skills. They are available.

I always have to mention this. Right now in Wyoming, which is the least populated State in the Nation, we have a huge shortage of workers. There is a huge shortage of workers. Are these good jobs? Yes, they are good jobs.

They are in the coal mines. We ship a third of the Nation's coal out of my county. It is clean coal and it is open-pit mining. We use huge trucks. You could only fit two trucks in this whole room and that would be a pretty tight squeeze. The top of it would probably touch the top of the roof. They are big trucks. We are having trouble getting drivers for the trucks.

The only requirement for being a driver on one of these trucks is to be able to drive and have a clean drug record—be able to pass a drug test. When you drive one of these trucks, once you get up to elevation and get in the driver's chair, there are antivibration seats, power steering, air-conditioned cabs. That great big vehicle is easy to drive.

What do you get paid for driving it? The starting salary is about \$60,000, and they train you, provided you have this clean drug record—\$60,000 a year. We are having trouble getting people to come to Wyoming to work for \$60,000 a year. So it isn't always minimum wage that drives these things. Skills are important, but you can even get the skills if you look for the jobs that pay well.

They may be nontraditional jobs. We have a lot of women who are driving coal haul trucks. They can do it very capably and probably with fewer accidents than the men.

The truth is, real wage growth happens every day. It is not the function of Government to mandate it. It is the direct result of an individual becoming more skilled and therefore more valuable to his or her employer. As a former small business owner, I know these entry-level jobs are a gateway to the workforce and an opportunity for workers to begin to acquire the skills and experience they need. These entry-level jobs can open the door for better jobs and better lives for low-skilled workers—if we give them the tools they need to succeed.

We have a great example in Cheyenne, WY. Workers entering the job market were given the tools and the opportunity to reach the American dream. We have a man there named Mr. Jack Preiss, and he is the owner of eight McDonald's in Wyoming. We often talk about McDonald's and minimum wage.

I want to tell you he has had three employees who started working at McDonald's at minimum wage who now own a total of 20 McDonald's restaurants. They own them. This type of wage progression and success should be the norm for workers across the country. However, there are a small percentage of workers who have not acquired the necessary work-based skills and for whom stagnation at the lower tier wage is a longer term proposition. The answer for these workers, however, is not to simply raise the lower wage rung. Rather, these individuals have to acquire the training, experience, and skills that will lead to meaningful and lasting wage growth. Our policies ought to be directed at that end.

We have to equip our workers with the skills they need to compete in a technology-driven global economy. It is estimated that 60 percent of tomorrow's jobs will require skills that only 20 percent of today's workers possess.

It is also estimated that graduating students will likely change careers 14 times in their lives. You didn't hear me say change jobs 14 times in their lives. That is easy. I said change careers 14 times in their lives.

Here is the important part of that statistic. The world is changing so fast that 10 of those jobs don't even exist today. They are going to have 14 career changes, 10 of which are for jobs that don't even exist today. We have to do a better job of educating and training our youth to be able to take the kind of jobs we are going to have.

We need a system in place that can support a lifetime of education, training, and retraining of our workers. The end result will be the attainment of skills that will provide meaningful wage growth. As legislators, our efforts are better focused on ensuring that the tools and opportunities for training and enhancing skills over a worker's lifetime are available and fully utilized—more available and fully utilized than we are in imposing an artificial wage increase that fails to address the real issues and in the process does more harm than good. Skills and experience, not an artificial wage hike, will lead to lasting wage security for American workers.

As chairman of the Health, Education, Labor and Pensions Committee, one of my priorities is reauthorizing and improving the Nation's job training system that was created by the Workforce Investment Act. This law would help provide American workers with the skills they will need, new skills to compete in a global economy. Those are ones that will lead to real, not artificial wage increases.

Last Congress—this is 3 years ago—I was denied the appointment of a conference committee to resolve the differences with the House on this important bill by some of the very people who are proposing this minimum wage increase. This Congress, this important bill has faced the same obstruction. In November of last year we reported this legislation out of the HELP Committee by unanimous voice vote. Yet it continues to languish, unavailable for debate on the floor of this Congress, with no progress being made and little hope for action in this Congress if such obstruction continues. This bill would train an estimated 900,000 people a year to higher skilled jobs—900,000 people a year could be on a better career path, could have more skills. That would be a real improvement for chronic low-wage workers.

It makes little sense to me that some of the same people who denied the opportunity in the last Congress to enact real improvement now think a redetermination of the lowest wage will magically change everyone's life. If we truly

want to change and improve the lives of our lowest paid workers, we must pass the Workforce Investment Act.

Let's be clear about what a minimum wage hike will and will not do. First, we must realize that large increases in the minimum wage will hurt low-income, low-skilled individuals. Mandated hikes in the minimum wage do not cure poverty, and they clearly do not create jobs. The Congressional Budget Office has said:

Most economists would agree that an increase in the minimum wage rate would cause firms to employ fewer low-wage workers or employ them for fewer hours.

That is a CBO estimate from October 18, 1999.

What every student who has ever taken an economics course knows is that if you increase the cost of something—in this case a minimum wage job—you decrease the demand for those jobs. Misleading political rhetoric cannot change the basic principle of supply and demand. The majority of economists continue to affirm the job-killing nature of the mandated wage increases. A recent poll concluded that 77 percent or nearly 17,000 economists believe that a minimum wage hike causes job loss.

It is kind of a spiral that we get into.

We simply cannot assume that a business that employs 50 minimum wage workers before the wage increase is enacted will still employ 50 minimum wage workers, whether the business is in Washington, Wyoming, or Massachusetts. Employers can't absorb an increase in their cost without a corresponding decrease in the number of jobs or benefits they can provide workers. We know there are losers when we raise the minimum wage. But who are the individuals who will benefit?

Minimum wage earners who support a family solely based on the wage are actually pretty few and far between. Fully 85 percent of the minimum wage earners live with their parents, have a working spouse, or are living alone without children.

Of the minimum wage earners, 41 percent live with a parent or relative, 23 percent are single or the sole breadwinner of the household with no children, and 21 percent live with another wage earner.

All are low-skilled workers or brandnew employees. In a shoe store you might have the lowest-skilled people unpacking the shoes. By the time they can check inventory and correctly put it on the shelf so they can find the size when the customers come in, they get a raise. If they can actually wait on a customer—that is kind of the goal in most businesses, to be able to wait on a customer—that is another level of wage increase. The better they do waiting on customers—which is the important part in the business—the more they get paid.

Research shows that the poor targeting and other unintended consequences of the minimum wage make

it a terribly ineffective approach to reducing poverty in America—the intended purpose of the policy. In fact, two Stanford University economists concluded that a minimum wage increase is paid for by higher prices that hurt poor families the most.

A 2001 study conducted by Stanford University economists found that only one in four of the poorest 20 percent of families would benefit from an increase in the minimum wage. The way to truly improve the wages and salaries of these American workers is through education and training—not an artificial wage increase.

With these realities in mind, I will offer an amendment, unless Senator KENNEDY wishes to withdraw his amendment. We can go on with the Defense debate. There must be serious discussion on that possibility. So I will allow that to go on and make a few more comments.

But I am considering offering an amendment that recognizes the true cost of the minimum wage increase on American workers and businesses, and particularly small businesses.

My amendment includes a minimum wage increase of \$1.10, and it also addresses other needs for reform and the needs of small businesses that create the most jobs in this country. Therefore, my amendment is protective of economic growth and job creation.

Let me turn to a brief review of the provisions that would be contained in my amendment. In doing so, we must bear in mind that small businesses continue to be the engine that drives our economy and the greatest single source of job creation. Any wage increase imposed on small businesses poses difficulties for that business owner and, more importantly, for his or her employees.

My amendment recognizes this reality and provides a necessary measure of relief for these small business employers.

My amendment would make the following changes that are critical, particularly for small business. The first one is updating the small business exemption.

Having owned a small business in Wyoming, I can speak from personal experience about how difficult any minimum wage increase is for small businesses at the low end of the scale level and job growth.

Small businesses generate 70 percent of new jobs. Since the negative impact of a minimum wage increase will affect small businesses most directly, we have proposed addressing the small business threshold which is set under current law at \$.5 million. If the original small business threshold enacted in the 1960s—that is when we came up with this arbitrary number, in the 1960s—if it were to be adjusted for inflation, it would amount to over \$.5 million.

The small business threshold was last adjusted 15 years ago. In those ensuing years since the national minimum

wage rate has been hiked, the economy has undergone a dramatic change, and the way work is done in this country has changed forever.

The pending amendment raises that threshold for small business determination to \$1 million to reflect these changes.

My amendment also incorporates bipartisan technical corrections that were originally proposed in 1990 by then Small Business Committee Chairman Dale Bumpers, Democrat from Arkansas, and cosponsored over the years by Senator REID, now the Democratic leader, Senator HARKIN, Senator PRYOR, Senator MIKULSKI, Senator BAUCUS, Senator KOHL, and others. Those Senators can attest to the Department of Labor's disregard of the will of Congress and interpreted the existing small business threshold to have little or no meaning. The Labor Department would make a Federal case out of the most trivial paperwork infraction by the smallest small business because of what it interpreted as a loophole in the law.

Some would say that the 1989 bill to hike the minimum wage and the small business threshold was inartfully drafted and permitted this result. Others say the Department is misreading the clear language of the statute.

Regardless, the fact is that a threshold enacted by Congress is not providing the balance and fairness that was intended. This amendment corrects the problem by stating clearly that the wage and overtime provisions of the Fair Labor Standards Act apply to employees working for enterprises engaged in commerce or engaged in the production of goods for commerce. My amendment also applies those wage and hour worker safeguards to homework situations.

Second, ensuring procedural fairness for small business: This next provision is just common sense and good government legislation.

Surely, we can all agree that small business owners—the individuals who do the most to drive our economy forward—deserve a break the first time they make an honest paperwork mistake when no one is hurt and the mistake was corrected.

Let me say that again.

Surely, we can all agree that small business owners—the individuals who do the most to drive our economy forward—deserve a break the first time they make an honest paperwork mistake where no one is hurt and the mistake is corrected.

Small business owners told me over and over again how hard they try to comply with all the rules and regulations imposed on them, mostly by the Federal Government. As a former owner of small business myself, I know what they mean. Yes, for all that work, a government inspector can fine a small business owner for paperwork violations alone, even if the business has a completely spotless record and the employer immediately corrects the

unintentional mistake. Even the best intentioned employer can get caught in the myriad of burdensome paperwork requirements imposed on them by the Federal Government. And I will even go so far as to say a lot of times the paperwork isn't clear, because I have filled out a lot of those documents.

To comply with the Paperwork Reduction Act, sometimes we use something for insurance that deals with health, and the questions can't be the same.

So there are a lot of possibilities unless you follow the manual very closely. And small businesses don't have time to do that because they are trying to make a living for themselves and their employees.

There are a lot of opportunities out there which the Federal Government gives them to make paperwork mistakes that really don't affect anybody. But if we have enough people working in the Federal bureaucracy to check and see if all the t's are crossed and all the i's are dotted, we can find some mistakes, particularly if that person only has to concentrate on one document. The small business owner has dozens that he has to comply with.

The owners of small businesses are not asking to be excused from any obligations or regulations, but they feel they deserve a break if they previously complied perfectly with the law. Small business men and women who are first-time violators of paperwork reduction deserve some protection.

The third part of the bill would provide regulatory relief for small businesses.

As any increase in the minimum wage places burdens on small employers, it is only fair to simultaneously address the ongoing problem of agencies not fully complying with the congressional directive contained in the Small Business Regulatory Enforcement Act.

That is a mouthful.

Under the law, agencies are required to publish small entity compliance guidelines for those rules that require a regulatory flexibility analysis. Unfortunately, agencies have either ignored this requirement or when they tried to comply have not done so fully or carefully.

My amendment does this by including specific provisions that the Government Accountability Office has suggested to improve the clarity of the requirement.

The fourth thing it would do is remove the barriers to flexible time arrangements.

My amendment includes legislation that could have a monumental impact on the lives of thousands of working men and women and families in America.

This legislation would give employees greater flexibility in meeting and balancing the demands of their work and family.

We came up with an idea like this, and it is real important to pay attention to it. We stole it from the Federal

Government. The Federal Government imposes this on agencies. The Federal Government says you are going to give the employees flexibility.

The first time I ever heard of this was in Wyoming. Some people in Wyoming are married to people that work for the government, probably not nearly as strange as out here. Out here, I think a lot of people who work in government are married to people who work in government. But out there, a lot of people who are working in government are married to people who aren't working in government.

We give this benefit to government employees—being able to have a little flex in their time. But we prohibit it in the private sector. We say you cannot do this even though we let the government folks do this. There, it would be a bad idea for your employees. We don't want you to have any flexibility. We know both the Federal employee and the private employee would like to watch their kids play soccer. The private employee better have his soccer schedule done so he doesn't need any flextime. But the government worker ought to be able to take it whenever they feel like it and trade it around.

We give the Federal Government the kind of flex I am talking about in this bill. Particularly in a family where the private employee is married to a government employee, they do not understand why they cannot have the same right as the government employee. They can bank a few hours and have a little longer weekend the next weekend, all in the same pay period. Their spouse can do it. They can have a little longer weekend. They can go use the boat over the longer weekend, but for the one that works for private industry it would be illegal. You cannot do that.

Just try and explain that to a family. That is how I first found out about this problem. I had a mother who wanted to be able to do the same thing as her husband. Her husband worked for the State government. He could do it. He could bank hours. But if it is a private sector, no, that would be stealing overtime from people. Why would it be stealing overtime in the private sector when it is not stealing overtime in the government sector? I don't understand that.

You will hear more, if we debate these things, and if we decide we are going to impose it on the Department of Defense and the Department of Energy authorization. If we decide we are going to impose that, comments will be on this flextime provision. Most of it will be on this because it is kind of a red herring that you can throw up and say, We do not trust business. Yes, we trust government but we don't trust business. You will hear that as the main part of this debate.

That is why I have spent a little time concentrating on it here.

This legislation would give employees in the private sector flexibility like in the government sector in meeting and balancing the demands of work and family.

Whatever we do, remember that part—only asking for private business what we give to government employees. Let me give some of the latest statistics: 70 percent of employees do not think there is a healthy balance between their work and their personal life; 70 percent of employees say family is their most important priority.

The family time provision in my amendment addresses these concerns head on. It gives employees the option of flexing their schedule over a 2-week period. In other words, employees would have 10 flexible hours they can work in 1 week in order to have 10 hours off in the next week.

Flexible work arrangements have been available in the Federal Government for over two decades. Have we had any arguments about them? No, they have been a great idea. They have been accepted and desired and used. But don't let the private sector have that. Because it works in one place doesn't mean it might work in another place. Let's continue to discriminate against private business. That is what we are saying when we do not allow the flextime.

This program has been so successful that in 1994 President Clinton issued an Executive order extending it to parts of the Federal Government that had not yet benefited from the program. President Clinton said:

[The] broad use of flexible arrangements to enable Federal employees to better balance their work and family responsibilities can increase employee effectiveness and job satisfaction while decreasing turnover rates and absenteeism.

It would allow the Federal employees to better balance their work and family responsibilities—that sounds good to me—and it can increase employee effectiveness and job satisfaction while decreasing turnover rates and absenteeism. That sounds pretty good, too.

Let's see now. We tried it for over two decades and decided to extend it to all Federal Government, so it has to be a good idea. Would we pass on a bad idea to the Federal Government? Would they stand for it if we did? No. So why can't we give it to the private sector? Why do we say: Private sector, you are just not as good as Government employees. You do not deserve the same breaks we give Government employees.

As I mentioned, this will be the bulk of the debate on this particular issue, the flextime part. It could have been a lot more inclusive. Actually, the Federal Government gets to do more than what I have stated, but we are definitely not going to allow that. We are putting this down to a very small minimum to see if we can get any movement on it at all.

As I said, we have voted on this before, and the answer is, Heck, no, we will not give the private sector that kind of a privilege. We don't care what the Federal Government gets to do, you can't treat the private sector decently. No, they didn't say that, I said that.

I could not agree more with what President Clinton said when he did his Executive order. I am saying now we need to extend this same privilege to the private sector workers. It would allow employees to better balance their work and family responsibilities, it can increase employee effectiveness and job satisfaction, while decreasing turnover rates and absenteeism. That was President Clinton talking about this kind of provision for the public sector. I am saying, if it is that great, we ought to do it for the private sector, too.

We know this legislation is not a total solution. We know there are many other provisions under the 65-year-old Fair Labor Standards Act that need our attention, but the flexible time provision is an important part of the solution. It gives employees a choice, the same choice Federal workers have.

The fifth part of this would extend the restaurant employee tip credit. A major employer of entry-level workers is the fast food service industry. Another part of it is the regular food service industry. The regular food service industry relies on what is known as the tip credit, which allows an employer to apply a portion of an employee's tip income against the employer's obligation to pay the minimum wage.

Currently, Federal law requires a cash wage of at least \$2.13 an hour for tipped employees and allows an employer to take a tip credit of up to \$3.02 of the current minimum wage. To protect tipped employees, current law provides that a tip credit cannot reduce an employee's wages below the required minimum wage. Employees report tips to their employers, ensuring an adequate amount of tips are earned.

Seven states—Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington—do not allow a tip credit; however, requiring raises for all hourly employees when States increase the minimum wage. The lack of a tip credit requires these employers to give raises to their most highly compensated employees, the tipped staff. If you are working in a nice restaurant, the tips will be more than the salary. Nontipped employees in these businesses are negatively impacted by the mandated flow of scarce labor dollars to the tipped position. In addition, employers are put at a competitive disadvantage with the colleagues in the rest of the country who can allocate employee compensation in a more equitable manner.

My amendment expands the tip credit to nontip credit States, consistent with the initial establishment of the credit under the Fair Labor Standards Act, anticipating the increase in minimum wage.

The sixth provision is small business tax relief. If we are going to impose greater burdens on small business, we should give them some tax relief at the same time. My amendment extends small business expensing by 1 year.

Simplify cash accounting methods. I am the only accountant in the Senate, so I probably ought to explain what cash accounting is. That could be a huge debate all by itself. It means that the business can actually use the dollars coming in as part of the accounting as opposed to anticipated dollars that would be coming in. It works off the actual cash flow rather than some of the accrual methods that we use. I will not go into that. Accounting is important, but it often puts people to sleep. It would simplify cash accounting methods and provide restaurant depreciation relief.

All of these tax provisions are fully offset in the bill. That means they are paid for. That means there is some way of covering the cost of them so that it isn't the general budget.

In total, the additional provisions in my amendment are intended to mitigate the small business impact of a \$1.10 increase in the minimum wage so people can keep their jobs. I share the view of many of my colleagues that if we are going to impose such a mandate on the Federal level, we must do our best to soften the blow. This may be the best we can do today, but I entreat all of my colleagues to look at the true root of the problem for minimum wage workers. That is the acquisition of job-based skills: more skills, more money.

We all share the same goals, which is to help American workers find and keep good-paying jobs and to keep the best paying jobs in this country. Real job skills, not artificial wage levels, should be our focus. Education, training, and job experience are the solution for low-wage workers. We have to pass the Workforce Investment Act that will train those 900,000 people a year to higher skill jobs.

In terms of education and training, we need to move forward on that kind of meaningful legislation that will lead to increased wages and better jobs that we all want for our Nation's workers.

In terms of job experience, we must always remember that businesses, particularly small businesses, create the jobs and provide the gateway to the working world for the vast majority of low-wage workers.

If we do not balance a minimum wage increase with economic relief for the small businesses, we will stifle job creation and shut the employment door on the very individuals we are trying to help.

I urge my colleagues to oppose the amendment offered by Senator KENNEDY and, if we continue to have the debate and I submit my amendment, to support my amendment. Both raise the minimum wage. One covers the cost of the minimum wage so that it would not drive down the number of people employed in this country.

We have been trying to increase employment. We want those people starting with minimum skills to work their way up the ladder to owning the business. That can happen in America. That can happen if we give them an in-

centive to learn to improve their skills and we don't impose false security of mandated higher wages that drive a spiral upward and eliminate jobs. Elimination of jobs is not the answer. Training people to higher skills so they can demand more money or go to work somewhere else is the answer.

If we are going to have this debate on the Department of Defense bill, I would be happy to submit my amendment to have it voted on, along with Senator KENNEDY's amendment. We have done that before. We know what the results will be, I suspect. Both of them will be subject to a point of order. We usually agree not to go for the point of order but just order the vote and have the 60-vote threshold we have always had. We would be willing to do that, but a more appropriate time to debate this would be another time on another bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the issue we are talking about, my good friend and the chairman of the Committee on Human Resources is talking about, and that I have talked about earlier, is whether we were going to have an opportunity in the Senate to take a few minutes to consider an increase in the minimum wage for the lowest paid workers in America. I had offered that as an amendment on the Defense authorization bill.

One might ask: Why are we doing this on the Defense authorization bill? The answer to that is we would not have another opportunity to do it on any other bill until the recessing of the Senate.

In my opening remarks when I offered that amendment, I indicated to the chairman of the Committee on Armed Services that we would be glad to work out a time for consideration that would not interfere with the general debate and discussion of the issues on the Defense authorization bill, but we have been unable to get that at this particular time. Therefore, we are talking about this issue at this time.

The Senator from Wyoming asked why is this relevant to the Defense authorization. I think the answer is rather compelling. That is, when we think of why the service men and women are fighting in Iraq and Afghanistan, and around the world, they are fighting for American values, American principles. Part of American values and principles is economic fairness, not the exploitation of poor workers in the United States of America. That is why it is relevant.

We are talking about the ideals and the values of the United States of America. We are talking about family values. We are talking about what people at the lowest rung of the economic ladder are going to get paid.

I bet some of these individuals who will be affected by the minimum wage are over in Iraq now fighting. They are wondering, why in the world are we taking up time when we have not in-

creased the minimum wage in the last 9 years and we have taken the time to see six pay increases for the Senate? They are saying: Why aren't you providing that increase for the minimum wage for these workers? That is what we are talking about.

Can anyone imagine that? We are going to get another pay COLA increase next week. We have increased our own salaries \$30,000 over the period of the last 9 years. And how much have we given to an increase in the minimum wage? Zero.

We have, I daresay, men and women who are serving in Iraq whose parents are probably earning the minimum wage. We are talking about getting an increase to \$7.25 an hour.

This issue never used to be a partisan issue. I regret it has turned out to be a partisan issue. We have been unable to get our Republican friends to give us an opportunity to vote on an increase in the minimum wage. We are caught in this situation because we cannot get an up-or-down vote on the increase in the minimum wage.

Since the time of the initiation of the minimum wage, going back to Franklin Roosevelt, Harry Truman, Dwight Eisenhower, Republican, all had an increase in the minimum wage. Richard Nixon, an increase in the minimum wage. George Bush, an increase in the minimum wage. But we do not have anything after Bill Clinton and the increase in the minimum wage. Nine years is the longest period in history for no increase of the minimum wage. If the Senator would let us have an up-or-down vote, we will take a very short time period. We are interested in taking a short time. We only received the Republican alternative about an hour and a half ago. We still don't know what the scoring is on it. The initial statement we have heard is that it is pretty much the same as it was a year ago, and that basically cuts overtime pay. It also undermines the States' opportunities to deal with problems on the tip credit. It also eliminates worker protections under the Fair Labor Standards Act. That is a fine option that is going to be out. That is what we have gotten in the last hour or so.

If I had the attention of my friend from Wyoming, the managers of the bill are here, I would ask unanimous consent that upon completion of the Defense bill, the Senate turn to the minimum wage bill, the text of which is my amendment, that the Enzi amendment be in order, that there be 4 hours of debate equally divided, and then we would go to a vote.

Mr. WARNER. Mr. President, I would have to object.

Mr. KENNEDY. I have heard the objection. We have had complaints about my offering the minimum wage amendment on this legislation. Then what do we do? We say: OK, let's let this go through. But just give us an opportunity to consider an increase in the minimum wage on the floor of the Senate with a very short time limitation.

And we can't get agreement on that. There you go. That is what this is all about.

I must say the idea that this isn't appropriate, if we could have gotten an option to go ahead and have the individual bill for an increase in the minimum wage, have an opportunity to vote on both the Senator's amendment and our amendment, let's have that and let's go back to the good old days where a majority would carry. That is fine with me. That would be fine with me. I will just take a half an hour on our side. Surely, the Senate can find time to give a half an hour to the issue of increasing the minimum wage for workers. One half hour, let's see where the Senate goes, whoever gets more than 50 votes. That used to be the way around here. But not now. We hear complaining about bringing up the minimum wage on this bill, and they still are going to have to get 60 votes on it because there will be a point of order raised against this on the budget.

We have heard a great deal before, at the time when my good friend was talking about his health care bill about wanting to have a debate on his health care bill. Remember that? It wasn't all that long ago. Let's have a good up-or-down debate. Let's have a vote. What is it, denying the opportunity for people to have this debate?

Well, we would be more than glad to have this legislation. You can have on your side a half an hour. We will take a half an hour. Let the chips fall where they may. If the leader wants to come out and make that, we have offered similar to that. There has been objection to it, but it is a reflection of our good faith.

From an early reading of the amendment of the Senator from Wyoming, they would raise the minimum wage by \$1.10. Would the Senator tell me what the cost of the Enzi amendment is? What is the cost? Do we have a budget point of order?

Could I address the Senator from Wyoming? If he could tell me what the budget cost of his amendment would be? While he is doing so, I will mention a couple of other points.

His amendment would raise the minimum wage by \$1.10 instead of by \$2.10, which our bill does. It cuts overtime, and it also reduces benefits so only 1.8 million workers would be covered. That is 4.8 million fewer than my amendment. There is \$1.10 an hour instead of \$2.10, and there are 4.8 million fewer than my amendment. Then it also cuts overtime pay. It ends Federal labor standards coverage for over 10 million workers. By raising the gross income of the companies that will be covered, they will eliminate 10 million workers. They will be eliminated from any kind of minimum wage or fair labor standards protections.

Then it basically overturns State actions that are dealing with what they call the wage tip credit which States vary about how they do it. But the Enzi amendment puts a cap on that.

The States now, for example, can have a higher minimum wage than we have. We haven't preempted the States because it has always been a flooring. Some States believe that those who depend on tips ought to be given a somewhat additional break. We are talking about people who make \$5.15 an hour, maybe make \$6 or \$7 in tips, and you are trying to nickel-and-dime them on that with the Enzi amendment, preempt the States.

I hope my colleagues have a chance to read through this overnight because we are preempting the States that have reached a different conclusion with regard to tip credit. The Enzi amendment says that is going to be out.

That is quite a mouthful. People understand those issues pretty well. They are very important. I don't know whether we have an answer. I will be glad to hear it later on. Could the Senator give me what the budget cost for his amendment would be?

Mr. ENZI. I would like to be able to do that. I don't have the numbers that I need to have. I appreciate the question, but I can't give you an answer yet.

Mr. KENNEDY. Well, I imagine we will get them later in the afternoon or get them on tomorrow. Could the Senator indicate when we might anticipate those? The reason this is important is because we are talking about 50 pages of tax issues in the Enzi amendment. Therefore, there is a cost to it. It does seem to me that prior to the time that we have a vote, we ought to know what those particular costs are. We have on the one hand the issues that are directly related to the minimum wage, and then we have the costs in terms of an addition to the deficit.

I don't know whether the Senator could tell us that we are going to get it later this evening. If you can give us the assurance, if you think we will have it this evening, that is fine; otherwise, whatever help the Senator could provide, I would be grateful.

Mr. ENZI. In answer to the question, Mr. President, I can't tell how long it will take for the Joint Tax Committee to have the new numbers. But I can tell you, I didn't know that the Senator was going to offer his amendment until yesterday. The estimated revenue effects that we have are from the one that we did and voted on last year which shows over a 10-year period that all costs are covered with a slight surplus.

Mr. KENNEDY. I am not sure that I completely understood the Senator's response in terms of the cost. What is the cost of the first, second, third, fourth, or fifth year? We will try and get that, if we could.

I point out to my colleagues, the amendment I offer is 2½ pages. The Enzi amendment is 71½ pages, 50 of which are tax provisions. It does seem to me if we were debating, look, ours is \$2.10, yours is \$1.10, let's go at it. Let the Senate make a judgment. But it isn't that. We have 50 pages in here of

tax provisions that are going to evidently be called incentives on the one hand but to others they are going to increase the deficit on the other hand. I am not exactly sure what those are. Then we are not only being questioned about that, but we also know that we have in that proposal a cut of overtime pay and the ending of Federal Labor Standards Act coverage for 10 million workers and basically a preemption of States that want to treat the tip credit in the way that they want, which is quite a proposal. I would hope that we would have a chance, which I expect we will, to at least examine it over the evening.

This chart says the \$1.10 increase leaves 4.8 million workers behind, the difference between the Enzi proposal and the way ours is drafted.

I wanted to address a couple of the issues the Senator has pointed out with regard to small business. This chart shows results of a Gallup Poll of May 2006: 86 percent of small business owners say the minimum wage does not affect their business. The question was: How does the minimum wage affect your business? Eighty-six percent said no effect; 8 percent, negative effect; positive effect, 5 percent; no opinion, the rest.

So it is kind of interesting, we have sort of gone beyond this point in terms of where the small business community is. They have a pretty good understanding of what happens. What we have found out with the increase, for example, on the living wage, you take the most dramatic example is the neighboring city of Baltimore. When they increased it to a living wage, what happened? First of all, they had less turnover. It was less costly on the city in terms of training new workers.

Secondly, they increased their productivity. They got less individuals who stayed home on sick leave because people began to take a greater pride in their work. Why? Because they were being treated with greater respect. And finally, the overall cost of the program, even though they increased it to about \$11.50—I am not sure, I think it is even above that; they were one of the first with a living wage—they found out that the workers were working harder, took greater pride in their work, and there was greater productivity, a greater increase in morale, and their overall costs have actually gone down.

States with higher minimum wages create more small businesses. I was listening to the Senator talk about the burden on small businesses. I just showed a recent Gallup Poll of small businesses which was in May of this year. Here are the 10 States plus DC with minimum wages higher than \$5.15, and overall growth of small business is 5.4 percent. Forty States have a minimum wage of \$5.15, and there is 4.2 percent growth. The States with the higher increase in the minimum wage saw an increase in the total numbers.

Study after study finds raising the minimum wage does not cause job loss.

This is by David Card and Alan Krueger, from Princeton's reanalysis of the effect of the New Jersey minimum wage increase on the fast food industry and representative payroll data, 1998. The increase in the minimum wage probably had no effect on total employment and possibly had a small positive effect. Four different tests of the two increases on employment impact fail to find any systematic, significant job loss associated with the 1996-1997 increases, Economic Policy Institute. Detailed studies of California's last two decades, the State-increased minimum wage legislation, consistently no employment for workers.

This chart shows the increases in 1996. It is too bad we have to go back so far, but we haven't had an increase in the minimum wage. Here is the increase in the minimum wage to \$4.75. I think it was \$3.45 prior to that time. We went to \$4.75. This is total job growth after we had the increase in the minimum wage. Then we increased to it \$5.15. This is a chart that shows the total job growth in the United States during that period. This idea about the impact on jobs is interesting, but it has been refuted time and time again.

This chart shows that the last minimum wage increase did not increase unemployment. These are the figures on unemployment.

The last increase to \$5.15 actually shows the unemployment going down over the period of the years, from 1997 until 2000. It doesn't have the most recent figures. But it is a pretty good indication of what was happening during that time. So we find that the States which have a higher increase in the minimum wage are expanding in small business. Eighty-six percent of small business, according to the Gallup poll, said it doesn't have any effect, in terms of employment. The national review about what has happened the last two times we raised the minimum wage was that it had virtually no impact in terms of the employment issue.

Finally, inflation. That issue is always another canard that is pointed out. They say if you raise the minimum wage, we are going to cause inflation. Look at what we are doing, Mr. President. Increasing the minimum wage to \$7.25 is vital to these workers, but it is a drop in the bucket to the national payroll. All Americans combined earned \$5.4 trillion a year. A minimum wage increase to \$7.25 would be less than one-fifth of 1 percent of the national payroll. There it is. No inflation, no adverse impact on unemployment. Small business feels that it doesn't impact or affect them. The studies show that small businesses have grown in States where they have had an increase in the minimum wage.

These are the economic arguments, but most of all, as we have said day in and day out, this is a fairness issue. These are men and women who work hard and play by the rules and take a sense of pride in their work. They work as teachers aides, in nursing homes,

cleaning up the great buildings of American commerce, and they work hard and try to do a decent job. More often than not they have two and sometimes three other jobs. Primarily, they are women. As I have pointed out, it is a women's issue. Primarily, those women have children. It is a children and a women's issue. It is a family issue. It is a family value issue and a civil rights issue because so many of the workers are men and women of color. And fairness, fairness. You don't have an economic argument against increasing it to \$7.25, and you don't have an argument that is relevant to decency and fairness in opposing this kind of increase.

Americans understand fairness, they understand decency, and they understand the importance of hard-working Americans who are playing by the rules. A job in America should get you out of poverty, not keep you in it. And the alternative to our increase in the minimum wage will keep you in poverty. We can do better as a country, and we will.

I see my friend from New Jersey who desires to address the Senate on the minimum wage. I hope he will have an opportunity to do that for as long as he likes.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. MENENDEZ. Mr. President, I am proud to join Senator KENNEDY in his call to increase the minimum wage to \$7.25 and to cosponsor this amendment. In my mind, this amendment is not just about wages, it is not just about fairness; it is about dignity. Certainly, there could not be any finer advocate for our Nation's workers than my colleague from Massachusetts, who has pushed relentlessly to get this body to act and provide that opportunity for dignity and to provide a long, overdue increase in the Federal minimum wage.

Yet despite his efforts, despite coming to this floor time and time again to call for a simple yet critical wage increase, this body has not heeded his calls. Despite the fact that some 7 million American workers are struggling to keep their heads above water, this body has chosen inaction.

That is a disgrace.

I think it is shameful that Members of this body have walked away time and again when given the chance to provide hard-working Americans with what is at the core of the work ethic we hold as a Nation—fair pay for a hard day's work.

We are not talking about a giveaway or a free ride; we are simply talking about a fair and decent wage that ensures those working their hardest make enough to get by. To be honest, workers making the Federal minimum wage today don't make enough to get by. The average worker earning the minimum wage and working 40 hours a week, 52 weeks a year, to support a family of three will only earn \$10,700 on the current minimum wage. That is \$6,000 below the Federal poverty line for a family of three.

No family can afford to live on those wages, especially not a family in a high-cost State such as New Jersey. In New Jersey, which has the highest median income in the Nation and one of the highest average rent costs in the country, \$5.15 an hour is simply not enough to get by. People in New Jersey know that. Leaders in New Jersey know that, and that is why our State acted to increase the minimum wage to \$6.15 last October. Raising the minimum wage to \$7.25, as this bill would do, would benefit an estimated nearly 200,000 New Jerseyans.

I am proud that New Jersey has been a leader for increasing the minimum wage. I heard Senator KENNEDY's reference to some studies about it. In fact, we are lifting people up in the process. New Jersey's move to be a leader, rather than wait for the Federal Government to lead the way, is providing a better standard of living for New Jerseyans.

We need leadership now in Washington. While Congress refuses to act, millions of workers across the country are being left behind. Nine years is far too long for those workers to wait. Nine years is too long for those who work around the clock, hoping to save a little extra for groceries, so they can buy school supplies or clothes for their children or for those who are saving so one day they can live in a place that they are proud to call home.

Mr. President, that is what this amendment is about. It is about more than just wages. It is about providing a decent and fair standard of living for those who share in the dream of America, as every other worker in this country. It is for those who work their hearts out every day so that they may provide a better life for their families. It is so that children in this country never have to know what it feels like never to have enough.

Increasing the minimum wage would give more than 7 million children of minimum wage earners a chance for a better life.

As the son of poor immigrants, hard-working parents who worked day in and day out as a carpenter and a seamstress in a factory, I knew what it was not to have enough. My parents didn't have time to fight for better wages. They were working hard to achieve the American dream. Similar to so many before them, my parents saw hard work as a path to a better life for themselves and their children. That continues to be the story for so many hard-working Americans.

But unless wages rise to keep up with the rising costs, to meet the realities facing working families, that dream will be out of reach for millions of minimum wage earners, who earn a wage that is worth less than it was nearly 30 years ago.

Now, I ask how the Members of Congress, who get a cost-of-living adjustment, can at the same time say to those people in this country working at the minimum wage—even after you

work 40 hours a week, 52 weeks a year, which puts you at the poverty level—Members of Congress get an increase in the cost of living, but they cannot vote after 9 years to give those hard-working minimum wage workers the first increase in 9 years.

Every day that we stand idle, the minimum wage continues to lose value, our Nation's workers fall further and further behind. We have to give working families the chance to work their way out of poverty. We want Americans to be self-sufficient. Yet when we have individuals who get up every day and do some of the hardest work that our country has to offer—and it is honest work and decent work, but it is hard work—every day they get up and go to work—and they cannot afford to be ill because most of them don't get health care. If they don't go to work that day, they don't have the resources to take home for their families. Can we not say as a Nation that we want to honor their work, that we want to reward their work, so that work becomes the vehicle by which there is self-sufficiency? That is what we say when we are unwilling to increase the minimum wage.

The increase we are proposing would put more than \$4,000 in the pockets of these hard-working Americans. This is enough to help a low-income family afford 2 years of child care, a year and a half in utility bills or a year of tuition at a public college.

This may be a simple increase for some, but an extra \$2.10 an hour will mean a lot more for the 15 million workers who have been waiting and waiting for 9 years for a better wage, a better standard of living, for hope and opportunity, and for a message that their work is rewarded.

Mr. President, these workers have waited long enough. They are waiting for leadership. They are waiting for a Congress that accepts cost-of-living adjustments to ultimately recognize that they, too, need an adjustment in their salary. Let's get our priorities straight and stand up for our Nation's families. Let's show true leadership and provide these workers across the country what they deserve. Let them work their way out of poverty. Let's pass this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Mr. President, I want to talk about the amendment of the Senator from Massachusetts. I want to specifically commend the Senator for his passion and enthusiasm. But it reminds me of a line in an old country song: "You only hurt the ones you love."

The graphs that we were shown were macro graphs about all economies and all unemployment in the country. The people on minimum wage, which this is designed to help, are those at the lowest end of the skill level and the beginning level of employment.

When the distinguished Senator from New Jersey referred to the 15 million

Americans who were on the minimum wage 15 years ago as if they were still on it today, it was deceiving and misleading. Those are not the same 15 million people. They are 15 million new people who are getting a foothold in the joy that is America by beginning on the ladder of employment.

Former Federal Reserve Chairman Alan Greenspan has repeatedly cautioned the Congress on this very subject and against raising the minimum wage for that reason. The Chairman pointed out that such a move "increases unemployment and, indeed, prevents people who are at the early stages of their careers from getting a foothold in the ladder of promotions."

The Federal Government can dictate what anybody pays anybody, but we cannot dictate who is hired. If we raise the component cost of employment—as the bill of the Senator from Massachusetts would—29 percent, it stands to reason that you put at risk 29 percent of those who are employed at the lowest level. What happens is that people seek a more efficient worker at the detriment of the least skilled and the least qualified.

One year after the first minimum wage was established, Franklin Roosevelt's own Department of Labor made the following observation:

In a number of instances, there have been reports that workers who had been receiving less than [the new minimum wage] had been laid off, and replaced by more efficient workers.

The marketplace will drive employment, and when we in Government infuse ourselves into an issue and make an arbitrary adjustment, then the marketplace will make the adjustment for the business community and the more efficient worker will be employed.

When the distinguished Senator from Massachusetts referred to the tremendous job growth and creation between the next-to-the-last increase in the minimum wage and the last increase in the minimum wage, again it was a macro graph. The fact is that while employment skyrocketed during the dot-com era, those were high-technology, high-end jobs. The reality was that, as a result of the Congressionally-mandated increase in the minimum wage, technology replaced a lot of those minimum wage, low-skilled jobs, and actually unemployment increased at the lowest end. It is only right to compare apples to apples and oranges to oranges.

It is interesting that researchers at the University of Wisconsin did a study not too long ago to determine what the minimum wage did to welfare mothers, that I give you, Mr. President, as an example. The study revealed that welfare mothers in States that raised their respective minimum wages remained on public assistance 44 percent longer than those in States where the minimum wage was not raised, making the point I made earlier; that is, getting a foothold on the ladder of success in America means getting in the employ-

ment chain. And the more we put pressure on how much it costs to bring someone into that chain, the more it punishes or penalizes someone who is not in it.

There is another deception which goes on in this argument, and that is that everybody who is on the low end of the chain and a minimum wage earner is at the bottom of the scale in life.

President Clinton's first Labor Secretary, Robert Reich, once observed "most minimum wage workers aren't poor." He is right. Today, according to data from the U.S. Census Bureau, the average family income of a minimum wage worker is above \$43,000 a year—well above the national average. There are reasons for that.

Accordingly, minimum wage increases are inefficiently targeted to help poor workers since fully 85 percent of minimum wage earners live with their parents, have a working spouse, or are living alone without children. In fact, when Congress last raised the minimum wage in 1997, only 17 percent of the benefits of that increase went to families living below the poverty level. For comparison, over 33 percent of the benefits went to the richest two-fifths of all families, which is another secret to raising the minimum wage.

It is not just at the lowest end of employment or the beginning level, but there are contracts in America that are indexed to the minimum wage. If the United States of America and this Congress force an increase in the minimum wage, then it very well could trigger, in a labor contract, in a labor organization with a company, an automatic increase in the pay scale for people far and above the minimum wage. Once again, it has an arbitrary effect on the marketplace that the marketplace will adjust, and when it adjusts, someone will lose a job or find it harder to get a job.

The University of Georgia in my home State recently did a study. The economist who did that study was Joseph J. Sabia, a Ph.D. graduate in economics from none less than Cornell University. He used Government data from January of 1979 until December of 2004. This is a 25-year longitudinal study, and in sum, Dr. Sabia found that a 10-percent increase in the minimum wages causes a nine-tenths of 1 percent to a 1.1 percent decrease in retail employment, and an eight-tenths of 1 percent to a 1.2 percent decrease in small business employment. Dr. Sabia's research confirmed yet again that low-skilled workers is the group that is most likely to be most negatively impacted by the minimum wage hike.

The study also reiterated minimum wage hikes are not an effective means of reducing poverty among working poor because most minimum wage workers are second or third earners in a family—teens or dependents—and most workers in poor households earn more than the minimum wage.

But the best study I refer to most often is the study I conducted during 33

years in the private sector employing hundreds of individuals in a real estate company. I knew what competitive marketplace factors were, and I knew how, when we brought people in—and I had some jobs in my company that were at the lower end, minimum wage to start. They may have been in maintenance, may have been in building upkeep, may have been operators on the night desk. But I always found myself being pressured by the market, not the Government, to raise the wage of the good worker because the good workers, as they improved and gained their self-confidence, shopped around.

In most of the years I worked, we were in the type of economy we are today. We were in full employment where you are competing for the best and the brightest. Those who are motivated, those who enter the system, those who are at minimum wage to start with will quickly rise as they gain skills, confidence, and self-esteem.

If we think an arbitrary, mandatory 29-percent increase in somebody's wages is going to solve poverty, improve their self-esteem or, in fact, solve the problem the Senator from Massachusetts intends it to solve, we are wrong. Instead, it is probably going to deny about 29 percent of those starting at that level an opportunity early on. It probably, as President Roosevelt's Administration found in 1939, is going to cause some people to actually lose their jobs. And worst of all, it is a feel-good amendment whose intention ends up having the absolute opposite result.

I care deeply for everybody in my State, everybody in this country, and for everybody entering the workplace. I believe the minimum wage is appropriate, but I believe to take a time of full employment, a time of a vibrant economy, a time when study after study indicates the exact opposite of what the distinguished Senator said, would be sending the absolute worst signal.

I believe in the empowerment of our workers, not in the slavery of our workers. I don't believe Government should arbitrarily try to fix something that, in fact, the marketplace fixes day in and day out 365 days a year.

I urge my colleagues in the Senate to not try to fix something that is not broken. I will oppose the Kennedy amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, our friend and colleague, the Senator from Connecticut, Mr. DODD, is looking forward to addressing the Senate in just a minute or two.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, I wish to review for the Senate what has been happening to many families in this country over recent years regarding the important growth of poverty and its relationship to the minimum wage. It has a very direct relationship. The figures are rather startling. It is appropriate, when we are talking about an increase in the minimum wage, that we have some fuller understanding about the growth of poverty in our Nation over recent years.

Mr. President, 5.4 million more Americans are in poverty. We had 31.6 million in 2000, and now there are 37 million. There is a 5.4-million greater number of Americans living in poverty in the United States. Of those 5.4 million, 2.5 million are children.

It is interesting, when we talk about an increase in the minimum wage, if we look at the countries of Western Europe—take Great Britain, for example, which has the second most powerful economy in Western Europe. In October, they will increase the minimum wage, and it will go to \$9.80 an hour. Listen to Gordon Brown, the Chancellor of the Exchequer, and the pride that he takes as a public servant, Chancellor of the Exchequer—effectively our Secretary of Treasury and the head of OMB combined—in having lifted 2 million children out of poverty over the last 6 years. We have put 2.5 million children into poverty in the last 5 years.

There are 5 million more Americans who are on the verge of hunger. These figures are from Food Security in the United States, USDA. These are not figures from those of us who are supporting an increase in the minimum wage. These are the figures. We have 5 million more Americans who are feeling the pangs of hunger, and the great percentage of those are children, again.

What is consistent in the last 5 years? No increase in the minimum wage, the growth of the number of people in poverty, the growth of the problems of hunger. We have Americans struggling to survive in this current economy, the Bush economy. Too many Americans are living in poverty: 1 in every 10 families; nearly 1 out of every 5 children in this country; 1 out of every 5 Hispanic Americans, and 1 out of every 4 African Americans.

This is interesting. It shows the extraordinary growth of poverty, particularly child poverty, in the failure to increase the minimum wage. So one says: What does that really have to do with the minimum wage no longer lifting a family out of poverty?

In 1965, 1970, 1975, for a period of some 20 years, we had a minimum wage that was above or at the poverty level. Republicans and Democrats did this for 20 years, and now we are seeing an absolute collapse. There was a little blip with the increase in the minimum wage, and now we are down to an all-time low, some \$5.888 or less. We know

that in the last 9 years, the increase to \$5.15 is buying about 15 to 20 percent less. It is not only \$5.15 an hour, the purchasing of that \$5.15 per hour is less.

The United States has the highest child poverty rate of the industrialized world. Here it is. Of all the industrial nations of the world, we have the highest poverty rate. That obviously has something to do with what their parents are being paid. Not completely; there are other programs in these countries that are directed toward children.

The Presiding Officer, a former Secretary of Education, is familiar with what a number of these countries do in terms of trying to assist and providing special allowances for children in a number of ways. Nonetheless, what comes out of it is the fact that we have the highest child poverty rate of any industrial nation in the world. The fact that we have not had an increase in the minimum wage is directly related to that.

Again, if you look over at this chart here, the States with the highest child poverty have the lowest minimum wages, with the exception of Pennsylvania, and that is a State with 20 percent greater child poverty than the national average but has a higher minimum wage. But the rest are basically States with lower minimum wages, a direct tie-in with the minimum wage and poverty and child poverty.

We have a chance to do something about child poverty and about poverty in this country, and we can do it in a way that is not going to endanger inflation or provide increasing unemployment or threaten the small business community.

As we have gone through this, we have seen those arguments which have been raised and which were raised again this afternoon by my good friends from Wyoming and Georgia. They are arguments I have listened to for the last number of years I have been in the Senate. The fact is that when we have had an increase in the minimum wage, no one has ever said: Let's go back, let's go back, although we are going to be faced with an alternative tomorrow to my increase in the minimum wage that will take us back, will eliminate the coverage, eliminate overtime for a number of workers, and that is unfortunate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, earlier today we went through a good deal of the history of the minimum wage, and we also went into the growth of poverty, particularly for children and

for those who receive the minimum wage. I wish to read a couple of real-life stories because I think it is always useful to understand that besides the graphs we have been able to show and the statistics we have been able to show on these charts, we also show in real terms what is happening to a lot of our fellow citizens, our fellow Americans.

This is a story from the Sacramento Bee, and I ask unanimous consent that it be printed in the RECORD in its entirety. This is June 18, 2006, last Sunday:

Monique Garcia earned minimum wage for most of a decade before becoming homeless. She washed dishes, swept floors, collected parking tickets, worked cash registers, staffed drive-through windows, and flipped burgers. Despite that, two months ago, the 26-year-old single mom found herself with too little money for rent and no place to go.

She moved with her 7-year-old daughter and 5-year-old son into St. John's, a family shelter tucked into an industrial corner of Sacramento. They share a room with another minimum-wage worker and her two young children. Garcia and her roommate trade off, one watching the kids while the other works.

It's hard, you've got a family to support and minimum wage isn't it, Garcia said last week.

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

[From the Sacramento Bee, June 18, 2006]  
LIFE ON \$6.75 AN HOUR: WHEN ENDS DON'T MEET

(By Jocelyn Wiener)

Monique Garcia, a single mother living on minimum wage, ended up homeless.

As the gulf between what they earn and what they owe continues to grow, many of the region's minimum-wage workers have turned to food banks for sustenance. Some, like Garcia, have moved into homeless shelters or cars for housing.

These workers welcome Gov. Arnold Schwarzenegger's proposal to hike the minimum wage by a dollar, to \$7.75 an hour. They cheer a separate plan proposed by state legislators—and supported by many labor groups—that would ensure the minimum wage increases each year to keep pace with inflation. About 1.4 million of the state's lowest-paid workers would be affected.

California's minimum wage is lower than that of more than half a dozen states, but is higher than the federal minimum of \$5.15 an hour. Washington state has the highest minimum at \$7.63 an hour, and it is indexed to inflation.

California's Industrial Welfare Commission is scheduled to consider the proposals early next month. Many business groups oppose a minimum wage increase because it could force increases for higher-paid employees, as well, and might cause some small businesses to close.

According to a report published earlier this year by the California Budget Project, a non-profit group that conducts economic and policy analysis to benefit the poor, the purchasing power of the minimum wage has dropped \$0.88 since 2002, a decline of 11.5 percent.

Advocates for the working poor say earnings have slipped so far out of sync with the cost of living that the proposals are unlikely to remedy families' deep financial distress. Barring a drastic policy change, they say workers like Garcia will continue to struggle

mightily under the ballooning costs of health care, transportation, child care and housing.

"I hope I am wrong," said Ralph Gonzalez, a social worker with the Sacramento County Department of Human Assistance. "I hope with the increase of the minimum wage we can get it. But with all my years of experience, I really doubt it. I really do."

Another California Budget Project report, this one released in September 2005, estimated that a single adult in the Sacramento region needed to earn about \$11.61 an hour, or \$24,151 a year, to cover housing, utilities, transportation, food, health care, taxes and miscellaneous expenses. They calculated that a single parent raising two children, such as Garcia, would need to earn \$24.17 an hour, or \$50,272 annually, to cover basic expenses.

Minimum-wage earners patch together strategies to make ends meet: some cram into one bedroom apartments shared by multiple families. Many work two or three jobs. They run up debt to pay medical bills, buy clothing at rummage sales and visit food banks when there's nothing left to eat. Many teeter on the edge of homelessness until, like Garcia, they fall off.

Garcia has round brown eyes, a long ponytail and the names of her children, Yesenia and Joshua, tattooed over her heart. Until last week, she worked about 15 hours a week at Round Table Pizza. Now she's applying at Del Taco and Wal-Mart and a discount store. She's worked full-time in the past and would like more hours, but recently hasn't been able to get them. She's afraid to take a second job because her absence already is hard on her children. For the same reason, she finds it difficult to complete the coursework she needs for a GED, virtually a requisite for most better-paying jobs.

That leaves her with about \$190 every two weeks, after taxes, she said. Even with a \$300 monthly check from Temporary Assistance for Needy Families for her 7-year-old daughter, and a monthly \$300 in food stamps, she doesn't have enough to rent an apartment.

To even consider an application, most landlords want her to earn at least double the rent. The cheapest one-bedroom she's seen is in North Highlands, for \$400.

John Foley, executive director of Sacramento Self Help Housing, said most landlords in Sacramento actually require tenants to make 2.7 times the rent. Most refuse to rent to people with any history of evictions or bad credit.

"It's legal to have those criteria," he said. "But, of course, they really crunch the poor."

He said it is especially disconcerting that workers in Sacramento cannot afford rent, because the region is relatively affordable compared with much of the rest of the state.

"We ought to be able to fix it here," he said. "That's what's so shameful."

Health care costs, which increase more than 7 percent each year across the country, also pinch the working poor. Some workers, like Garcia, receive Medi-Cal. But, for a whole host of reasons, many others are ineligible for government programs.

Marina Aguilar, an uninsured Der Wienerschnitzel worker, knows intimately the burden of medical bills. She says her husband, an asthmatic, was admitted to a local hospital overnight after a severe attack two years ago. He was uninsured, and the bill for his short stay came to \$5,000. For two years, Aguilar says, she and her husband—who lays tile for a living—have paid \$100 every month on that bill. So far, they've paid more than \$2,000, but they still owe about \$4,000 because of interest.

Aguilar, a 37-year-old mother of three, earns minimum wage working 30 to 35 hours

a week. Her husband is now insured, but she is not covered by his plan. Last month, her doctor told her there was something in her breast that needed to be biopsied. The biopsy alone would cost \$5,000. Her mother, grandmother, great-grandmother and sister all had cancer; the risk is clear.

"I'm worried, because if I have cancer, cancer spreads very quickly," she said in Spanish as she sat in her sister-in-law's lace-curtained home across the street from the Sacramento Food Bank.

Aguilar would like to use the money she earns to buy things for her 10-, 15- and 19-year-old daughters and 3-year-old grandson. She'd like to take the younger ones to Chuck E. Cheese's, maybe even on a vacation someday. She's never been on a vacation.

Low-wage work can seem, to many workers, to be a whirlpool from which they can never escape. Gonzalez, of the Sacramento County Department of Human Assistance, has another name for it: Catch-22.

Homeless people don't have alarm clocks or easily accessible showers, he said. So those workers who are sleeping in their cars, or under a bridge, often lose their jobs because they can't be presentable for work. Those who are not homeless may need to ride a bus several hours to get to work on time. They may not be able to afford the high cost of child care. Few services exist to help them, Gonzalez said.

At nearly age 60, Epitacio Leon has spent 43 years watering and tilling and picking the state's agricultural fields. His face is baked dark from decades in the sun, his fingernails are caked with earth, his bottom teeth are missing. His most recent raise, from \$6.75 to \$7 an hour, represents the highest wage he's ever earned.

Leon rises at 4 every morning in the tiny trailer where he lives alone. He eats breakfast, then catches a ride to the fields with another worker. By 6 a.m. he is working, irrigating tomato and sunflower fields near Woodland. He works for 12 hours, then comes home exhausted. He drinks a few beers and goes to bed.

"I'm old already," he said in Spanish as he sat in his niece's Woodland home last week. "I'm tired of working already."

If he retires now, he said, he wouldn't get enough money from the government to pay his bills.

The sounds and smells of his great-niece's high school graduation barbecue floated into the living room. Always working, never saving, Leon didn't have a family of his own. But he visits his niece's family on evenings and weekends and special occasions, and finds pleasure in playing the role of great-uncle.

On the evening of the graduation party, his 10-year-old great-nephew walked into the living room. Leon teased him a little, then asked him to bring him a beer. Then he stopped him.

"Let me see whether I have a peso," he said, fishing in his pocket. He pulled out a \$1 and a \$10 bill. He deliberated a moment before handing the boy the \$10.

The boy beamed. Leon smiled a little.

It would be nice to retire some day, he said. But it won't be next year, and probably not the year after that.

The Cost of Living:

\$5.15 federal minimum hourly wage.

\$6.75 California's minimum hourly wage.

\$7.63 Washington state's minimum hourly wage, the highest in the nation and indexed for inflation.

\$11.61 hourly wage a single adult in the Sacramento region needs to cover basic living expenses.

\$24.17 hourly wage a single parent raising two children in this region needs to cover basic living expenses.

Mr. KENNEDY. The stories continue along. This is happening out in Sacramento.

Here is a story about, for all intents and purposes, Christie:

Christie did a job that this labor-hungry economy could not do without. Every morning she drove her battered '86 Volkswagen from her apartment in public housing to the YWCA's child care center in Akron, OH, where she spent the day watching over little children so their parents could go to work. Without her and thousands like her across the country, there would have been fewer people able to fill the jobs that fueled America's prosperity. Without her patience and warmth, children could have been harmed as well, for she was more than a babysitter. She gave the youngsters an emotionally safe place, taught and mothered them, and sometimes even rescued them from abuse at home.

For those valuable services, she received a check for about \$330 every two weeks. She could not afford to put her own two children in the day care center where she worked.

She is looking out for children, and she is unable to provide the childcare for herself.

Carolyn Payne did everything right but still can't find a job with decent wages.

She had earned a college diploma, albeit a two-year associate's degree. And she had gone from a homeless shelter into her own house, although it was mostly owned by a bank. The third objective, "a good-paying job," as she put it, still eluded her. Back in the mid-1970s, she earned \$6 an hour in a Vermont factory that made plastic cigarette lighters and cases for Gillette razors. In 2000, she earned \$6.80 an hour stocking shelves and working cash registers at a vast Wal-Mart superstore in New Hampshire.

"And that's sad," she said.

She just can't make it and is in a homeless shelter. These people, our brothers and sisters of America who want to work, want to provide for their families, will do hard and difficult work. Carolyn Payne should have a greater sense of hope in the richest and the most powerful country in the world. We will give them that if we increase the minimum wage.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, I am going to describe what I understand is in the amendment which is being offered by Senator ENZI. I think it is important that we have a chance over the evening—because it looks less likely that we are going to be completing this debate tonight. We have others who are on their way over here. But I am going to review this and try to get through it, and then if I have misstated it, I hope I will be corrected.

In the last 9 years, while costs have been rising, the minimum wage has been stuck at \$5.15 an hour; that is,

\$10,712 a year, \$6,000 below the poverty line for a family of three. Since 1997, the minimum wage has lost 20 percent of its value. The Enzi proposal is a \$1.10 increase—far short of making up for this lost value. It won't even make up for the lost value of the purchasing power of the existing minimum wage. It leaves behind 4.8 million workers who would be covered by the Democratic proposal because it only raises the wages of 1.8 million workers.

The raise to \$5.15 was historically low, lower than any but for one increase in the 1960s. In fact, before the 1997 increase, the minimum wage had fallen to its lowest level since 1960. So we can't allow such a low increase for hard-working minimum wage workers.

Eighty percent of the 14.9 million Americans who would be affected by the minimum wage are adults, and more than a third are the sole breadwinners in their families. Minimum wage workers have waited 9 years. They deserve one that is fair.

On the issue about the 10 million Americans who will lose the minimum wage in overtime protection, first, the Bush administration and Republican leadership in Congress stripped away overtime protection from 6 million Americans. That has already taken place. That has already taken place. They have done that through rules and regulations. Now they want to deny over 10 million more workers, minimum wage workers, overtime pay by eliminating the fair labor standards coverage entirely. Do you see what I mean? If you eliminate the coverage of the Fair Labor Standards Act, you eliminate the protections for overtime pay.

Currently, all employees who work for employers who are engaged in interstate commerce, have gross annual sales of at least \$500,000, are guaranteed the minimum wage and overtime pay. But even in businesses that have less than \$500,000 in annual sales, employees still have individual minimum wage and overtime coverage if they are engaged in interstate commerce. The Enzi amendment would raise the \$500,000 annual sales to \$1 million and eliminate the fair labor standards coverage for workers who are engaged in interstate commerce. No more overtime for those individuals—10 million.

Raising the annual business threshold to \$1 million and eliminating the individual coverage would force greater numbers of hard-working Americans, retail workers, security guards, garment workers, waitresses, and their families into poverty. Raising the annual threshold and eliminating individual coverage would allow businesses to pay their workers less than the Federal minimum wage and require them to work longer hours without overtime pay.

So, on the one hand, you get the \$1.10 increase for 1.8 million, which will not even cover the lost value of the \$5.15 since the last 9 years. Then you elimi-

nate the overtime protections for these workers as well. Because the Fair Labor Standards Act guarantees overtime and equal pay for women and men, this exemption jeopardizes these rights for over 10 million workers.

The gross annual sales threshold was created as a way to determine that employers were engaged in interstate commerce, not as a way to exempt workers from minimum wage and overtime protection. Doubling the annual sales threshold and eliminating individual coverage would take away those protections for over 10 million workers, contradicting the long-term intent of the Congress to expand the Fair Labor Standards Act.

For over 60 years Congress has repeatedly amended the Fair Labor Standards Act to provide more protection, more minimum wage and more overtime protection—not less. This will be the first time we will see the significant reduction rather than an expansion.

Instead of trying to exclude over 10 million workers from the guarantee of a minimum wage, we should be trying to raise it. It has been more than 9 years. Americans have waited long enough.

This chart indicates raising the business exemption reverses a tradition of extending worker rights.

Congress amended the business exemption in 1961, 1967, 1969 and 1989, each time to afford more employees minimum wage and overtime protections. The current \$500,000 exemption was established deliberately to cover more employees. By raising the exemption, the Republican proposal would reduce the protection for the first time.

That is very important.

I want to cover the last two points. I see the Senator from Connecticut here.

Under the Republican proposal, workers opt into the flextime system, but once they do, they do not control their own schedules. They work a 50-hour workweek when their employer tells them to, not when they choose to.

Under the current system, workers would get overtime for those extra 10 hours a week. Under the Republican proposal, they would not.

The Republicans claim the proposal would give the parent time to see a child's soccer game or attend a child's school play. They, in reality, don't get that freedom. They just get paid less for working a longer workweek.

Public sector workers also have greater protection from being coerced to agree to flextime if they don't want it. Public employees generally have the protection of a union contract as well as the constitutional due process protections afforded them in the Civil Service, although this administration is trying to undermine those due process rights as well. Public employees can challenge abuses of flextime within the context of those protections, whereas most public employees cannot.

As then-Governor Ashcroft explained in 1985, when the Senate was considering whether to permit flextime in the public sector:

State and local governments are qualitatively different in structure and function from private business. Public employees serve under exceptional circumstance, the most significant characteristic of which is the protection public servants enjoy because they work in government.

I am also going to add to the statement an analysis on the tip credit that would show how this effectively preempts the State from being able to make a judgment on this. This is a one-size-fits-all. It is "the Federal Government knows best."

If we pass it here, we preempt what Massachusetts can do, what Connecticut can do, what Georgia can do. It doesn't seem to me to be the wise course of action. We permit States to make their own judgment to increase the minimum wage because that is what it is, a minimum. It is a bottom. But this proposal is going to interfere with the States' wage policy in other ways.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Connecticut.

Mr. DODD. Mr. President, let me begin, if I may, by once again commending our colleague from Massachusetts for his leadership on this issue. Over the years, no one has been a stronger champion, a louder voice, a stronger voice on behalf of the most disadvantaged in our society than the senior Senator from Massachusetts. Once again he is proving that point with this amendment he has offered. Frankly, as I recall in years past, increases in the minimum wage were the ones that were endorsed by both parties. I am old enough to remember when an increase in the minimum wage would have occurred in far less time than 9 or 10 years.

Nearly a decade has elapsed since the last increase. I am sure my colleague from Massachusetts can tell me on the average, it was probably every 2 or 3 or 4 years that the increase would occur. When it did, when the proposal was offered and it was worked out between the two parties, it went through almost unanimously if not unanimously. But here we are. This is an indication of what has happened in our beloved country over the last number of years.

Nearly 37 million of our fellow citizens, including 13 million children are currently living at or below the poverty level in the United States. Yet we somehow cannot find ways among ourselves here to reach a consensus to increase the minimum wage to \$7.25 over the next 2 years—a \$2.10 increase.

I find that rather shocking. I suppose it is an indication of what has happened to the body politic in this country, that you cannot find common ground to make a difference in the lives of almost 40 million of our fellow citizens.

These Americans are struggling out there every single day and as I mentioned earlier, 13 million of them are totally defenseless—our children. Certainly, while Members of Congress may

find it odd, the average citizen out there, even those who are making way beyond the minimum wage, were they here tonight in this Chamber, would tell you how difficult it is to meet the rising cost of living—food, housing, clothing—not to mention soaring energy costs. Yet in the midst of all of that, we find it impossible to provide an increase, after nearly a decade, of \$2.10 per hour for these families in our country.

Mr. KENNEDY. Will the Senator yield for a moment?

Mr. DODD. I am happy to yield to my colleague from Massachusetts.

Mr. KENNEDY. As all of us know, the Senator has been the chairman of the Children's Caucus here in the Senate. He is the author of the Family and Medical Leave legislation. He worked 5 years to get that legislation passed. It has been a great success. There were extensive hearings in our committee over the course of the years on children and children's needs, children's education.

Does he agree with me that we have seen this remarkable growth of child poverty in the last 5 years? The Senator has just mentioned this. I just want to underline it. In the strongest economy of the world, we are seeing a significant growth in child poverty and child hunger in this Nation, and we have seen, as the Senator pointed out, the virtual lack of increase in the minimum wage and the reduction of purchasing power.

Does the Senator join with me in recognizing what we have seen? The U.K., which is the second strongest economy in Europe, will be going to \$9.80 an hour in December. Gordon Brown takes pride in the fact that they have raised 1.8 million children out of poverty in the U.K. over the period of the last 5 years. In Ireland it is \$9.60, and they have raised hundreds of thousands of children out of poverty.

Does the Senator agree with me that the fact of the failure of increasing the minimum wage has had an extremely negative impact on the well-being of children in our country, resulting in the fact that there are hundreds of thousands, even millions more children who are living in poverty because we have failed to do that?

Mr. DODD. Mr. President, I say to my colleague, if he will yield back, I couldn't agree with him more. This is one of the great myths about the minimum wage increase. You will hear over and over again; in fact, we have heard it here already today: If you increase the minimum wage, this hurts business. This makes it more difficult to hire people, to employ people.

I found it rather interesting that in surveys done among the business community, particularly the small business community, 86 percent of small business owners do not think the minimum wage affects their business.

The Senator from Massachusetts is absolutely correct that raising children out of poverty is directly related to the

ability of their parents to provide for them.

Again, it should not take lecturing here to my colleagues in this great body to make the case, in the 21st century, that we are going to have to have the best prepared, best educated, healthiest generation we can produce if we are going to remain competitive in a global economy. When you have 13 million of your children growing up in poverty, how are these children going to effectively compete? How are they going to be well educated? How are they going to be healthy enough not only to be good parents themselves, but good workers, and good citizens?

It seems axiomatic. It should be understood on its face. If we continue on the road we are traveling, with the number of children in our country growing up in poverty increasing, it is going to make it more difficult for our country to compete in the 21st century.

There is a graph here which I know the Senator has seen, but it makes the case of what is happening. The United States has the highest child poverty rate in the industrialized world: Denmark, Sweden, France, the Netherlands, Germany, Spain, Japan, Canada, U.K., Italy. All of these countries, major competitors in the world, do a far better job seeing to it that their children are better prepared to meet those challenges.

Our future is lagging behind when a substantial number of children are growing up, in our great country, in poverty. This is through no fault of their own. It is through the accident of birth, being born into a family where their parents are struggling to earn a decent wage and make ends meet. These are working families, by the way. These are not families collecting subsistence or some kind of charity. They are out there working, earning an income that does not allow them to meet the basic necessities of life.

Mr. KENNEDY. Will the Senator yield?

Mr. DODD. I am glad to yield to my colleague.

Mr. KENNEDY. The Senator has given just an excellent statement about what happens to children when they live in poverty. I was wondering if the Senator would comment about the growth of hunger over the last 5 years. There are 5 million more of these people now, according to the USDA, and more than 20 percent of these are children. Five million more Americans are hungry or on the verge of hunger.

I wonder, I ask someone who chaired the Children's Caucus, I ask about the fact that children are increasingly pressured in terms of the issue of hunger, what does this do to a child in terms of a child's development?

Let me add one addendum. I believe the Senator may remember what happened, I think it was in Philadelphia, where they expanded the school lunch program to include a school breakfast program. They found out that the grades of the children all went up noticeably—I think it was somewhat

close to 10 percent. In any event, it was clearly noticed, as they found out, when children have decent nutrition, their performance—in terms of educationally, culturally, socially, and from a discipline point of view—is very importantly impacted. I wonder if the Senator would tell us from his own experience what he knows about this.

Mr. DODD. I thank my colleague for bringing up this chart to emphasize the point. I think these numbers are from the Department of Agriculture.

Again, the Senator is making an excellent point. If you have a hard time understanding what the Senator from Massachusetts is saying or the Senator from Connecticut, ask any teacher. Ask any teacher in this country, particularly at the elementary school level, what sort of academic performance, what sort of attention spans you have with a child who has received adequate nutrition, a decent meal, compared to those who have not. You will hear anecdote after anecdote of what happens with children who do not have proper nutrition—not to mention the growing health care problems that can emerge.

This is just good, sound investment policy. If you really care about the future of your country, if you really care about whether or not our Nation's children are going to be able to perform adequately in this century, then clearly making sure that they have the basic essentials is, again, so obvious that it should not require a debate on the floor of the Senate to make the point.

Mr. KENNEDY. Will the Senator yield for one more question?

Mr. DODD. Yes.

Mr. KENNEDY. Now we find out there is increasing hunger, and now we know it affects more than one million children.

Can the Senator tell us what he knows about Americans and their degree of support to relieve the hunger of children? It is truly overwhelming, is it not?

Mr. DODD. It is not surprising but it is worthy of being repeated.

Ninety-four percent of our fellow citizens across this country, regardless of geography and economic circumstance, of gender, ethnicity, whatever the differences may be, agree with the following quotation: People who work should be able to feed their families. Ninety-four percent subscribe to that notion.

The Senator from Massachusetts is talking about working families. Our fellow citizens believe that if you are a working family, you should be able to make enough money to feed your family.

This is the United States of America. This is not some Third or Fourth World country we are talking about. Yet with 37 million of our fellow citizens, adults and children, unable to meet the requirements of basic food and nutrition, it ought to stun everyone in our country.

What we are trying to do is make it possible for these people who are working hard to be able to provide for their families. That is all we are talking about.

I point out to colleagues who have offered an alternative to this proposal, that a \$1.10 per hour increase to \$6.25 per hour over the next 2 years, means that millions of children would be left behind.

What the Senator from Massachusetts is offering—with a bipartisan group of support, we hope—is a \$2.10 per hour increase to provide for the needs of working families. What the Senator from Massachusetts has laid out I couldn't agree more with him. If you are truly interested in making a difference in this country, that extra \$1 per hour could make a huge difference in the ability of these families to make ends meet.

Among full-time, year-round workers, poverty has increased by 50 percent since the 1970s. Minimum wage employees working 40 hours a week, 52 weeks a year are earning \$10,700 a year. That is almost \$6,000 below the Federal poverty guidelines of \$16,600 for a family of three—\$6,000 less than you ought to be able to have if you are going to meet the poverty guidelines.

Here we are in the 21st century, and the minimum wage is losing its value as well. Since the minimum wage was last raised nearly 10 years ago, its real value has eroded by 20 percent. Minimum wage workers have already lost all of the gains from the 1996–1997 increase.

Today, the real value of the minimum wage is more than \$4 below what it was in 1968. To have the purchasing power it had in 1968, the minimum wage would have to be more than \$9.25 per hour—not the \$5.15 we are currently at.

I want to make a point as well about what the impact of this minimum wage increase would have on the lives of working families.

Nearly 15 million Americans would benefit from the minimum wage increase to \$7.25 per hour. That is 6.6 million people directly affected in a positive way and another 8.3 million affected indirectly. Almost 60 percent of these workers are women, and 40 percent are people of color. Eighty percent of those who would benefit are adult workers, not teenagers seeking pocket change, as some have said, and more than a third of these are adults are the sole providers for their families.

Again, we are talking about an increase to \$7.25 per hour, which is still hardly enough to make ends meet when you consider the cost of food, clothing, housing, not to mention the skyrocketing cost of energy that has hit everybody in this country. We all know how hard it is to provide for our families.

If you raise the minimum wage to \$7.25 per hour, it would mean an additional \$4,400 a year. That additional money would be enough for a low-in-

come family of three to buy 15 months of groceries which they couldn't otherwise get, 19 months of utilities which they would not otherwise be able to afford, 8 months of rent, over 2 years of health care, 20 months of child care, 30 months of college tuition at a public 2-year college. Consider those numbers—20 months of child care that these working families need if they are going to keep their jobs and keep their children safe, not to mention 30 months of college tuition. It may not seem like much, but it is important.

In 10 years, the person earning minimum wage has received no pay increases, unless they have been lucky enough to live in a State that increased the minimum wage.

But for most of our fellow citizens, that has not been the case. And we now have nearly 40 million of our fellow citizens living at or below the poverty level.

I repeat this because I know my colleagues care so much about it. To have 13 million of our children in this country who, except by accident of birth, have found themselves living under these circumstances and having to survive at that level is unacceptable.

This is the United States of America. We ought to be doing far better.

To find out, as we recently pointed out on the chart, that almost every other industrialized country in Western Europe is doing far better by their children, far better by their minimum wage workers, ought to be a source of collective embarrassment for this great country of ours.

I don't think I have to make this case too often. We know how difficult it is going to be to compete in the 21st century. If we don't have a generation coming along that is well educated and well prepared to meet the challenges of the 21st century, it is going to be hard for Americans to remain strong and competitive.

You just have to read about what is happening in our major competitive countries. We take great pride in 60,000 high school students in this country who competed last year in the science fair, a great number. Compare that with 6 million who competed in the same science fair in the People's Republic of China last year.

That is the challenge of the 21st century.

With 13 million kids in this country going without getting a decent meal every day, we are going to have a real problem on our hands if you do not begin to address that.

I feel strongly about this and I wish we could reach agreement quickly. I remember the days when the minimum wage increase was done by a voice vote. We worked out the differences and sat down and negotiated, and it was passed unanimously on a record vote or a voice vote. How sad it is that we have come to this, where nearly a decade later we are sitting here arguing with each other about whether 15 million of our fellow citizens could get a bump of \$2.10 per hour up to \$7.25 an hour.

This ought to be something we can all agree on and not engage in this kind of acrimonious debate.

I want to point out, as well, that there are other provisions that will be offered by the majority that are very troublesome to me, including a fundamental change in the overtime pay schedule that I think is very unfair to people. This goes beyond the minimum wage worker. Here we have always provided that if you work more than a 40-hour week in that week, then you get time and a half. That has been Federal law. We are now saying we are going to apply a 2-week standard. An employer could have you work 50 hours in 1 week and 30 hours in the next. That is 80 hours, but for the 10 hours more in the first week, you don't get the additional pay.

That is unfair to a lot of people in this country. If you work an additional 10 hours in a week, that can be hard labor, and you ought to get time and a half. The law requires it. That would be a \$3,000 per year pay cut for a median income worker and an \$800 pay cut for minimum wage workers. That additional 10 hours of overtime pay could make a big difference.

I don't know why the majority decided to add that provision. It seems to me that is unduly harsh to an awful lot of people.

We talked about the poverty level working with the minimum wage. I am talking about people who are above the poverty level but are struggling and don't have to be making \$16,000 or \$10,000 to be struggling in this country. You could be making \$40,000, \$50,000 or \$60,000 a year. If you are a family of four, you may very well be struggling, considering the cost-of-living increases that have gone on. For that man or woman who works an additional 10 hours a week, 10 hours away from their families after putting in 8 hours a day, 5 days a week, that additional 10 hours can be hard. And to say I am not going to give time and a half for those 10 hours I think is unfair to those people.

If that ends up being adopted, I think it is a great step back as well.

I hope we will adopt the proposal that the Senator from Massachusetts has offered. I commend him, once again, for making a strong case.

Again, on behalf of 13 million children in this country, and million of people who are out there struggling tonight to take care of their families, to raise good families, I urge adoption of the amendment being proposed by our colleague from Massachusetts. I hope it will be adopted by our colleagues when voted on tomorrow. It is an important contribution. Nine years is too long to wait for an increase in the minimum wage.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. WARNER. Mr. President, on behalf of the leadership, I make this unanimous consent request.

I ask unanimous consent that the first amendment, No. 4323, be withdrawn; provided further that Senator ENZI be recognized in order to offer a first-degree amendment relating to the minimum wage; provided further that the Senate then resume debate at 9:30 a.m. on Wednesday and that there be 1½ hours of debate equally divided between the chairman and ranking member of the HELP Committee or their designees. I further ask unanimous consent that at the use or yielding back of time, the Senate proceed to a vote on Kennedy amendment No. 4322, to be followed by a vote on the Enzi amendment, with no amendments to the amendments in order; provided further, if either amendment does not get 60 votes in the affirmative, then that amendment would be automatically withdrawn.

I further ask unanimous consent that following those votes, Senator LEVIN be recognized in order to offer amendment number No. 4320 related to Iraq. There will be 5 hours equally divided in relation to that amendment, and following that debate, the amendment be set aside and Senator KERRY be recognized to offer his amendment related to Iraq.

Mr. DODD. Reserving the right to object, I express my appreciation to the Senator from Virginia and the Senator from Michigan. I have an amendment I am considering offering dealing with Guantanamo Bay.

I inquire as to whether there is an opportunity to work that out?

Mr. WARNER. I simply say, I understood the Senator has that amendment. I have asked colleagues on this side to be here. They are now present.

The Senator indicated you would lay it down now for the purpose of introducing the amendment, having a colloquy on the amendment, and the time for the voting would be established by the leadership at some point in the future.

Mr. DODD. I thank the chairman.

Mr. WARNER. The Senator is now ready to proceed.

Mr. DODD. I wanted to make sure in the discussion there was a space for that.

Mr. HARKIN. Reserving the right to object, I am here to speak on the minimum wage amendment.

Are we going off of that?

Mr. REID. We will vote on it in the morning.

Mr. HARKIN. OK.

Mr. LEVIN. Reserving the right to object, is it my understanding that there would be no amendments allowed to my amendment?

Mr. REID. If the Senator will yield, we just got a call that some Senator objects to this.

Mr. WARNER. I didn't hear what the distinguished Democratic leader said.

Mr. REID. A Senator just called objecting to this request.

The PRESIDING OFFICER. Is there an objection to the unanimous consent proposed by the Senator from Virginia?

Mr. LEVIN. There is an objection, apparently, which we just received in the cloakroom.

Although I support it, we have to object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Iowa.

Mr. HARKIN. Mr. President, last March in the bankruptcy reform bill, the Senate debated the minimum wage with Senator KENNEDY offering an amendment to increase the minimum wage over a 2-year period to \$7.25. That amendment failed on a largely party-line vote, 46 to 49. Again, last October, another Kennedy amendment to increase the minimum wage over a 2-year period, to \$6.25, again failed on a largely party-line vote, 47 to 48.

Both votes ignored the fact that 37 million Americans, many holding down full-time jobs, are living in poverty.

Here we are again. This week we again debate an amendment offered by Senator KENNEDY, me, and many others, to increase the minimum wage. I hope this time the outcome will be different. Indeed, with 37 million Americans living in poverty, almost 13 percent of our population, we have to have a different outcome. We have to raise the minimum wage.

Poverty is increasing sharply among the working poor. The new Census Bureau numbers show over the last year alone, the number of Americans who work but live in poverty increased by 563,000. The number of Americans who work but live in poverty increased by half a million.

A job ought to lift people out of poverty not keep them in poverty. But that is what we have today—more and more Americans working, yet more and more Americans falling into poverty who are working. A job ought to lift you out of poverty. It offends our basic sense of fairness to know there are many Americans who work full time, play by the rules, and still live in poverty.

Millions of Americans find themselves doing this, including 13 million children. That is why it is absurd, beyond reason, hard to explain to the average person why the minimum wage has been stuck at \$5.15 an hour for the last 9 years.

How would any Senator like to have the same salary that he or she got 9 years ago? Seven times in the last 9 years we have raised our salaries. We have adjusted upward to account for the increased cost of living. Yes, over the same time, we have callously allowed the income of workers earning the minimum wage to languish, lose value every year, as inflation has gone up and they stay the same. It is incredible we would raise our salaries seven

times in 9 years and never raise the minimum wage.

The amendment offered by Senator KENNEDY and me and others to raise the minimum wage to \$7.25 is, as I said, long overdue. Prior to last March, it had been 5 years since we last had a vote on the minimum wage. It has now been 9 years since we last raised the minimum wage.

To have the same purchasing power, for example, if we took the year 1968, the minimum wage today would have to be more than \$9.26 an hour. Minimum wage workers earn a paltry \$10,712 a year total, almost \$16,600 below the Federal poverty guidelines for a family of three.

This chart shows the salary of a full-time minimum wage worker to be \$10,712. The average family health care premium in 2005 was \$10,880. Right now, 35 percent of minimum wage workers in America are the sole support of their families. These are not just teenagers. Some may be teenagers; more often than not it is a single, working mother. They can work hard all year at the minimum wage—and they do work hard, if you have ever seen anyone do that kind of work—and they cannot even buy a health care premium.

As I said, the salary for full-time minimum wage workers is \$10,712; the average cost of a health care premium, \$10,880. They could not even afford to buy health care, let alone pay rent, buy food, pay for heating, buy gas for the car to get back and forth to work.

As I said, there is a lot of misperception about who gets the minimum wage. We hear it is teenagers, part-time workers flipping hamburgers. Here are the facts: 35 percent earning the minimum wage are the sole breadwinners of their families; 61 percent are women; almost a third of those women are raising children; 76 percent of the women who would directly benefit from an increase are over the age of 20. Among families with children, and a low-wage worker who would be affected by an increase, the affected worker contributes half of the family's earnings. Those are the facts.

A decent minimum wage is critical to moving people from welfare to work. I thought that is what we wanted to do. Since the Clinton Welfare-to-Work Program in 1996, we reduced the number of welfare cases by half. But so many of the people who moved off of welfare did not move out of poverty. Why? Because at the current minimum wage, it is not a living wage, it is a poverty wage.

An increase to \$7.25 would make a dramatic difference. It would add \$4,370 in income. That is real value to a family living in poverty. Nearly 7.5 million workers would benefit from a minimum wage increase. In my home State of Iowa, 87,500 workers would benefit from the increase, more than 6 percent of our workforce.

In urging the passage of the first minimum wage legislation, President Franklin Roosevelt once said:

No business which depends for existence on paying less than living wages to its workers has any right to continue in this country.

Imagine that. He went on to say:

By living wages, I mean more than bare subsistence levels. I mean the wages of a decent living.

He had it right. We can do it better. Gas prices are up 70 percent, health insurance is up 33 percent, college tuition is up 35 percent, housing is up 36 percent, and wages are up 1 percent. Minimum wage is up nothing, not even 1 percent.

During the same period, private sector executive salaries have risen dramatically. Right now, the average CEO in America makes \$11.8 million a year—the average worker is earning \$27,460 a year—431 times what the average worker makes. Imagine being a minimum wage worker making \$10,000.

Mr. REID. Would the Senator yield for a unanimous consent request?

Mr. HARKIN. As long as I get the floor back.

Mr. REID. I ask that the Senator, when we finish, be permitted to resume the floor.

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

Mr. REID. Mr. President, I would like to ask the unanimous consent request made by the Senator from Virginia a few minutes ago be agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, I presume that the request is as read and that there have been no changes, and we will then have the sequence of recognition of Senators Levin and Kerry; and I add to it that thereafter the Senator from Virginia would be recognized for the purpose of submitting whatever amendment.

I ask for recognition for the purpose of offering the amendment from our side on whatever subject that comes up at that time at the conclusion of these two.

Mr. LEVIN. Reserving the right to object, I assume there would be adequate time that we would be allowed to consider an amendment of the Senator from Virginia? As I understand, the Senator was talking about a possible amendment on Iraq.

Mr. WARNER. I said it could be on anything.

Mr. LEVIN. Could be on Iraq.

Mr. WARNER. We have been going back and forth.

Mr. LEVIN. Is the Senator offering the amendment he is referring to postcloture?

Mr. KERRY. Mr. President, if I could inquire, I agree with the minority manager of the bill, there is a question about what the amendment might be about. If it comes precloture or postcloture, postcloture it makes no difference. If it is precloture and it is about Iraq, I think the Senator from Michigan and others would then have an interest in being able to respond to whatever that amendment is.

I say to the distinguished manager, the Senator from Virginia—and it is

his right, and we are very happy to have him acknowledge that right to put that amendment in—we would want to have time, obviously, to debate it and respond to it, conceivably.

The question is whether it is precloture or postcloture. I ask the Presiding Officer if the Senator from Virginia intends to offer whatever amendment he does immediately after cloture or precloture?

Mr. WARNER. Mr. President, I withdraw that and ask unanimous consent that we approve the request as read earlier.

Mr. LEVIN. Reserving the right to object, when we were discussing this last, I asked whether or not the manager, the chairman, would make it clear that my amendment is not subject to amendment.

Mr. WARNER. Mr. President, we are perfectly willing to make that eminently clear.

Mr. LEVIN. And also if the Senator would agree that the Kerry amendment—

Mr. WARNER. We have not seen his amendment.

Mr. LEVIN. Then the request is that the unanimous consent request be amended so that my amendment which is on file will not be subject to amendment.

The PRESIDING OFFICER. Is there objection to the modification of the unanimous consent request of the Senator from Virginia that the Levin amendment not be amendable? Without objection, the request is so modified.

Mr. WARNER. Has the Chair ruled on the underlying UC request?

The PRESIDING OFFICER. Is there objection to the request as modified?

Mr. DODD. Reserving the right to object, I know we have had a discussion with the distinguished chairman of the committee. Senator BINGAMAN and I are interested in offering amendments at the appropriate time precloture on the Guantanamo situation. I am wondering if we could allocate an hour before the cloture motion is filed to raise that amendment and then have a vote on it, either one or two of those amendments.

Mr. WARNER. Mr. President, I have been trying to get the minimum wage put aside so that you could move. And you are going to argue tonight your amendment; is that correct?

Mr. DODD. I say to my colleague—

Mr. WARNER. And Senator BINGAMAN likewise. I think he has an amendment pending at the desk.

Mr. LEVIN. It has not been filed.

Mr. WARNER. But he has spoken to it.

Mr. LEVIN. That is correct.

Mr. WARNER. What is the desire? I have to ask my colleagues, we are trying as best we can to accommodate all interested parties. The amendments are coming from this side. It is really incumbent on you all to try and reconcile how you wish to proceed. We are about to lock up the two significant amendments of the Senator from

Michigan and the Senator from Massachusetts. I recognize you have had that amendment. You asked to bring it up tonight. I have assembled a group of my colleagues to debate the amendment. What is the pleasure?

Mr. REID. Mr. President, if the Senator from Virginia would yield—

Mr. WARNER. Yes.

Mr. REID.—the problem we have is, the Senator from Connecticut wants to have his amendment heard prior to cloture. The problem is, there has not been a motion for cloture filed yet. If the cloture motion is filed tonight, then under the rules, an hour after we come in on Thursday, cloture would be voted on. That being the case, under the proposed unanimous consent agreement we have here, there is going to be a lot of hours used up prior to Thursday morning at 9 or 10, whenever we come in here. I think there are a lot of people who want to offer amendments, but unless they are germane amendments, there would be no guarantee that there would be a vote on them, other than the two here. We have had assurances that the Levin and the Kerry amendment, even though there would be a problem with cloture, they would allow a vote on that. I think realistically, it would be hard for anyone to guarantee a vote prior to cloture to the Senator from Connecticut.

Mr. WARNER. Mr. President, we had understood that the debate would be held tonight. We were willing to have a vote on Gitmo tomorrow right after the minimum wage. There it is.

Mr. REID. That would certainly be long before cloture and the debate would be finished tonight, and we could slow up Senators LEVIN and KERRY by more than 20 minutes.

Mr. DODD. If we could agree to a vote on one or two amendments on the Gitmo situation and allow us the opportunity to debate this evening or possibly an hour tomorrow morning before the vote, that would accommodate us completely. If we could accommodate that request, then we can go forward. That is the request we would like to make.

Mr. REID. I respectfully request, I have spent nearly all of the day trying to work something out on these two amendments. Senator LEVIN and Senator KERRY can speak for themselves. I am not sure they want another hour. We can finish the debate on yours tonight and vote on it in the morning with 15 or 20 minutes evenly divided. Maybe something like that could be worked out, but I don't think there is an hour left. If these two men debate tomorrow night, we aren't going to finish this thing until some time late tomorrow night at best.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Virginia?

Mr. REID. I would simply say this—and I appreciate very much the Senator from Iowa being so courteous—everyone is in agreement that we are going to try to work something out so

that you and Senator BINGAMAN can get a vote on your amendment tomorrow morning. It is just a question of how we do it timewise.

Mr. DODD. Is that the understanding, that that would be the case?

Mr. WARNER. We will try and do our very best.

The PRESIDING OFFICER. Is there objection to the request, as modified?

Without objection, it is so ordered.

The Senator from Iowa has the floor.

Mr. WARNER. If the Senator would yield just for a moment, I would like to ask my two colleagues, for the knowledge of my two colleagues on this side, how soon may we start the debate on the Guantanamo amendments?

Mr. DODD. Why don't we say around 7 o'clock. Say at 7 o'clock.

Mr. WARNER. We will certainly accommodate the Senator from Iowa. I have two colleagues who withdrew from their schedules to come over here tonight because we were told that we would start this debate.

Mr. DODD. I would say at 7 p.m.

Mr. WARNER. All right, 7 p.m.

Mr. HARKIN. Mr. President, the average CEO in America today makes \$11.8 million a year. The average salaried worker makes \$27,460 a year. That is 431 times what the average worker makes. That is the average worker. Take a minimum wage worker at \$10,600 a year. The average CEO makes a thousand times more a year, a thousand times more than a minimum wage worker. So you can see the disparity has gotten out of hand.

In the wake of Katrina, in a speech in New Orleans, President Bush proclaimed:

We should confront poverty with bold action.

We are just trying to raise the minimum wage for the first time in 9 years, and we can't even do that. We can have tax reductions for the wealthy on and on and on; they seem to be sacrosanct, untouchable; but we can't raise the minimum wage. The working poor have to do with \$5.15 an hour. This is unconscionable. We have to do something about it.

Have Members of the Senate all joined the Neiman Marcus crowd? Have we become so totally insulated from the realities of real life for the people who work and shop at Wal-Mart and K-Mart, Dollar stores, who pinch their pennies, who go to the grocery store and spend the time looking for the best bargains, have we become so insulated from them that we can't see the need to raise the minimum wage from \$5.15 an hour?

Poverty has doubled since the late 1970s among full-time, year-round workers from about 1.3 million to more than 2.6 million. Every day the minimum wage is not increased, it continues to lose value and workers fall further and further behind.

Here is what is happening today. That is why I say there is a misery index out there, a working class misery index. This shows it. Productivity

keeps going up. People are working longer, working harder. They are producing more. Productivity is up 166 percent since 1960. Look what has happened to the real minimum wage. It is down 23 percent.

This is what the average person feels: My gas prices have gone up. My rent has gone up. I can never afford to send my kid to college. College tuition has gone up. Health care premiums are skyrocketing. I am working harder, longer. I am producing more, and I am getting less. That is what I call a working class misery index in America. And what have we done? We raised our salaries 7 times in the last 9 years. We have tax break after tax break after tax break for the privileged few in America.

Just a couple weeks ago there was an attempt on the floor to completely wipe out the estate tax, estate taxes paid by only 3 families out of every 1,000 in America. Three out of every 1,000 families pay any estate taxes. They are the wealthiest in our country. We had an amendment to the bill by the other side to completely eliminate it. Thankfully, we didn't do that.

But now when we want to raise the minimum wage just a paltry two dollars and something cents an hour, we can't do that? Where is the fairness? Where is the fairness for the American worker? No wonder the average American's esteem of Congress has gone down—along, I might add, with the President's, because the President is not up here asking for a minimum wage increase either.

No wonder people don't think we are doing anything. We raise our salaries 7 times in 9 years. We have tax breaks for the wealthy. We have tax breaks for big business. We want to do away with estate taxes for the wealthiest few. But we won't raise the minimum wage.

It all leads us to conclude that when it comes to the issues of poverty and the working poor, the American public should watch what we do, not what we say.

I will bet every Senator here can give wonderful talks about work, the value of work and more jobs and creating jobs and the economy is up and isn't everything wonderful. Yes, if you are a CEO, it is wonderful. If you are a CEO, it is pretty darn nice. If you are making \$150,000, \$160,000 a year, \$170,000, as we are here, things are pretty nice. But if you are a minimum wage worker, things aren't very pretty. Things aren't pretty at all. You are not saving anything. You are barely able to scrape by. Your kids are probably not getting the best food and nutrition. They are probably not going to be able to manage to go to college. You don't have health care so you go to the emergency room when you get sick so you don't have any preventative care. Your kids are probably not getting the vaccinations and the checkups they need. They are probably not getting the dental care they need.

I am not talking about "poor people living in poverty who aren't working."

I am talking about poor people who go to work every single day. You see them. We all see them. We all see them. You go into stores and see the people working behind the counters. Check on the people who are working in day-care centers, people in Head Start centers, people cleaning houses, cleaning our office buildings. Yes, and a lot of people are working, flipping burgers and stuff like that, making the minimum wage. But they are the sole breadwinner of their family.

We see them every day and yet we pass by, we just pass on by. Let's not pass on by here. Let's stop and think, act accordingly, and reach down and say to those people who are working hard every day that it is time to give you a raise, too—not just corporate CEOs or Members of Congress, but let's give at least a \$2.10 increase to the people who make the minimum wage. It will be good for American workers and for our economy. It is long overdue, and it is the right thing to do.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

AMENDMENT NO. 4376

Mr. ENZI. Mr. President, I send my amendment to the desk for the debate to be done in the morning.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk:

The Senator from Wyoming [Mr. ENZI] proposes an amendment numbered 4376.

Mr. ENZI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, my understanding is that we will have two amendments introduced by the other side with regard to Guantanamo. They will be debated tonight. We are going to work toward making certain they get a vote on those amendments. I ask my ranking member.

Mr. LEVIN. Mr. President, I thank the Senator from Virginia. We thank the Senator for his unvaried hospitality and good nature on these kinds of difficulties. We appreciate his determination to try to find the opportunity for a Guantanamo amendment or amendments. They are trying now, I believe, to figure out—I think it is going to be offered at 7 p.m. I guess they will be here to offer that amendment at 7 o'clock.

Mr. WARNER. Mr. President, in the interim, seeing no Senator desiring to address the Senate, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAHAM. 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. GRAHAM. Mr. President, I want to speak, if I may, regarding a proposal by Senator BINGAMAN concerning Guantanamo Bay and the disposition of detainees. I understand he introduced an amendment yesterday. I have the summary of it. If I mischaracterize it or if it is changed in any way, I apologize. I will try to give an overview based on what I know, with the understanding that if it changed, I stand corrected.

Senator BINGAMAN, from what I understand, has an amendment that would require the United States to either charge, repatriate or release individuals held at Guantanamo Bay within 180 days of the enactment of the Defense authorization bill, and if for some reason the Government fails to comply within that timeframe, the Department of Defense would have to report back to Congress to tell us why. It provides further that charges could be filed in U.S. District Court, a military tribunal court or military commission or an international tribunal against detainees.

If I may, I will express my concerns about this amendment. No. 1, the detainees at Guantanamo Bay are being held as enemy combatants. That is a concept that has been part of our law for quite a while. The Supreme Court has several enemy combatant case holdings. That is someone who is involved in hostilities but not in the normal course of combat. They don't wear uniforms. They are not supported by a particular State. They are fighting, in this case, for a terrorism cause that doesn't have a country of origin. They are irregular combatants.

For many years in the military law, a regular combatant or enemy combatant has been considered a person outside of the protection of the Geneva Convention because that is an international treaty designed to protect lawful combatants and have procedures that every signatory country will abide by. A lawful combatant is someone who represents a State, wears a uniform, and operates within the rules of international military law.

Al-Qaida, by their very definition, because they don't wear uniforms and represent a particular country, are irregular enemy combatants. The people at Guantanamo Bay have been captured in various parts of the world by the U.S. military or were turned over to them as being suspected of being involved in the war on terror. There are 500-something people down there now; over 200 have been released. Senator BINGAMAN's amendment would require the Government to release them all or charge them.

The reason I believe that is not good public policy is because enemy combatants—you don't have to choose between trying them and letting them go. A prisoner of war is not required to be released until the hostilities are over. We have had Members of the Con-

gress who were enemy prisoners during Vietnam and were incarcerated 5, 6 or 7 years, until the Vietnam war came to an end.

This amendment, in an odd way, would allow enemy combatants to be released before hostilities are over, which is something not afforded to a prisoner of war. But a traditional prisoner of war is not subject to being tried as a war criminal for the mere status of being involved with the opposing force.

I believe strongly that it is not advisable for this country to say as a matter of policy that every enemy combatant or unlawful combatant per se is a war criminal. Military trials or commissions should be conducted for people who are part of the enemy force who have violated the law of armed conflict. There are about 20-something people, I believe, facing military commission charges at Guantanamo Bay and haven't been tried yet because of Federal court proceedings affecting the outcome of the military commission status. This amendment would require the United States to make a choice that no other country has ever had to make: try them or let them go.

The truth is that some of them deserve to be tried as war criminals. Some of them deserve to be taken off the battlefield until they are no longer a threat to our country and our coalition forces. And to have to let them go or try them is a choice the country should not have to make.

Who is at Guantanamo Bay? There have been some high-profile stories about individuals who were sent there who may not have been involved in enemy combatant activities. Unfortunately, those things happen. You can get someone in your custody based on some bad information and, over time, find out you made a mistake. And 200-something people have been released under the current procedure. What is that procedure? The Geneva Convention says if there is a question as to whether a person is a POW, a prisoner of war, or an unlawful enemy combatant, the host country, the country in custody of that individual, must have a competent tribunal to make that decision.

As far as I know—and correct me if I am wrong—the decision as to whether a person is an enemy combatant is a military decision. We don't have civilian trials. The Geneva Convention doesn't require a civilian judicial determination to be made. The determination of whether you are a POW who is entitled to the Geneva Convention protection, an enemy combatant or an innocent individual, is left up to the military. I argue that that is the way it should be, with due process rights.

The problem with this war is that we don't know when it is going to be over because there will be no surrender ceremony. I am sensitive to that. I understand the Senator's concerns, and that is legitimate. The process at Guantanamo Bay now, as I understand it, is

when somebody is sent there, a combat status review tribunal will review their case, a military intelligence officer, and a military lawyer will look at the case and determine if the individual before them is an enemy combatant or meets the definition of an unlawful irregular enemy combatant. The host country where the person comes from can intervene on their behalf. Evidence is collected. They don't have a lawyer, but they have a representative. Every year, that person's status is reviewed. An annual review looks at whether the person still has intelligence value, whether they are a threat to the United States or has anything changed about their initial status determination.

Under an amendment passed that was authored by Senator LEVIN and myself, every Guantanamo Bay detainee now will have a chance to appeal their case to the Court of Appeals for the District of Columbia, and a Federal court of appeals at the District of Columbia will review the combat status review tribunal's action in that case to see if it was proper. So now we have civilian courts looking over the initial military determination. When it comes to military commissions and people being tried as war criminals, we have the presumption of innocence and the right to a lawyer, which is a very similar tribunal to international tribunals, very similar to the UCMJ but different in some regards.

So the idea that we need to let the prisoners go or try them all, I think it would be a very bad policy decision to make because some of them can be dangerous, can be a threat to our country if released or they could have intelligence value but don't fall within the definition of war criminal. To say that every enemy combatant is going to be tried as a war criminal is not good policy because you are beginning to change the way the rules have worked for a very long time.

We have had 200-something people released. About a dozen of them have gone back to the fight, unfortunately. So there have been mistakes at Guantanamo Bay by putting people in prison that were not properly classified. There have been mistakes about releasing people that we thought were not dangerous but turned out to be so.

I have a summary of statements made by individuals who have been released from Guantanamo Bay but went back to the fight. I ask unanimous consent that it be printed in the RECORD.

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

SELECTED STATEMENTS FROM DETAINEES

Statements made by detainees provide valuable insights into the mindset of these terrorists and the continuing threat they pose to the United States and the rest of the world.

A detainee who has assaulted GTMO guards on numerous occasions and crafted a weapon in his cell, stated that he can either go back home and kill as many Americans as he possibly can, or he can leave here in a box; either way it's the same to him.

A detainee with ties to UBL, the Taliban, and Chechen mujahideen leadership figures told another detainee, "Their day is coming. One day I will enjoy sucking their blood, although their blood is bitter, undrinkable . . ."

During an interview with U.S. military interrogators this same detainee then stated that he would lead his tribe in exacting revenge against the Saudi Arabian and U.S. governments. "I will arrange for the kidnapping and execution of U.S. citizens living in Saudi Arabia. Small groups of four or five U.S. citizens will be kidnapped, held, and executed. They will have their heads cut off."

After being informed of the Tribunal process, the detainee replied, "Not only am I thinking about threatening the American public, but the whole world."

A detainee who has been identified as a UBL bodyguard, stated, "It would be okay for UBL to kill Jewish persons. There is no need to ask for forgiveness for killing a Jew. The Jewish people kill Muslims in Palestine so it's okay to kill Jews. Israel should not exist and be removed from Palestine."

A detainee who has been identified as UBL's "spiritual advisor" and a relative of a fighter who attacked U.S. Marines on Failaka Island, Kuwait on October 8, 2002, stated, "I pray everyday against the United States." This detainee repeatedly stated, "The United States government is criminals."

A detainee and self-confessed al Qaida member who produced an al Qaida recruitment video stated, ". . . the people who died on 9/11/2001 were not innocent because they paid taxes and participated in the government that fosters repression of Palestinians." He also stated, ". . . his group will shake up the U.S. and countries who follow the U.S." and that, "it is not the quantity of power, but the quality of power, that will win in the end."

A detainee who has assaulted GTMO guards on over 30 occasions, has made gestures of killing a guard and threatened to break a guard's arm.

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Mr. GRAHAM. Mr. President, one of them is Mullah Shazada who was released from Guantanamo Bay on May 8, 2003. He assumed control of Taliban operations in southern Afghanistan. His activities reported including the organization and execution of a jail break in Kandahar.

Abdullah Mahsud was released in 2004. He became the militant leader of the Mahsud tribe in southern Waziristan. We learned he had been associated with the Taliban since his teens and has been described as an al-Qaida facilitator. In mid-October 2004, he directed the kidnapping of two Chinese engineers in Pakistan. During a Pakistani rescue attempt, the kidnapers shot one of the hostages.

Mohammed Ismail was one of two juveniles held at Guantanamo Bay. He was released in 2004. During a press interview after his release, he thanked the United States for providing him education opportunities in Guantanamo Bay and stated he would look for work after visiting his relatives. He was recaptured 4 months later in May 2004 participating in an attack on U.S. forces near Kandahar. At the time of his recapture, Ismail carried a letter confirming his status as a Taliban member in good standing.

Abdul Rahman Noor, after being released in July 2003, has participated in hostile actions against U.S. forces near Kandahar. He was later identified as the person in a 2001 al-Jazerra interview described a mujahdeen defensive position claiming to have downed an airplane.

The reason I mention these individuals is that mistakes have been made in letting people go. Once the military tribunal reviewed these individual cases, they made a determination the person was no longer a danger to the United States and possessed no additional intelligence value. They were wrong.

These people and several others went back to the fight, and at least one of the people involved killed an American medic.

The process we have at Guantanamo Bay is reform in a manner that I think is consistent with American values. This body, in an overwhelming vote, indicated to the Department of Defense that their interrogation techniques needed to be standardized and put in the Army Field Manual. That is a work in process.

This body, in an overwhelming vote, gave every detainee at Guantanamo Bay a right to petition their status to Federal court for Federal court review.

We have due process rights in place for detainees at Guantanamo Bay that I think are unprecedented in the rules of armed conflict and are based on the fact that this is a war without a definable end.

But the amendment before us by my good friend from New Mexico would require this country to release the detainees en masse or repatriate them or charge them. The problem with repatriation is that one of the problems with closing Guantanamo Bay is, where do we put these people?

We have had case after case where the detainee was eligible to be released but did not want to go back to their host country for fear of reprisal. The idea that we can take the 460 prisoners and open the gates of the prison and say, Go back, is going to be a problem because a lot of them have no place to go or won't be taken back.

Another problem is that if we release these people en masse, some of them will become our worst nightmare. Information about statements made by detainees—I have another document here, where they openly avow a desire to get back into the fight and to kill Americans and to continue the war on terrorism.

Simply stated, the people at Guantanamo Bay, in my opinion, are people who need to be looked at every year in terms of their status and whether they have intelligence value and whether they present a danger. And that decision can be reviewed by civilian authorities.

They are not people for whom we should open the door and say, Leave or be charged, because the truth of the matter is that there are people down

there who are enemy combatants who have not engaged in conduct that would fit a traditional definition of a war crime.

I just don't think we need to make that choice. We need to make sure that every detainee has adequately been processed, that our country is accountable for their treatment, that our country is accountable for their legal status, and that we have a way to prove to the world and to our own public that the detainees are being confined within the rules of armed conflict and treated properly.

This amendment would set in motion, I believe, forces that would come back to haunt us. Mr. President, I say to my good friend from New Mexico, I understand his concerns about Guantanamo Bay and the image problems that it has created, but I would argue that the reforms in which we have engaged have been real. We are not getting much credit for those reforms, but we are just going to have to understand as a nation that every critic of this country's policy doesn't have to make the decisions we do.

The criticism coming from abroad about Guantanamo Bay is part of democracies being able to speak openly, but they are not coming to South Carolina. If we let them go, they are not coming to South Carolina. I will do everything I can to keep these people from coming into my home State. And I doubt we want them to go to Mexico, and I doubt they are going to go to Connecticut.

I do not want to intermingle them with our military prison population because these people represent the hardest of the hard.

I hope we can reform Guantanamo Bay and that one day it will be closed because the needs of the war on terrorism have been met. And I do hope that those who are war criminals in the truest fashion will be tried at Guantanamo Bay by military commission and those who are not war criminals will be held until they are no longer a danger. I do not believe it is advisable for this country to make a choice as a nation that no other nation has ever had to make before, and that is turning loose someone who is caught on a battlefield engaged in hostilities against our own people or try them all as war criminals. That has never happened before, and it shouldn't happen here.

I yield the floor.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, we now have an agreement for a couple of votes in the morning relative to the minimum wage amendments which have been discussed this afternoon. Tomorrow we will also proceed to debate the Iraq-related amendments offered by Senator LEVIN and Senator KERRY.

Mr. President, at this point, on behalf of the leader, I am prepared to send a cloture motion to the desk, but I do want to make the following point

before sending the cloture motion to the desk. This does not—I repeat, does not—preclude us from working toward further agreement to set up votes on these amendments prior to cloture. In fact, we anticipate having votes on both of those amendments prior to cloture. We are looking forward to the debate on both amendments.

Almost everyone on this side is interested in speaking to the appropriateness of adopting those amendments, and, as I said, we do not intend for cloture to shut out in any way votes on the Kerry and Levin amendments.

#### CLOTURE MOTION

Having said that, Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 2766, the National Defense Authorization Act for Fiscal Year 2007.

Bill Frist, John Warner, John E. Sununu, Jim Bunning, George Allen, Lamar Alexander, Craig Thomas, Kay Bailey Hutchison, Chuck Hagel, Ted Stevens, Judd Gregg, Robert F. Bennett, Thad Cochran, Pat Roberts, Pete Domenici, Jim Inhofe, Jeff Sessions.

Mr. MCCONNELL. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I wish to speak briefly in response to the comments of my colleague and friend from South Carolina, Senator GRAHAM, about the amendment which I intend to offer at an appropriate time on the Defense authorization bill.

I say, in all respect to the Senator from South Carolina, he has totally misread the amendment. He has totally mischaracterized it. This amendment does not, as he said, require the Government to either release everyone at Guantanamo or charge those individuals.

It is very clear in the amendment. It starts out by saying, "Except as provided in subsection (b)," and then it goes on to say:

Not later than 180 days after the date of enactment of the law, an alien who is detained by the Secretary of Defense shall, consistent with applicable law, be charged or repatriated or released.

But then obviously the exception is what we start out with there. It says the exception under paragraph (b) is that with respect to an alien described in the first section, subsection (a), who is not charged or repatriated or released within this 180 days, the Secretary of Defense shall submit to the appropriate committees of the Congress a detailed report as to each such alien that includes, and then it specifies the information that needs to be included.

Essentially, it says the Department of Defense shall go ahead and charge these individuals with criminal activity or it shall repatriate them to their home country, an appropriate country, or it shall release them, or it shall give us a report and explain what its plans are with regard to these individuals and why it is not taking one of the previous actions. That is not the characterization or the description that the Senator from South Carolina just went through.

This amendment does not require that any enemy combatant be released. It is clear in its language that it does not require that. It does not require the release of people "en masse," which was the language the Senator from South Carolina used. It does not require us to release people who are then believed to have the motivation of getting, as the Senator from South Carolina said, back into the fight.

This does not in any way restrict what the Department of Defense does. It just says the Department of Defense has various options, but we are going to begin to understand what action the Department of Defense is taking with these individuals.

It can charge them with a crime, it can repatriate them to their home country, it can release them, or it can tell us, the Congress, the appropriate committees of the Congress, what it intends to do and what action and what factors cause it to not want to take one of those previous actions. That is a very straightforward amendment.

I think anyone who is opposed to that amendment basically says we, the Congress, have no responsibility for oversight, the appropriate committees of the Congress have no responsibility to concern themselves with what is being done with these prisoners at Guantanamo, and I think that is a very unfortunate message for us to send.

The amendment goes on to provide that in the report to the appropriate committees of the Congress, if the Department of Defense wishes to submit part or all of that in classified form, it can do so. To the extent it is not required to be in classified form, it would, of course, be a public report.

This is a very modest amendment. In fact, the criticism I have heard from people who have generally been aware that I might offer this amendment is: Why does this amendment give the Department of Defense an out? It says with regard to each of these individuals, either charge them with a crime, repatriate them, release them, or tell us what your other plan is, if you have some other plan that you believe is required under the circumstance. That is the very least that this Congress should be doing with regard to these individuals.

I, frankly, do not want to ask this Congress to resolve the question of the legality of what is going on at Guantanamo. Some of that is being determined in the courts, as it should be determined in the courts. But, clearly,

this Congress has some oversight responsibility. This Congress should be insisting that the Department of Defense specify what action it intends to take, go ahead with whatever action it intends to take in the next 180 days, and at the end of that time report to the Congress as to any detainee for whom it does not intend to go ahead or for whom it has not gone ahead and brought charges against or decided to repatriate or decided to release.

So let me just stop with that. I am glad to discuss the amendment further, but I know that my colleague from Connecticut who has a separate amendment dealing with Guantanamo wishes to speak and describe his amendment, and I also see that my colleague from Alabama is on the Senate floor and wishes to speak perhaps on the same issue as well.

So, Mr. President, at this point I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I have been to Guantanamo twice, and I have seen the work of our military personnel, the good morale they have under difficult conditions, their determination to provide every decent and right request and treatment to the prisoners who are there. I have seen areas where they are detained, the religious freedom that they give them, including a Koran and prayer rugs and things that they have requested, the exercise that they obtain. It is, I believe, in all respects a very fine prison that treats people in a decent way.

But as the Senator from South Carolina noted, these individuals are prisoners of war, and prisoners of war are not given trials. In the history of the United States of America, we do not give prisoners of war trials. They are detained until the conflict is over.

What about those who have gone beyond just being a combatant against the United States but have become an unlawful combatant, violating all the rules of warfare and are therefore apprehended and detained? Should they be given more rights than a properly uniformed and properly lawful combatant is given who is detained by an enemy? I think not. I would suggest these are matters that are within the parameters of the U.S. military to handle. They have no desire to maintain a single prisoner any longer than they have to. They have released several hundred already, and 15 of those have been rearrested on the battlefield where they are presumably attempting to fight the United States of America and our soldiers and our allies around the world.

So I would say to my colleagues, these are not academic questions. They are matters of real life and death and must be carefully thought through. Under the circumstances we are now dealing with regarding prisoners in Guantanamo, we don't need to micromanage the military. I would agree with Senator BINGAMAN that his

amendment at first glance says that they must be charged with a crime, filed in an appropriate Federal district court of the United States or a military tribunal or an international criminal tribunal or repatriated to the country of origin or some other country. That is a mandate. The amendment goes on to say: But with respect to those who are not so charged, the Department of Defense must submit a report saying why they haven't been charged and when they will be handled in this matter. So I think in conflict, as Senator GRAHAM has detailed, it goes to the historic manner by which any nation, and in particular the United States, handles prisoners of war.

Again, I have seen the conduct at Guantanamo. I think it is an appropriate facility considering the danger that these individuals pose. It is an appropriate location. It makes it very difficult for them to break free and kill other people. The Department of Defense actually is continuing to improve it. They give the prisoners first-rate meals, first-rate medical care. Until the three suicides we saw recently, not a single prisoner had died in Guantanamo of any kind of causes, natural or otherwise.

So I believe this amendment is not necessary. I think it would have the effect of restricting the power of the executive branch to carry out this war on terrorism and manage the military's treatment of prisoners. The Department of Defense wants to get rid of them. They have tried to repatriate numbers of them. But some of them are just dangerous and must be detained.

I would ask, how would a prosecutor prove a case? Some would say we will just give them a trial. What if they were captured in the mountains of Afghanistan and maybe the soldier who captured them was later killed, or maybe he was reassigned to Korea or some other place? It is not so easy to have trials of prisoners of war, and that is why it has never been done and why I think the amendment, which is carefully drafted and attempts to avoid some of the worst criticisms that might be made of it, is, nevertheless, a step too far, and I believe we should reject it.

I just want to point out a number of things that are important about how careful our military is, unlike what happens when American military prisoners are captured, apparently, as we saw today, the horror of being captured, tortured and killed by the al-Qaida forces in Iraq, who are just brutal in their treatment of American prisoners. We give the prisoners at Guantanamo a combatant status review tribunal—a tribunal consisting of three people, the Department of Defense Combatant Status Review Tribunal process pursuant to a Supreme Court plurality opinion in Hamdi. Hamdi dealt with due process for American citizens. The process created was applied to all foreign nationals de-

tained at Guantanamo and went beyond the process referred to by the Supreme Court of the United States. It went beyond that.

The Combatant Status Review Tribunal provides a venue for detainees to personally challenge their status as enemy combatants. They were given that opportunity. As of January 22, 2005, the Department of Defense had completed 558 CSRTs. Of the 558 hearings that were conducted, the enemy combatant status of 520 detainees was confirmed, and 38 detainees were found to be no longer meeting the criteria to be designated as enemy combatants.

The Administrative Review Board is another process the Department of Defense has implemented. This administrative review process makes an annual assessment of whether there is continued reason to believe that the enemy combatant poses a threat to the United States or its allies, or whether there are factors bearing upon the need or the continued detention, including the enemy combatant's intelligence value, in the global war on terror. That is what this board does every year for every prisoner.

Based on this assessment, the Administrative Review Board can recommend that individuals should be released or should continue to be detained. Allowing detained enemy fighters to be heard and potentially released or transferred while hostilities are ongoing, as they are this very minute in Iraq and Afghanistan, is a historic and unprecedented step. We have never done that before in war.

The first year, the Administrative Review Board resulted in 330 continue-to-detain decisions, 119 transfer decisions, and 14 release decisions. So these are not rubber stamps. The Department of Defense is attempting to move people out, to transfer them, or release the people they can justify releasing. But remember, 15 of those former prisoners at Guantanamo, who have been released, have later been detained and captured on the battlefield seeking to fight America.

The second year of the Administrative Review Board process, in this annual process, resulted thus far in 12 continue-to-detain decisions, 6 transfer decisions, and no release decisions. That is as of June 20 of this year.

So the Department of Defense has created a system that goes beyond what this Nation has ever utilized in time of war to deal with an attempt to release persons who have been captured as prisoners of war fighting the United States of America. They didn't do that for German prisoners. They didn't do it for Japanese prisoners. They didn't do it for North Korean prisoners. They didn't do it for Vietnamese prisoners. These are unprecedented steps. I think it is more than is required, but it is a generous step for the United States to take, and I certainly support that.

Mr. President, as of May of 2006, 287 detainees have departed Guantanamo,

192 have been released, 95 have been transferred to other governments, including Albania, Afghanistan, Australia, Bahrain, Belgium, Denmark, France, Great Britain, Kuwait, Morocco, Pakistan, Russia, Saudi Arabia, Spain, Sweden, and Uganda. We would like to release them all, if we could.

But the President of the United States took an oath to protect the people of the United States from attack by enemies. If he releases prisoners who we believe will have any reasonable basis to continue to attempt to kill American citizens or American soldiers, he is derelict in his duty. This is not some game he is playing. This is not some academic process that the generals who are supervising this are involved in or the Administrative Review Board members or the Combatant Status Review Tribunals are dealing with. They can't make a mistake. If they make a mistake, somebody could die.

I know the operations at Guantanamo have raised complaints from some of our allies, specifically a complaint from one British official. I am so proud of the support the British government and population has shown to the United States, but I have to tell you, I don't know what the man expected us to do. Did he want us to release all 500 of them? Is that what he would want? Is that what the other people on our editorial boards like to write about? We should just release them? Well, maybe Great Britain would like to take them. Maybe the United Kingdom would like to take them and house them in their jails. Would they really? Would they release them? Would they want to release them on their subways or on their buses or on their trains in London?

Three prisoners just committed suicide last week at Guantanamo, and amazingly, we had newspapers in this great Nation that purport to be wise and thoughtful pandering to those seeking to close Guantanamo by suggesting that they are somehow killing themselves because they are depressed.

One of these was an active member of the Taliban forces who fought against the United States. One was a recognized leader in al-Qaida—they are from Yemen and Saudi Arabia and other places. I believe two were from Saudi Arabia and one was from Yemen. Do we want to release prisoners like these?

They hanged themselves. I suggest, with all sincerity, that these three prisoners did not commit suicide together, the same day, because they got depressed over mistreatment. Most of them have gained weight and have been well treated, well fed, and given superb medical care. That is not why they committed suicide. They committed suicide as a continuation of their commitment to jihad and to prepare to commit suicide to further jihad.

If they had a bomb with which they could have blown themselves up and others, Americans or other people, they would have done that. They abso-

lutely would have done that. But because they were in our custody and couldn't get hold of a bomb and wrap it around their body and kill men, women and children on buses or trains or something like that. The only thing they could do was kill themselves in hopes they would have editorials around the world, editorials in New York City and Washington, DC, have Senators and Congressmen on the floor of the House and the Senate saying how badly we are treating these prisoners of war, these unlawful combatants, and suggesting they all ought to be turned loose and how this is America's fault.

The fact that these three prisoners, clearly terrorists, committed suicide the same day is absolute proof that they were threats to innocent people and to the United States of America. It is proof that they had that threat capability. If they had been released, do you think they would have just gone nicely back home to work a job in Yemen or work on a pipeline in Saudi Arabia? No, they are committed jihadists. They are terrorists. That is why they were in Guantanamo. I am glad they hadn't been released like some of the others and I am glad that those like them are still being detained there. They are not entitled to trial.

I don't know what we will do with Guantanamo. The President said he would like to close it. I guess it would make some people happy around the world. Maybe they would get off his back. But somebody has to do something with them. I will tell you one thing, we can't release them all. Do we release them any better if they are brought back to the United States? Do we release them any better if we take them over to London or Madrid? I submit not. We have them in a safe place. They are being well taken care of. We have invested a lot of the taxpayers' money in making that facility at Guantanamo a good facility, a safe facility. I don't know why we would want to move them, other than just to make people feel better and stop fussing.

But we are going to continue to apprehend people. When we went out after the bombing of Zarqawi and did these raids in 17 different spots and they arrested quite a number of people, what are they going to do with them? Turn them loose?

When I was in Iraq recently, I heard about two brothers who were known bomb makers. Can you imagine someone a greater target of the United States military than a skilled bomb maker who is making bombs that kill American soldiers on a regular basis? They caught them and they thought they had enough proof. But the military decided they didn't. Or the court or somebody did, and they turned them loose.

I am telling you, those military personnel and the civilians that worked with them to help build that case and to identify these bombers were really heartbroken. It was very painful for

them to have to release somebody whom they believed had been responsible for killing innocent civilians in Iraq and American soldiers. But we didn't have enough proof, apparently, and we let them go.

We don't need to keep pushing the military, pushing that you have to have proof beyond a reasonable doubt like you have to before you can lock up an American citizen—let's not put that kind of burden on our military.

I think this Guantanamo matter is greatly overblown. We fail to realize just how dangerous some of the prisoners are. Hopefully, we can sift through them and find some more who are not dangerous and they can be released. Hopefully, we can send them back to foreign countries. But you know, when you send them back to a foreign country, things don't always work out right. You turn around and 6 months later, 2 years later, they are released. Or sometimes we have Members of the Senate who have made speeches and complained because, if we send them back to their home countries, the home countries realize they are terrorists, maybe even applied those tactics against their country, and they mistreat them. Now we are blamed for some treatment by a foreign government where we sent these prisoners.

We were aggressive in interviewing prisoners at the outset of opening Guantanamo. We had a very good briefing last time I was there where the people said they really reduced the intensity of interrogations. In the weeks and days following September 11 when we thought and had every reason to believe that there were cells probably operating all over this country, the military and our intelligence people were aggressive in asking questions of them and pursuing interrogations. They did not torture them. I do not believe there has been a single allegation that has been substantiated of any torture at Guantanamo. But people took it farther and said the military was too harsh with these prisoners. So for a whole lot of reasons we don't pursue those tactics as strongly today.

The standards are very lax in that regard—or strong in the sense that prisoners are not stressed and not abused in any way as they are being interrogated. In fact, just the opposite is the case. Occasionally, it is odd, after time goes by, somebody begins to talk. Some people never talk.

I appreciate the interest of my colleagues in wanting to run the cleanest prison system we possibly can, to comply with the highest ideals of the United States. I believe if they went there and examined what was going on they would conclude, with me, that the prisoners are being treated well, that they are being given every help and dietary and religious values that they need. We should continue to do that.

Sometime in the future we will have to wrestle with how we are going to handle them and maybe we can continue to repatriate them to the countries of origin. Maybe some actually

ought to be tried and executed. Others simply need to be detained until the war is over. That is just the way it is, and that is the way it has always been.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DODD. I appreciate the comments of others about Guantanamo Bay and the individuals who are being held here. I listened to the discussion earlier between the Senator from South Carolina, Mr. GRAHAM, and my colleague from New Mexico, Senator BINGAMAN, and Senator SESSIONS from Alabama, who discussed the issue of those who are being detained in Guantanamo and the very facility itself.

I had thought about offering an amendment on this matter, but it is getting confusing, with the number of amendments being offered tomorrow and the length of debate. Senator BINGAMAN is offering an amendment which I think is worthy of consideration. I may withhold the amendment I intended to offer until a later time, on another matter, when there is more of an opportunity to have debate. There is at best only a limited amount of time we may get tomorrow for discussion. I have been told I might have only a few minutes.

I regret that. I wish we had more time to offer this amendment. But I think in the interests of my colleagues here, given the seriousness of the issue, it probably deserves more time. So, I will reserve offering that amendment until another time when we have more of an opportunity to discuss it.

Let me, if I can, discuss some issues that have been raised here this evening that I think are important. I have listened to my colleagues talk about, first of all, the individuals being held in Guantanamo. We talk about people here, some of whom clearly have the very worst intentions for the United States. Some of these individuals have attacked our soldiers, attacked innocent citizens, and pose serious threats. There is no debate about that. We are not arguing about whether or not that is true for many of these people.

There may, obviously, be some exceptions that fall out of that category—individuals who have been improperly retained or restrained and sent to Guantanamo or elsewhere. That certainly may be the case. But there is no question that many of these individuals are people to worry about. That is not the issue.

The issue is: We are a nation of laws. We say this all the time. It is something about which we take great pride. We have celebrated it over and over again. It is one of the distinguishing features of this great country of ours.

We proved that we are a nation of laws categorically 60 years ago this very year when, in a different set of circumstances, the United States, along with our allies, some of whom reluctantly joined us in this effort, held a series of trials in a place called Nuremberg. We made the decision at Nuremberg that the defendants in those trials—these thugs, these people who had murdered 11 million innocents, 6 million Jews because of their religion, not to mention the millions more who lost their lives as a result of the Nazi war effort—would be afforded a trial instead of just being summarily executed. Winston Churchill advocated summary execution, and many others did as well. Why would you possibly give these defendants, it was asked—these thugs that I have mentioned, who carried out the orders of Adolph Hitler—why would you give them a trial? Why would they get a lawyer? Why would they be allowed to present evidence in a court of law?

It was the conclusion of the United States, under the leadership of people like Justice Robert Jackson, that the rule of law should be paramount. Justice Jackson and others argued very strongly that it was going to be critically important that the United States and others join in showing the world that there is a difference between these fascists—who had summarily executed people merely because of their ethnicity or religion—and this great country of ours.

In fact, Nuremberg was an interesting choice for the venue of those trials. In a sense, the Nazis chose Nuremberg. The Nuremberg Laws created a legal justification for every atrocity they committed, and so having a trial at Nuremberg, trying the very people who perpetrated these crimes, was somehow a fitting coincidence.

I speak about this because as a child growing up I heard night after night my father, who was the Executive Trial Counsel under Robert Jackson at Nuremberg, speak of these days. I was 1 year old in the summer of 1945 when my father left for a few short weeks merely to be an interrogator of these defendants at Nuremberg. He ended up replacing Judge Story as Executive Trial Counsel under Robert Jackson, and spent a year and a half trying a number of defendants at Nuremberg. He wrote my mother every single day 15 to 20-page letters describing in great detail his views and thoughts about the defendants and our allies in that effort, the Russians, the British, the French. He had some choice thoughts about a number of those people who were at Nuremberg. And he talked to his children growing up over the years about what happened at Nuremberg.

There was a great debate. In fact, half of the Supreme Court argued against Robert Jackson even going. There were colleagues here who argued that it was *ex post facto* jurisprudence—that we had no right to go back and create a body of law to try the defendants at Nuremberg.

My father and others argued strenuously that the natural law should require that individuals who had committed such crimes—who had committed summary executions based on religion or ethnicity—that these people should be taken to task for what they had done, but also, critically, be afforded rights—the right to a fair trial, the right to have legal representation.

Imagine—people like Goering and von Ribbentrop and Keitel and Speer and others—actually be given a lawyer to represent them in a trial, so that they could stand up and make a case for themselves, as Goering did for days on end at Nuremberg.

Obviously, the facts are different here. At Nuremberg, the war was over. There was a different set of circumstances. I would be the first to acknowledge it.

That is not the comparison I am trying to draw. The comparison I am trying to draw here is about the rule of law.

We can characterize these individuals at Guantanamo in words that none of us are going to terribly argue about. But I come back to the point that those who were at Nuremberg, who made the case for the trial such as I described, need to be heard again today, 60 years later.

We are a nation of laws. We are different. We are not like these people who are being held at Guantanamo. The rule of law is something we cherish in this country, even to the point where we are willing to stand up and defend the rights of people who do things we find abhorrent.

Whenever I talk to students about the Bill of Rights and the first amendment, I tell them that it doesn't just protect their rights when they say something I agree with. It is important also to protect those individuals who stand up and say something I totally disagree with or find obnoxious, to put it mildly.

That is the rule of law. That is what makes us different. That is what distinguishes us.

What has happened already is that there is confusion. Are these prisoners of war? If they are, obviously the Geneva Conventions prevail. If they are not prisoners of war but enemy combatants, the Supreme Court has ruled already that they have certain rights, that they have a right to appeal that status. Yet, we find that a substantial number of these people are being held without any definition of who they are, what their status is legally, whether or not they are POWs, enemy combatants, or something else.

When Senator BINGAMAN offers his language here to get some clarity, why is that important? I think it is important because we are, again, a nation of laws. We determine that people ought to be given one status or another. We need some clarity as to who these individuals are and how they are going to be dealt with.

Why do I say that? First, because we ought to care, particularly in this a

body, the U.S. Senate, that the rule of law is defended. But second, and not unimportant, is the question of how we are being perceived in the fight against terrorism—something that requires international cooperation. It is critically important that the United States not only lead on this issue but that other nations around the world and their citizenry following us, join us, if you will, in this effort.

Today, as I speak about this issue—unfortunate symbols are important. Guantanamo has become a symbol of things that have gone wrong without clarity, without definition, and that lack of clarity is hurting our cause.

As we try to build a coalition, it is crucial that we win support for what we are trying to achieve. Without allies in this effort, we will never ever win this war on terrorism. It is a transnational problem that insists upon a transnational response.

It is critically important that we understand the necessity of building the kind of relationships that are going to be absolutely critical if we are going to succeed in this effort, as I believe we must. We have no choice but to succeed in this effort.

But to disregard the feelings or sentiments of others on whom we must support and depend in the future, if we are going to succeed in this effort, is something that ought not to be lost on the membership of this institution.

I am deeply concerned about the direction we are heading here, one that is lacking clarity, any clarity at all, in dealing with these individuals that are being held. What is their status? Is it one thing or do we need a determination of that.

The administration I think bears the responsibility to come forward and say what the status is. Just saying we are going to hold people without some clarity is not good enough. If you want to hold them, fine. Decide what they are. Are they prisoners of war? If they are, then that is one set of circumstances. If they are not prisoners of war but enemy combatants, that is a different set of criteria that applies. But the rule of law must apply.

The criticism we are receiving here is that again we just do not have any definition. This ought not be an issue that divides us and people trying to inflame the passions of others: Who cares more about terrorism or who is willing to stand up and fight against terrorism more than anyone else. That is not the issue. The issue is the rule of law which joins people of different political persuasions but of like mind about insisting that the rule of law be applied. That has never divided us. When we move that important criteria, that important definition of who we are as Americans—the rule of law—and engage in this sort of demagogic debate about who cares more about terrorism, or you don't care about terrorism at all, if you are only willing to talk about the rule of law, that somehow makes you weak on this issue, that you

lack the kind of conviction and spine when it comes to dealing with terrorists because you start talking about the rule of law, how strong an American are you, if you only get up and talk about the rule of law?

We have all learned painfully when you begin to disregard the rule of law because you don't like the individuals that you want to apply it to, it comes back to hurt all of us.

Those who made the case more than 50 years ago at another place in another set of circumstances but facing the same criticism—the emotional response was certainly warranted. The Nazis brutalized people, incinerated millions, and certainly lit passions that said, Why would you ever give that kind of individual a lawyer and a right to present a case? And you can understand the emotions that people felt at the time—to give them the right to present a case? Did they ever give any of their victims a right to present a case in the incinerators of Buchenwald or Dachau? They never did. Why should we do it now?

Because people stood up and said we are different than they are. That is why we insist upon the rule of law.

Today, we need to remind ourselves—conservative, liberals, centrists—who we are. The rule of law unites us. It ought not divide us when we have these debates and discussions.

Guantanamo has unfortunately become a symbol of things that need to change.

The President himself, to his credit, a week or so ago in a press conference on June 14, acknowledged that fact. He said:

No question, Guantanamo sends . . . a signal to some of our friends . . . provides an excuse, for example, to say, "The United States is not upholding the values that they're trying to encourage other countries to adhere to." He also stated clearly that he "would like to close Guantanamo."

That was the President of the United States. I am not making a case on my own. He recognizes what is happening with the symbol of Guantanamo, and how difficult it is to build the kind of relationships that are critical if we are going to succeed as we must in this war against terrorism.

I am not going to be offering an amendment. I think there is not adequate time to debate and discuss these things at this late hour in the evening. But I will find an opportunity at the appropriate time to raise the issue.

I hope we can build a broad, bipartisan consensus on these points. We ought not have division over the rule of law; to get clarification about how we talk about POWs, enemy combatants, and what the status of these people is because different sets of rules apply. Having no status at all and not fitting into one category or another is something that ought to be unacceptable to all of us.

I think having a facility that has become the symbol of something which none of us believe we stand for—we

know we stand for the rule of law, we know we believe in that, and we embrace it—is raising serious reservations and concerns among people who ought to be joining us in this effort. If that is the case, as General McCaffrey said in talking about Guantanamo, close it down. He said he would like to close it down, and others believe as well that we ought to find other venues to deal with these issues as well as, of course, determining the legal status of these individuals so we can move on and again build the kind of coalitions necessary to have a successful coalition to fight the war on terrorism.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. SESSIONS. Mr. President, I appreciate the eloquent remarks of my colleague and his sharing of insight into Nuremberg and a number of thoughts that he shared with us about the rule of law, which I think is very important.

I note that at Nuremberg they tried and executed quite a number of people who conducted their war unfairly, in an unlawful way and went beyond being prisoners of war. They were, in fact, tried for crimes that they had committed.

I also say to my colleague with great sincerity that we are respecting the rule of law. These individuals that are caught and held at Guantanamo, some may qualify as a prisoner of war, many do not. They are what I have called—others used enemy combatants—unlawful combatants because they were carrying out combat in an unlawful way. They did not carry arms openly. They did not wear a uniform. They moved surreptitiously. They killed randomly women, children—actions that deny them the status of a lawful combatant and a prisoner of war. They are then held, if nothing else, certainly with legal protection because the Geneva Conventions cover people who are lawful combatants, who wage war for legitimate nations in a legitimate way.

Mr. DODD. Mr. President, if the Senator will yield, it is an interesting point. Going back, there was a body of law that had emerged prior to Nuremberg that, in fact, those who advocated that there should be a trial at Nuremberg relied on a point. But one of the great crimes that was argued against was crimes against humanity at Nuremberg. Many argued that this was sort of making it out of whole cloth. I don't think it was. But that was debated at the time.

The people who my colleague described as committing crimes against humanity, it clearly seems that those who were not enemy combatants in the

traditional definition of that word but engaged in the kind of brutality against humanity, today there is a codified body of laws that would certainly make those people subject to international law let alone our own kind of crimes.

The point I am trying to make is, it just gives it some clarity. What are they? What is the legal status in that category? If you are a POW, there is one set of laws that apply. If you are an enemy combatant, there is a set of laws and regulations that apply. If you are a non-enemy combatant and have engaged in the very activities my colleague described, what is the law that applies to those individuals under those circumstances? There is no status at all being attributed to these people. They are in limbo. That is what I am concerned about.

Mr. SESSIONS. Mr. President, I certainly respect the Senator's thoughts about that. I must follow up a little bit.

First, what happened at Nuremberg happened after the war was over.

Mr. DODD. I agree.

Mr. SESSIONS. We held German prisoners in the northern campus of the University of Alabama where I lived when I was in law school. They had German prisoners there during World War II.

But what I want to try to reassure my colleague about is that we do have a proper procedure that is ongoing. For example, we have defined these as combatants. We give them a combatant status review tribunal when they come in. They are reviewed in that fashion. They have a three-judge panel. They actually go beyond the requirements that the U.S. Supreme Court said in the Hamdi case.

In addition to that, they created an Administrative Review Board that, on an annual basis, must make an assessment of whether there is continued reason to believe that the enemy combatant poses a threat to the United States or its allies, or whether there are other factors bearing upon the need for the kind of detention, including its enemy combatant intelligence value in the gulf war on terrorism.

For example, in the first year of those Administrative Review Board hearings, there were 330 decisions to continue to detain the prisoners, 119 decisions to transfer them to other jurisdictions, other countries perhaps, or possibly other countries, and 14 release decisions. This second year, to date, the review board had 12 findings of continued to detain, 6 transfers, and no release decisions.

At least there is a procedure. In response to criticisms in the Congress, around the word, in response to the Supreme Court decision, they have taken it carefully because the military is proud of its standards. The military wants to do this right. But they have a responsibility not to release those who should not be released as they continue to pose a threat to the security of our Nation.

Mr. DODD. If my friend will yield further, I am sure he is a good lawyer. In the Rasul v. Bush case in 2004, of course, the Supreme Court ruled "a state of war is not a blank check for the President," and "enemy combatants have the right to challenge their detention before a judge or other neutral decisionmaker."

That took a court case basically going to the highest Court of our land—I don't know what the ruling was, 5 to 4 or 6 to 3—and they ruled in that case enemy that combatants have a judicial right to challenge their status.

All I am saying, I am not trying to determine the outcome, just what is the status for the people to be detained or moved other places.

Our highest Court has said it is not a blank check, that they have a right to make a case. I don't want to be seen as perceiving—because I am saying they have a right to make a case, do I like these people? Am I trying to befriend them? I am saying the rule of law has to apply.

We are different. That is what makes us different from these people. These people would never give their victims a right to a judicial system proceeding as they engage in the kind of activity my colleague from Alabama properly described.

What makes my colleague from Alabama, and I hope myself and our colleagues, different is this very point the Supreme Court made. Even these enemy combatants have the right to make a case before a judge or other "neutral decisionmaker," that the state of war is not a blank check for the President. That is the point I am trying to make. I am not trying to characterize the people in any other way than what my colleague has described.

The point the Senator and I need to come together on is the rule of law. That is all I am trying to suggest. I don't have an amendment to offer, but we have to find this common ground on this issue because it is who we are. It is what we want the world to know and appreciate what the United States is. That is really what did so much for us in the wake of World War II where we became this symbol of nations that rise above their passions and their emotions.

He is absolutely right on Nuremberg. Several people got limited sentences, some got off, and many got executed, as they should have, but it went through a legal process. To read those transcripts, where people went on and talked as Goering—I am tempted to draw the comparison of Goering to Saddam Hussein, who talks endlessly. Goering did almost the same, and there was concern by some that he might have gotten away had it not been for a very aggressive prosecution.

It was the rule of law, and how proud these people were that showed the world—and the United States led—were different.

The fact situations are very different between the end of a conflict and an ongoing conflict and how you deal with it, but the rule of law does deserve stronger support than I am afraid we are giving. That is my concern.

Mr. SESSIONS. I thank the Senator.

I believe care has been taken to comply with the Supreme Court cases. The Department of Defense has gotten the system in a way that has a combatant status review tribunal and an administrative review board, and there have been multiple hearings. The Department is giving these prisoners—whether they are prisoners of war, lawful or unlawful combatants who are being detained—the rights to which they are entitled. I really do believe they have.

That is the only concern I have about the perception that might be out there, even around the world, that we are acting outside the rule of law. I do not believe that is so.

#### MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

#### CELEBRATE WEST VIRGINIA

Mr. BYRD. Mr. President, on June 20, 1863, a new State was added to the Union. Today, 143 years later, we celebrate the birthday of West Virginia. I am always happy to have an excuse to share my love for West Virginia with the rest of the Nation.

The story of West Virginia is unique and fascinating, a one-of-a-kind juxtaposition of geography, history, and politics. It is a story as interesting as the State is beautiful.

The steeply folded mountain ridges that define the southern edge of the State, and her rich mineral and natural treasures that more than made up for her paucity of flat agricultural terrain, defined her early years and set her apart socially and economically from the rest of Virginia. West Virginia's natural attributes attracted a hardy, can-do breed of opportunistic settlers determined to scratch a living for their families from her rocky hillsides. They mined salt and coal, hunted and trapped, and cut small family farms out of the hillsides. These mountaineers had little in common with the gentrified, land-owning and slave-owning plantation masters of eastern Virginia's tidewater and piedmont regions. Thus, even as the issue of slavery began to strain the relations between the Nation's industrial North and her agricultural South, the contrasts within Virginia were sharp.

A child of conflict, West Virginia's birth was surprisingly peaceful. Before the Civil War, the Commonwealth of Virginia was a large State, fraught with its own internal divisions, based