

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma is recognized.

### HONORING OUR ARMED FORCES

CORPORAL JEREMY D. ALLBAUGH

Mr. INHOFE. Mr. President, today I rise to remember the life of one of America's heroes, Marine CPL Jeremy David Allbaugh. Corporal Allbaugh came from Luther, OK, and graduated from nearby Harrah High School. Before graduating, he was chosen to be a U.S. marine, becoming a member in the 1st Battalion, 4th Marines. Tragically, Jeremy died on July 5, while conducting combat operations in Al Anbar Province near the city of al-Qa'im, when his humvee was struck by an improvised explosive device.

There are no words that can truly express the dedication and selflessness of this young marine. There are no words that can adequately convey our thoughts for their loss to his family, who are here with us today. They have given everything to our country, something many find it difficult to comprehend and a sacrifice fewer will ever face. But I will say these words so as to honor Jeremy's last request, a request which America will always oblige her heroes, which was: "Remember me."

Before deploying to Iraq with his Marine unit, Jeremy had a conversation with his brother, Army 2LT Jason Allbaugh, in which Jeremy made two simple requests. He said: If something happens to me, do me a favor. Jeremy said: Do two things for me. Take care of mom and dad, and remember me.

Jeremy, today we do that. We remember your life of service and thank you for giving the ultimate sacrifice in defense of our Nation.

Growing up, Jeremy seemed destined to become a marine. His brother Jason—and I visited with him—said as far back as he could remember, Jeremy wanted to be a marine. Most kids had the conventional costumes on Halloween but not Jeremy. He wore fatigues. Jeremy also wore a camouflage backpack to school. His dream became reality 3 years ago when, 2 months shy of his 18th birthday and prior to graduating from high school, Jeremy joined the Marine Corps. His father Jon and his mother Jenifer, seeing how much Jeremy loved his country and his desire to serve, supported his decision and gave their permission.

That decision could not have been an easy one. All parents can understand their concern, especially parents of our servicemembers who face the possibility that their son or daughter could see combat in Iraq, Afghanistan or anyplace else in the world. Although their concern was great, I am sure it was surpassed only by the enormous pride they felt for their son Jeremy.

Jeremy, driven by a sense of duty, was willing to leave the comfort of his family and friends and the life he knew and answer the call for his country. Jeremy arrived in Iraq this past April.

Jenifer said in Jeremy's weekly phone calls he gave the family a much different picture of what was going on in Iraq compared to what was being reported in the media. There were a lot of good things being done there, Jeremy told his family. There were Neighborhood Watch programs, new schools, hospitals, clinics being built in the area where he was assigned. I know this is true because I was there when Jeremy was there, and I saw this for myself in some 15 trips to the area of operation in Iraq.

When asked how the local Iraqi people treated the marines, Jeremy was upbeat. "They appreciate what we do," he said. Jeremy believed in the positive changes he saw happening in Iraq, and he loved being a part of it.

Jenifer wishes so desperately that the American people knew and understood the sacrifices of our men and women in uniform. She hopes that more people will start to talk firsthand to our troops who are over there, not only to politicians in Washington. I, too, wish more people would talk to our troops who are over there and see their pride, their courage, their sense of honor and duty. Jeremy exemplified these qualities.

Maybe that is why Jenifer wishes people would talk to the troops, because she knows they would be talking to men and women similar to her own son.

Similar to so many of America's fallen heroes, Jeremy was young, only 21-years-old, when an IED took his life. Jeremy joined the Marine Corps after 9/11 and after the beginning of Operation Iraqi Freedom. He knew what it meant to serve. He knew what it meant to be a marine. He knew what chances he was taking. Jeremy's courage and selflessness are common for someone of his young age serving over there. Perhaps Jeremy's last wish, the wish that he be remembered, was his most selfless act.

When we remember Jeremy, we remember that which is great about our country, and his death will force us to remember the sacrifices of those throughout our history who have given their lives in defense of the Nation. We remember; we will always remember.

Rev. Jeff Koch, Pastor of the First Christian Church of Blackwell, OK, where Jeremy was honored before being laid to rest, said Jeremy "paid the ultimate sacrifice so tonight we can sleep easy."

I, too, believe this. Because of Jeremy's sacrifice, America can sleep easier. But I will rest easier knowing Jeremy lived and that, though they are rare, men and women similar to Jeremy are out there right now, protecting our lives and freedoms and our liberties. In this long war against terrorism and tyranny, America will continue to rely on men and women such as Jeremy, men and women who have been called to duty, men and women willing to put service before self.

We remember the life of Jeremy David Allbaugh, a marine, a friend, a

brother, a grandson, and a son. We remember and pray for his family, father Jon; mother Jenifer; brothers Jason and Bryan; sister Alicia; and his grandparents, John, Dorothy, and Peggy.

Today, on the floor of this great deliberative body and in the annals of our RECORD, we mourn Jeremy's passing and forever honor and remember his life. Jeremy Allbaugh is a living memory to us, of what is great about America.

So we say: Rest easy, Jeremy. Semper Fidelis.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 1585, the Department of Defense Authorization Act. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1585) to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Nelson (NE) (for Levin) amendment No. 2011, in the nature of a substitute.

Levin (for Specter-Leahy) amendment No. 2022 (to amendment No. 2011), to restore habeas corpus for those detained by the United States.

Warner (for Graham-Kyl) amendment No. 2064 (to Amendment No. 2011), to strike section 1023, relating to the granting of civil rights to terror suspects.

### AMENDMENT NO. 2022

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to 60 minutes of debate prior to a vote on the motion to invoke cloture on amendment No. 2022, offered by the Senator from Michigan, Mr. LEVIN, with the time equally divided and controlled between the leaders or their designees.

Who yields time? The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I yield 15 minutes to the Senator from South Carolina.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, I compliment Senator INHOFE in that moving tribute to a fallen marine.

The issue we have before the Senate is one of great importance to the country. It will affect the future of this bill. It will affect the national security needs of our Nation for a long time to come. It is a bit complicated, but at the end of the day, I don't think it is that difficult to get your hands around.

We are talking about a habeas corpus amendment to the Defense authorization bill that will confer upon any combatants housed at Guantanamo Bay, and maybe other places, the ability, as an enemy prisoner, to go to a Federal court of their choosing to bring lawsuits against the Government, against the military—something never granted to any other prisoner in any other war.

We had thousands of Japanese and German prisoners housed on American territory during World War II and not one of those Germans or Japanese prisoners were allowed to go to Federal court to sue the troops who had caught them on the battlefield or the Government holding them in detention as a prisoner of war.

To start that process now would be an absolute disaster for this country and has never been done before and should not be done now.

Now, the history of this issue: Guantanamo Bay is the place where international terrorists are sent, people suspected of being involved in the war on terror. Shaikh Mohammed is there, some very high-value targets are there, bin Ladin's driver. People who have been involved with al-Qaida activity and other terrorist groups are housed at Guantanamo Bay under the theory that they are unlawful enemy combatants. They do not wear a uniform as did the Germans and the Japanese, but they are very much at war with this country. They attack civilians randomly. Nothing is out of bounds in terms of their conduct. So they fit the definition, if there ever was one, of an unlawful enemy combatant. What they do in the law of war is unlawful. They certainly are enemies of this country. Shaikh Mohammed's transcript regarding his Combatant Status Review Tribunal—take time to read it. I can assure you he is at war with us. We need to be at war with him.

The basic premise I have been pushing now for years is that the attacks of 9/11 against the World Trade Center, against the Pentagon, the hijacking of the airplanes were an act of war. It would be a huge mistake for this country to look at the attacks of 9/11 as criminal activity. We are at war, and we should be applying the law of armed conflict.

The people whom we are fighting very much fall into the category of "warriors" based on their actions and their own words. What is the law of armed conflict? The law of armed conflict is governed by a lot of international treaties, the Uniform Code of Military Justice, and American case law.

What rights does an unlawful enemy combatant have? Well, our court looked at Guantanamo Bay. Habeas petitions were filed by detainees at Guantanamo Bay alleging that they were improperly held. The U.S. Supreme Court in the *Rasul v. Bush* decision in 2004 said: There is a congressional statute, 2241, that deals with habeas rights created by statute.

The Government argued that Guantanamo Bay was outside the jurisdiction of Federal courts; it was not part of the United States. The Supreme Court said: No, wait a minute. Guantanamo Bay is effectively controlled by the Navy; it is part of the United States.

The question for the court is, Did the Congress, under 2241, intend to exclude al-Qaida from the statute? And the answer was that Congress had taken no action. So the issue, 6 years after the war started here: Does the Congress wish to confer upon enemy combatant terrorists housed at Guantanamo Bay habeas corpus rights under section 2241, a statute we wrote? That is the issue.

Now, imagine after 9/11 if someone had come to the floor of the Senate and made the proposal: In case we catch anybody who attacked us on 9/11, I want to make sure they have the right of habeas corpus under 2241 because I want to make sure their rights exceed any other prisoner in any other war. I think you would have gotten zero votes.

Well, that is the issue.

Now, last year, Congress spoke to the courts, and the DC Circuit Court of Appeals understood what we were saying. Congress affirmatively struck from 2241 the ability of a noncitizen alien enemy combatant to have access to Federal court under the habeas statute. Why is that so important? From a military point of view, it is hugely important. Under the law of armed conflict, if there is a question of status—is the person a civilian? Are they part of an organized group? Are they an unlawful combatant? There are many different categories that can be conferred upon someone captured on a battlefield.

Under Geneva Conventions article 5, a competent tribunal should be impaneled—usually one person—to determine questions of status, and the only requirement is they be impartial. The question of who an enemy combatant is is a military decision. We should not allow Federal judges, through habeas petitions, to take away from the U.S. military what is effectively a military function of labeling who the enemies of America are. They are not trained for that. Our judges do not have the military background to make decisions as to who the enemy force is and how they operate.

So a habeas petition would really intrude into the military's ability to manage this war because if habeas rights were granted by statute to the prisoners at Guantanamo Bay, they could pick, through their lawyers, any district court in this country. They could go judge shopping and find any judge in this country they believed would be sympathetic and have a full-blown trial, calling people off the battlefield, having a complete trial as to whether this person is an enemy combatant in Federal court and let the judge make that decision. Well, that

has never been done in any other war, and it should not be done in this war. Judges have a role to play in war, but that is not their role. The role of the U.S. military in this war, as it has been in every other war, is to capture people and classify them based on their activity within that war, and habeas would undo that. That is why last year Congress said: No, that is not the way we should proceed in this war.

This is not unknown to our courts. In World War II, there was a habeas petition filed by German and Japanese prisoners who were housed overseas asking the Federal courts to hear their case and release them from American military confinement. Chief Justice Jackson said:

It would be difficult to devise a more effective fettering of a field commander than to allow the very enemies he has ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home.

Justice Jackson was right. And what has happened since these habeas petitions have been filed? Hundreds of them have been filed in Federal court before Congress acted. Here is what they are alleging:

A Canadian detainee who threw a grenade that killed an American medic in a firefight and who comes from a family with long-standing al-Qaida ties moved for a preliminary injunction forbidding interrogation of him or engaging in cruel, inhumane, or degrading treatment of him. This was a motion made by an enemy prisoner for the judge to sit in there and conduct the interrogation or at least monitor the interrogation. I cannot think of anything worse in terms of undermining the war effort.

A motion by a high-level al-Qaida detainee complaining about base security procedures, speed of mail delivery, medical treatment, seeking an order that he be transferred to the least onerous conditions at GITMO, asking the court to order that GITMO allow him to keep any books, reading materials sent to him, and report to the court on his opportunities for exercise, communications, recreation, and worship.

Hundreds of these lawsuits have been filed under the habeas statute. That is why Congress said: No, dismiss these cases because they have no business in Federal court.

Surely to God, al-Qaida is not going to get more rights than the Nazis. Surely to God, the Congress, 6 years after 9/11, will not, hopefully, give a statutory right to some of the most brutal, vicious people in the world to bring lawsuits against our own troops in a fashion never allowed in any other war.

Here is what we did last year: We allowed the military to determine whether a person is an enemy combatant, whether they were an unlawful enemy combatant through a competent tribunal called a Combatant Status Review Tribunal made up of three officers. The legislation allows every decision by the military to be appealed to

the D.C. Circuit Court of Appeals so the court can look at the quality of the work product and the procedures in place.

There is Federal court review over activity at Guantanamo Bay where judges review the work product of the military. To me, that is the proper way to move forward because some people at Guantanamo Bay, because they are so dangerous, may not be released anytime soon or may never be released. More people have been released at Guantanamo Bay than are still at Guantanamo Bay. They were thought not to be a threat. Thirty of them have gone back to the fight. We have released people at Guantanamo Bay to take up arms against us again. That is the result of a process where you make a discretionary decision.

It would be ill-advised for this Congress to confer on American courts the ability to hear a habeas petition from enemy prisoners housed at Guantanamo Bay where they could go judge shopping and sue our own troops for anything they could think of, including a \$100 million lawsuit against the Secretary of Defense. That will lead to chaos at the jail. It will undermine the war effort.

I am urging a "no" vote to this amendment. We have in place Federal court review of every military decision at Guantanamo Bay and a way to allow the courts to do what they are best trained to do—review documents, review procedures, review outcomes—not to take the place of the U.S. military. I cannot think of a more ill-advised effort to undercut what I think is going to be a war of a long-standing nature than to turn it over to the judges and to take away the ability to define the enemy from the military, which is trained to make such decisions, and give it to whatever judge you can find, wherever you can find him or her, and let them have a full-blown trial at our national security detriment.

I urge a "no" vote.

I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SPECTER. Mr. President, I believe I have 10 minutes reserved at this time.

The ACTING PRESIDENT pro tempore. The time is divided between the leaders or their designees.

Mr. SPECTER. Mr. President, I will act as the acting designee since no one is on this side of the aisle.

The ACTING PRESIDENT pro tempore. I see that the Senator from Vermont is yielding 10 minutes to the Senator from Pennsylvania. The Senator from Pennsylvania is recognized.

Mr. LEAHY. The Senator from Pennsylvania is the lead cosponsor of this amendment. I proudly yield him 10 minutes.

Mr. SPECTER. I thank my distinguished colleague from Vermont.

Mr. President, the arguments advanced by the Senator from South

Carolina a few moments ago are outdated. The Supreme Court of the United States has held in the Rasul case that the Guantanamo detainees have rights under the Constitution to proceed in court in habeas corpus. In my view, that decision was based on both constitutional and statutory grounds. The Court of Appeals for the District of Columbia has held that it is a matter of statutory interpretation. I believe that will be reversed by the Supreme Court in a case now pending there. But the existing law is governed by the Military Commissions Act, and the question is whether the Congress should now correct the provision in the Military Commissions Act which eliminated the right of Guantanamo detainees to challenge their detention by habeas corpus proceedings in Federal court.

The District of Columbia Circuit has held that the provisions of the Combatant Status Review Tribunal are adequate. I believe that an examination of those proceedings will show that they are palpably deficient and obviously inadequate on their face.

The constitutional right of habeas corpus is expressly recognized in the Constitution, with a provision that habeas corpus may be suspended only in time of invasion or insurrection, neither of which situation is present here. That fundamental right has been in existence since the Magna Carta in 1215. As noted earlier, the Supreme Court, in Rasul, has recently applied that constitutional right to Guantanamo Bay detainees.

Now, Congress has acted to legislate to the contrary. Of course, Congress cannot legislate away a constitutional right; that can be done only by amendment to the Constitution. That matter is now pending before the Supreme Court, and I believe on the precedents it will be held that it remains a constitutional right.

But the issue which we confront today is the statute, the Military Commissions Act passed by Congress 2 years ago which eliminates habeas corpus. The Supreme Court has held, in the case of Swain v. Pressley, that habeas corpus in the Federal courts may be eliminated by an adequate substitute. In that case, the substitute held to be adequate was a proceeding in the District of Columbia courts. The Supreme Court said: That was adequate judicial review to superintend executive detention.

But when we take a look at the provisions of the Combatant Status Review Board, as examined by the District Court in the District of Columbia, in the In re: Guantanamo cases, this is illustrative. An individual was charged with being an associate of al-Qaida individuals. When asked to identify whom he was supposed to have associated with, the tribunal could not identify the person. I discussed this case at some length yesterday, and the courtroom broke into laughter. It was a laughing matter to be detaining some-

body who was allegedly associated with someone from al-Qaida when they could not even identify who the person was.

Now, there has been a very revealing declaration filed by LTC Stephen Abraham, who was a member of the Combatant Status Review Tribunal and observed the process.

This is the way Lieutenant Colonel Abraham described the process:

Those of us on the panel found the information presented to try to uphold detention to "lack substance." What were purported to be specific statements of fact lacked even the most fundamental earmarks of objectively credible evidence. Statements allegedly made by witnesses lacked detail. Reports presented generalized statements in indirect and passive forms without stating the source of the information or providing a basis for establishing the reliability or credibility of the sources.

I put this in the RECORD yesterday, but it shows a proceeding totally devoid of any substance. You don't have to have sufficient evidence to go to court to detain someone at Guantanamo, but there has to be some basis for the detention. An examination of what is happening with the Combatant Status Review boards shows they are entirely inadequate under the standards set down by the Supreme Court in the case of Swain v. Pressley. Therefore, the alternative established by Congress in the Military Commissions Act is totally insufficient to provide fair play.

The Supreme Court of the United States has laid it on the line. Even the Guantanamo detainees are entitled to fairness. Guantanamo has been ridiculed around the world and Guantanamo is not being closed. No alternative has been found for it. But at a minimum, those who are detained at Guantanamo ought to have some proceeding to establish some basis, however slight, for their continued detention.

When Congress established the Military Commissions Act and provided for Combatant Status Review boards, we did so with the thought that we could have an alternative to going to Federal court, which would provide a basic rudimentary element of fairness required by the Geneva Conventions and required by the Supreme Court, which brushed aside the practices from World War II, overruling the prior precedents. So now it is up to the Congress of the United States to correct that mistake which we made 2 years ago. I believe any fair reading of what happens with the Combatant Status Review boards would demonstrate that we ought to correct the 2005 legislation. This amendment ought to be adopted.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. LEAHY. Mr. President, I understand the Senator from New Mexico wants 3 minutes. I yield 3 minutes to the Senator from New Mexico.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico is recognized for 3 minutes.

Mr. BINGAMAN. I thank the Chair. Mr. President, I rise in support of the amendment being offered by Senators LEAHY and SPECTER to restore the writ of habeas corpus. I am proud to be a cosponsor of this legislation, and it is my sincere hope that it will be adopted.

One of the most troubling aspects of the administration's onslaught on basic civil rights, which has largely been carried out with the acquiescence of Congress, is with regard to the suspension of habeas corpus.

The "great writ," as it is known in Anglo-Saxon jurisprudence, is simply the basic right to challenge the legality of one's confinement by the Government. It is based on a core American value that it is unacceptable to give the executive branch unchecked authority to detain whomever it wants without an independent review of the legality of the Government's actions. The right dates back to the Magna Carta, and our Founding Fathers included it as one of the fundamental rights guaranteed by our Constitution.

I would like to take a moment to briefly recount how we ended up where we are today.

In 2004, in the case *Rasul v. Bush*, the U.S. Supreme Court ruled that individuals held at the Guantanamo Bay naval base have the right to challenge the legality of their detention by filing a habeas petition in a U.S. Federal court.

In November 2005, in response to the Supreme Court's decision, and at the behest of the Bush administration, Senator GRAHAM offered an amendment to the 2006 Defense Authorization bill that sought to overrule the *Rasul* decision and strip Federal courts of jurisdiction to hear habeas claims filed by Guantanamo prisoners.

I offered an alternative amendment aimed at preserving the right to habeas corpus. My amendment was voted on the day before the Senate recessed for Veterans Day. No hearings had been held in either the Senate Judiciary Committee or the Armed Services Committee regarding the impact of eliminating this longstanding right. After very little debate on the Senate floor, my amendment was defeated by a vote of 49–42. The next week I offered a second amendment also aimed at preserving habeas rights, but it was also defeated after a deal was reached as part of what is known as the Graham-Levin compromise.

Under the Graham-Levin compromise, which was ultimately included in the Detainee Treatment Act of 2005, habeas rights were curtailed but the D.C. Circuit was granted very limited jurisdiction to review the determination of a Combatant Status Review Tribunal. That compromise was adopted 84–14. In 2006, the Supreme Court ruled in the *Hamdan* case that it was unclear as to whether Congress intended to prospectively repeal habeas rights and that the military commissions in Guantanamo were improperly constituted in violation of the Geneva

Conventions and the Uniform Code of Military Justice.

Once again, the Senate had the opportunity to restore our Nation's commitment to the rule of law.

Unfortunately, rather than standing up for the rights enshrined in our Constitution, the Senate passed, by a vote of 65–34, the Military Commissions Act of 2006, which explicitly eliminated habeas rights.

Today is almost exactly a year after the Senate voted to pass the Military Commissions Act, and the Senate once again has the opportunity to do what is right. We have the chance to restore one of the most fundamental rights guaranteed by our Constitution, and I hope the Senate will take this important step in restoring our Nation's commitment to the rule of law.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KYL. Might I inquire how much time exists on both sides?

The ACTING PRESIDENT pro tempore. There is approximately 18½ minutes on both sides.

Mr. KYL. I thank the Chair.

I request the Chair to advise me when I have spoken for 15 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, let me respond to some of the arguments that have been made in support of this amendment and urge my colleagues, as they have done in the past, to reject it. The first thing that must be clarified is that the writ of habeas corpus is not being restored. It can't be restored because it has never existed to question detention. POWs and enemy combatants, detainees, have never, in the history of English common law or American jurisprudence, had the constitutional writ of habeas corpus to challenge their detention—never. So it is a mistake for those who support this amendment to claim that somehow we need to restore the right. It has never existed for this purpose; no case in the history of English or American jurisprudence or anywhere else in the world, for that matter.

Yesterday our distinguished friend and colleague Senator DODD praised and upheld the honor and wisdom of those like his father who participated in the Nuremberg tribunals after World War II. It is well that he should. Along with his father, Thomas Dodd, is, of course, Robert H. Jackson, who became a Justice of the U.S. Supreme Court in 1941 and who returned to the Court after serving as chief counsel at the Nuremberg tribunals from 1945 to 1946. The heroes of American justice and the lions of Nuremberg did not become evil men or ignorant in the law in the period between 1946 and 1950, the year that *Johnson v. Eisentrager* was decided by the U.S. Supreme Court. It is a case in which Justice Jackson delivered the opinion of the court that enemy combatants have no constitu-

tional right to habeas corpus. That was the holding in the case by the very jurist who presided over the Nuremberg trials. He knew what he was talking about. That precedent remains the law of the United States to this day.

My colleague from South Carolina quoted Justice Jackson in that decision in which he said he could think of nothing that would fetter our commanders more than granting to enemy POWs a right to contest their detention, a constitutional habeas corpus right to question their detention in American courts. He said the very act of war is to subdue your opponent and for that opponent to have the right to require you to go into the courts of your land to defend your capturing of that enemy would be, from the commander's standpoint, an impossible burden to bear. He was right. It is the wisdom and correctness of that decision and all of the precedents that we defend today.

So, first, this is not about restoration of a right. With respect to questioning detention, that right has never existed. The reasons why should be evident to us all.

Secondly, to the extent there needs to be a process for determining whether an individual should be detained, this Congress has gone further than ever in the history of our country and granted an unprecedented process and procedure for that issue to be resolved. After the military tribunals sort out the people who have been captured and they determine, based upon the evidence they have, whether to detain these individuals, what we have granted to these detainees is a right never before granted. It is unprecedented in the history not just of the United States; no other country has done this. We allow that detainee to appeal that detention to a court in the United States, a Federal court, and not just any Federal court, the U.S. Circuit Court for the District of Columbia, the U.S. Court of Appeals for the District of Columbia, which many view as the court directly below the U.S. Supreme Court. And from a decision of that DC Circuit Court, the losing side can petition for writ of certiorari to the U.S. Supreme Court. Never has such an unprecedented legal right been granted to a POW or a detainee. So we should not be suffering under the illusion that by not granting habeas, they don't have any rights. They have more rights than they have ever had.

I would briefly respond to my good friend and colleague Senator SPECTER, who cited an affidavit of an individual who said, from his perspective, the evidence of the Government was inadequate in a case or in a series of cases, there are three remedies for that. The first is that the tribunal says the evidence is inadequate. The detainee gets to go. The second is for the court to ask for more evidence and say this isn't sufficient; do you have anything else you can provide. Of course, it is usually a question of classified information that the Government is loathe

to release because frequently it is from a source to which a commitment has been made that the source would not be revealed or that the intelligence wouldn't be revealed, or sometimes it is from another country that we have gotten the information from and we have also made agreements with those countries not to air intelligence they provided to us. So there is always a tension between how much evidence the United States wants to reveal of a classified nature in order to keep this person in detention. But that is the second remedy.

The third remedy is if the court nonetheless decides that there is sufficient evidence, the individual is detained, he can appeal that detention to the circuit court. The circuit court can make all of those same inquiries. So you have one of the most prestigious courts in the country making the final decision about whether the evidence is sufficient. That is certainly adequate process.

The Congress has ratified that twice through our decisions in dealing with the statutory right of habeas. Remember, there is the constitutional right and a statutory right of habeas. What Congress did 2 years ago, in consideration of the Detainee Treatment Act, was to develop a compromise that provided this procedure and make it clear, we thought, that the statutory right of habeas did not apply to these detainees.

A subsequent court decision said: Well, you made that clear with respect to future cases, but for pending cases we think you have not made it clear. So we came back and made it clear that the statutory right applied to neither the existing cases nor future cases. Of course, Congress has the right to limit the statutory right of habeas corpus. So neither the statutory right nor the constitutional right has provided a remedy for these detainees.

There is an alternative remedy that is perfectly adequate. When the Military Commissions Act was marked up by the Armed Services Committee—the bill that is before us—it was adopted with an even more specific provision removing Federal court habeas jurisdiction over enemy combatants to clear up any remaining doubt after the Supreme Court's interpretation of the DTA in the Hamdan decision. That vote, last September, was 15 to 9, including all the committee's Democratic members. Were they all wrong about the Constitution at that time? After subsequent negotiations that did not change the habeas provisions in the bill, the MCA passed this body on a vote of 65 to 34.

We have acted on this matter. I urge my colleagues, when they vote in a few minutes, to refer to their previous vote. It was correct at that time. It remains correct today. If, by some reason, we are wrong, and the case the Supreme Court has before it decides that this fall, then there is no necessity for us to act in a statutory way now. It is

not going to change what the Court decides. The Court will say that right exists, and nothing we do will affect that. It would be unnecessary in any event. But if the Court confirms we are right, then it would not only be unnecessary but wrong for us to change that law by supporting the habeas amendment in a few minutes.

The final point I wish to make is that the consequences of granting the habeas right would be horrendous. Justice Jackson referred to this in the Eisentrager decision. I can be more explicit. But as he said: No decision of this Court supports the view. None has ever even hinted that the right of habeas existed in this case.

What would the consequences of granting habeas be?

At least 30 detainees who have been released from the Guantanamo Bay facility have since returned to waging war against the United States and our allies. A dozen released detainees have been killed in battle by U.S. forces. They went right back to fighting us. Others have been recaptured. Two released detainees later became regional commanders for Taliban forces. One released Guantanamo detainee later attacked U.S. and allied soldiers in Afghanistan, killing three Afghan soldiers. Another former detainee killed an Afghan judge. One released detainee led a terrorist attack on a hotel in Pakistan and also led a kidnaping raid that resulted in the death of a Chinese civilian. This former detainee recently told Pakistani journalists he plans to fight America and its allies until the very end.

The point here is even detainees whom we have released, either because there was insufficient evidence to hold them or because we deemed they no longer posed a threat to us, have gone back to the battlefield and have fought us and fought our allies, have killed and been killed. These are dangerous killers.

This is not some law school exercise we are going through here. This is not the American criminal justice process. This is dealing with terrorists who are fighting us on the battlefield, and will continue to do so if they are released improperly. That is why dealing with something such as habeas is a very serious—very serious—matter.

I mentioned the problem of classified evidence. In a habeas trial, there clearly would be a right of the defendant or the detainee to both call witnesses—he would literally be able to call his captors, the people who captured him on the battlefield and require them to verify his identity and the reasons why he was held and why he needs to continue to be held—totally disrupting our operations—and classified evidence would probably be required in most of the cases because these are people on whom we have gotten good intelligence as to their intentions and their past activities. Much of this intelligence is highly sensitive as it comes from foreign sources and human sources to

whom we have made commitments that we would not reveal the information they provided to us.

It is a Hobson's choice, then, if you treat this like an American trial, where you say either the Government has to come and make this classified evidence available—and then it becomes public—or you have to withhold the classified information and let the detainee go. That cannot be the case in the case of these detainees. That is another practical reason why you cannot have the habeas granted to allow them to contest detention.

Again, put this in the context. What we have is a process that allows them to contest their detention at several stages. It allows counsel to have access to at least some of the classified information. It allows the court—and, in fact, the court of appeals has said it has the right—to review this information, all of the information that is relevant to a particular detainee's case.

The process is not lacking. It is not as if you have to grant habeas in order for these individuals to have a fair determination of their detainee status. They have that today. What they do not have is the extra right that habeas accords American citizens, people here in the United States, to call the witnesses to the court who captured you, to call up all of the classified evidence that is used against you—for the detainee to have a right to that.

The judge who tried the 1993 World Trade Center bombing case and the Padilla case made the point that when information was granted to the lawyers of the detainees in that case, within 10 days the information that was supposed to remain classified—the lawyers were not supposed to reveal it to anyone because it was highly classified; it included the names of coconspirators—within 10 days that information was in Sudan and was in the hands of Osama bin Laden. He knew because his name was on the list that we were after him. He was named as a coconspirator in the case.

So when the habeas right exists, and you have an even greater requirement to release this information, it is inevitable that highly sensitive information in fighting this war on terror will find its way into enemy hands. So the detainees can get back to the battlefield and the highly sensitive information will be very much jeopardized.

These are reasons not to grant, for the first time, a writ of habeas corpus. It is a reason to sustain what we have established for these detainees—a very fair procedure. I urge my colleagues not to grant the cloture motion, to vote “no” on cloture, so we do not open up this can of worms, so we can continue to fight the war against these terrorists.

I reserve the remainder of the time on this side.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask to be yielded 2 minutes.

Mr. LEAHY. Mr. President, I yield 2 minutes to the senior Senator from Michigan.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized for 2 minutes.

Mr. LEVIN. Mr. President, the law we passed last Congress stripped the Federal courts of jurisdiction to grant habeas corpus despite a constitutional prohibition which says that habeas corpus may not be suspended except in cases of rebellion or invasion, neither of which is the state of affairs today.

I want to make in this 2 minutes one essential point. The Specter-Leahy-Dodd amendment does not grant any individual the affirmative right to go to court. It does not grant a right of habeas corpus. It simply removes a legislative barrier to such action, restoring the law as it was before we enacted this provision in the last Congress, leaving it up to the courts—where it belongs and it always has been—as to whether habeas corpus should be granted.

When we debated this provision in the last Congress, we received a letter from three retired Judge Advocates General who urged us not to strip the courts of habeas corpus jurisdiction. That letter, signed by Admirals Hutson and Guter, and General Brahms, said the following:

We urge you to oppose any further erosion of the proper authority of our courts and to reject any provision that would strip the courts of habeas jurisdiction.

As Alexander Hamilton and James Madison emphasized in the Federalist Papers, the writ of habeas corpus embodies principles fundamental to our nation. It is the essence of the rule of law, ensuring that neither king nor executive may deprive a person of liberty without some independent review to ensure that the detention has a reasonable basis in law and fact. That right must be preserved. Fair hearings do not jeopardize our security. They are what our country stands for.

Well, we received similar letters from nine distinguished retired Federal judges and from hundreds of law professors from around the United States, and from many others.

I urge our colleagues to support the Specter-Leahy-Dodd amendment.

Mr. KENNEDY. Mr. President, I am cosponsoring this amendment because I strongly support the restoration of the right to habeas corpus for noncitizens detained as enemy combatants.

This bill will reinstate one of the cornerstones of the rule of law. Habeas corpus protects one of our most fundamental guarantees: that the Government may not arbitrarily deprive persons of their liberty.

President Bush and Congress undermined that guarantee last year by enacting the Military Commissions Act, which stripped courts of jurisdiction over habeas corpus petitions by enemy combatants. That legislation is a stain on our human rights record and an insult to the rule of law. It is almost surely unconstitutional.

For centuries, the writ of habeas corpus has been a core principle of Anglo-

American jurisprudence. Since the days of the Magna Carta in the 17th century, it has been a primary means for persons to challenge their unlawful government detention. Literally, the Latin phrase means “have the body” meaning that persons detained must be brought physically before a court or judge to consider the legality of their detention.

The writ prevents indefinite detention and ensures that individuals cannot be held in endless detainment, without indictment or trial. It requires the Government to prove to a court that it has a legal basis for its decision to deprive such persons of their liberty.

The Framers considered this principle so important that the writ of habeas corpus is the only common law writ enshrined in the Constitution. Article I, section 9, clause 2, specifically states, “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”

Mr. President, 9/11 was a tragic time for our country, but we did not set aside the Constitution or the rule of law after those vicious attacks. We did not decide as a nation to stoop to the level of the terrorists. In fact, we have always been united in our belief that an essential part of winning the war on terrorism and protecting the Nation is safeguarding the values that Americans stand for, both at home and throughout the world.

Instead of standing by these principles, however, the Bush administration used 9/11 to justify abandoning this basic American value. It has consistently undermined habeas corpus, claiming that the Constitution, statutory habeas corpus, and the Geneva Conventions, which Alberto Gonzales described as “quaint,” do not apply to enemy combatants held at Guantanamo Bay or elsewhere.

The administration even went so far as to establish detention facilities outside the United States to avoid the reach of U.S. courts and the application of basic legal protections such as habeas corpus. The administration’s purpose was to hold these combatants indefinitely and try them in military commissions.

The commissions, however, have severely limited the rights of alleged enemy combatants. The accused have no access to the evidence which the Government claims it possesses and no ability to provide a meaningful defense. The tribunals are a sham and an insult to the rule of law.

The administration’s lawlessness failed. Last year, the Supreme Court ruled in *Hamdan v. Rumsfeld* that Federal courts have jurisdiction over habeas corpus petitions brought by detainees at Guantanamo Bay. Justice Stevens reminded the administration that “in undertaking to try Hamdan and subject him to criminal punishment, the Executive is bound to comply with the Rule of Law.”

In the face of this clear Supreme Court precedent, the administration and Congress recklessly responded with the Military Commissions Act, which eliminated the right of all noncitizens labeled by the executive as enemy combatants to be heard in an Article 3 court. This bill will repeal these disgraceful provisions of the Military Commissions Act and restore the right to habeas corpus for detainees held at Guantanamo Bay and elsewhere. I urge my colleagues to vote for the rule of law and to support this amendment.

Mr. DODD. Mr. President, I rise to once again voice my support for the Specter-Leahy-Dodd amendment to the Department of Defense Authorization Act. This amendment will restore habeas corpus rights to individuals held in U.S. custody.

Just as importantly, it will begin to undo the damage done by the Military Commissions Act of 2006—legislation that undermined our values and our commitment to the rule of law. In a struggle with terrorism in which our credibility, our good name, is a powerful weapon, the Military Commissions Act was not simply wrongheaded; it was dangerous. The amendment we offer today is a first step out of that danger and back to our moral authority.

Critics of this amendment in the Bush administration and elsewhere have argued that restoring habeas corpus rights will clog Federal courts and hamper our military operations in Iraq and Afghanistan. This is simply not true.

First, in keeping with long tradition, this amendment only applies to individuals held on clearly defined U.S. territory, including Guantanamo—but not to individuals held in U.S. custody in Iraq and Afghanistan. Several individuals filing habeas petitions from Iraq and Afghanistan have already been denied. The truth is that a relatively small number of individuals are covered by this amendment. Right now, fewer than 500 people are held in Guantanamo Bay. It is simply not credible to suggest that thousands or millions of petitions would deluge our courts and grind them to a halt. From 2002 to 2006, when detainees had the ability to file habeas petitions, the Federal courts continued to run smoothly. Last year, a distinguished group of retired judges wrote to Congress, stating clearly that habeas petitions from detainees in no way tied up our courts.

Second, habeas petitions heavily favor the Government’s position. They are often decided solely by paper filings by the Government, and Federal judges have wide discretion in determining what type of evidence they need to make their determinations. In addition, usually only a minimal amount of evidence is needed to justify continued detention. Therefore, it is highly unlikely that U.S. servicemembers will be called from the battlefield to testify before a Federal judge.



Finally, many of those who oppose this amendment have relied on Justice Jackson's opinion in *Johnson v. Eisenstrager* to defend the stripping of habeas rights to detainees. But *Eisenstrager* has been overtaken by more recent cases. Justice Jackson's opinion in that case relied in part on the fact that the petitioners were German prisoners of war who were imprisoned outside the United States. In 2004, however, the Supreme Court held in *Rasul v. Bush* that the U.S. courts have jurisdiction to hear challenges to the legality of detention of foreign nationals held there because the United States had complete jurisdiction and control over the base at Guantanamo. In other words, the Supreme Court itself rejected the Government's reliance on *Eisenstrager* as it applies to individuals held in Guantanamo. That was the very decision that prompted the President and Congress to strip detainees of habeas rights with the Military Commissions Act.

In ignoring the most recent precedent, President Bush and his supporters are ignoring the history of the very bill they are now fighting to uphold. Their reliance on outdated rulings is, at best, disingenuous. Willfully or not, they have once again distorted the facts.

I believe that returning to the legal framework that was in place prior to the Military Commissions Act would not undermine our security. In fact, I believe reaffirming our commitment to the rule of law will strengthen our efforts to combat terrorism—we can protect our security and uphold our values at the same time. And so I ask my colleagues to support this amendment.

Mrs. FEINSTEIN. Mr. President, I rise today to speak in favor of the Leahy-Specter amendment to restore habeas corpus, as part of the Defense authorization bill. This amendment is identical to S. 185, the Habeas Restoration Act, which was introduced earlier in this Congress and enjoys bipartisan support. I was pleased to sign onto that bill as one of its earliest cosponsors, and I am pleased to speak in favor of this amendment today.

I strongly disagree with the provisions in the Military Commissions Act that were passed last fall, eliminating the jurisdiction of American courts to consider any petition for a writ of habeas corpus filed by an alien detained by the United States after either being determined to be an enemy combatant or while awaiting such a determination.

I believe the Leahy-Specter amendment would rectify this provision, and I urge my colleagues to support it.

I firmly believe that we must do all we can to fight the war on terrorism. But we also must preserve the core principles that create the foundation of this country.

The right to habeas corpus is one of those fundamental principles. Habeas corpus is the right secured in the Constitution, allowing a person to seek re-

lief from unlawful detention. It has roots that date back to the Magna Carta of 1215.

Habeas corpus has been suspended only a few times in our history—and then only temporarily, such as during our Civil War. Never in history have we suspended habeas corpus indefinitely, for a war that has no foreseeable end.

This is not simply a matter affecting a few hundred detainees at Guantanamo. The Military Commissions Act went far beyond eliminating the rights of the remaining detainees at Guantanamo—it also potentially can reach all 12 million lawful permanent residents in the United States, as well as visitors to our country. Under this law, any of these people can be detained, potentially forever, without any ability to challenge their detention in Federal court, simply based on the Government declaring them enemy combatants.

In fact, the Government need not even find that a noncitizen is an enemy combatant for their habeas rights to be stripped. It is enough for someone to be “awaiting” a determination—of a mere accusation is enough for a person to lose this basic right.

Here is what the Military Commissions Act says:

No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

Most of the remaining detainees at Guantanamo have been held without charges for years. While they did receive very limited due process through DOD-sponsored administrative tribunals, designed to evaluate whether they can continue to be classified and held as enemy combatants, in these review tribunals, detainees can often face: secret and hearsay evidence, evidence obtained from “enhanced interrogation techniques,” and no right to counsel. Appeals from these review tribunals are limited to the question of whether the Government followed its own limited procedures. There are even recent reports that when some of these tribunals found that a detainee was not an enemy combatant, the Defense Department arranged for the tribunals to be repeated, until Government officials got a result that they wanted.

Rather than abolishing habeas corpus, I believe the judiciary plays a vital role in evaluating and reviewing whether due process has been provided and whether innocent persons are being held.

This is not a partisan issue, as demonstrated by the fact that the lead Senators are the chair and ranking member of the Judiciary Committee. In addition, conservatives like Kenneth Starr, Professor Richard Epstein, and David Keene of the American Conservative Union have all called for restoration of habeas, as have a long list of liberal and other scholars, retired Fed-

eral judges, and military leaders such as RADM Donald Guter, former Judge Advocate General of the Navy, who wrote that the elimination of habeas corpus rights for detainees “makes us weaker and impairs our valiant troops.”

The right of habeas corpus is a key component of what keeps our system of justice fair and balanced. It is time for Congress to ensure that it remains available. I urge my colleagues to support the Leahy-Specter amendment to restore the rule of law at Guantanamo and elsewhere and the Great Writ of habeas corpus to its rightful place in our American system of justice.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I want to—

Mr. LEAHY. Mr. President, if I could ask the Senator from Alabama a question.

Mr. SESSIONS. Yes.

Mr. LEAHY. Is it the Senator's intention to close for his side?

Mr. SESSIONS. Mr. President, let's see how the time looks. I think perhaps so. How much time is left on this side?

The ACTING PRESIDENT pro tempore. Three minutes remain.

Mr. SESSIONS. Mr. President, I would utilize that 3 minutes and allow the distinguished chairman of the Judiciary Committee to close with his remarks.

First, I express my appreciation to Senator LINDSEY GRAHAM and Senator JON KYL, who meticulously explained the origin of the situation we find ourselves in today and why we have never provided the writ of habeas corpus to enemy combatants and why we should not do so.

Let's back up a little bit and go to the core of it. The Senator from New Mexico, Mr. BINGAMAN, I think correctly gave us the status of the case. Congress passed section 2241, part of the United States Code, a statutory provision of Congress dealing with habeas. At that time, I suggest, without any doubt in my own mind, Congress had no idea that years later the Supreme Court would conclude that language—and rightly or wrongly on the Supreme Court ruling—that language would provide habeas rights to combatants captured on the battlefield. OK. But the Supreme Court ruled that based on the way the statute was written. It was an unintended consequence. I would note, three members of the Supreme Court dissented and did not think that statute covered that.

So after that happened, we had to ask ourselves: Is the Supreme Court saying: You, Congress, provided habeas rights to prisoners. You did it when you passed the statute. We are not saying the Constitution requires it. We are not saying the Supreme Court requires it. What we are saying is you did it when you passed the statute?

So Congress said: OK, we did not mean that. Then we passed the amendment last year Senator GRAHAM offered

that fixed it, and did not provide, for the first time in the history of American history—or world history, for that matter—enemy prisoners be given the right to sue the generals who have captured them.

All right. So we did that, and we passed it. The DC Circuit Court of Appeals, in interpreting that statute, has followed it and concluded that Congress has changed the law and that the prisoners in Guantanamo are not entitled to habeas rights that we provide to every American citizen.

Now, that is the right thing. This is exactly what we should do. So I am somewhat taken aback by the suggestion of those who are promoting this amendment that somehow Congress denied the Great Writ and changed the law and they are here to restore it.

This is purely a matter of congressional policy and national policy on how we want to conduct warfare now and in the future. How are we going to do that? Are we going to do it in a way that allows those we capture to sue us? Now you can utilize those rights if we choose to try a prisoner of war and to lock them up or to execute them. You can use a lot of legal rights. A prisoner can use those rights, but not in this circumstance. This is merely to restore the historical principles of habeas that already existed. The current law does that. The new amendment would change it.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator's time has expired.

The Senator from Vermont.

Mr. LEAHY. Mr. President, at the beginning of this debate, I said Congress committed a historic error when it eliminated the Great Writ of habeas corpus because it did it not just for those detained at Guantanamo Bay—that raises enough questions about our sense of history and our sense of our own basic jurisprudence in this country—but Congress also eliminated it for millions—millions—of permanent legal residents here in the United States. Some of them are professors in our finest schools, others are medical people in our hospitals, and some are actually serving in our law enforcement and in our military. Listening to the arguments these past few days of those opposed to restoring habeas rights, it becomes ever more apparent that this was a mistake the last Congress and the administration made based on fear. I cannot think of a greater mistake than one based on fear in the most powerful Nation on Earth.

Opponents make the alarmist argument that if we permit people to challenge their detention in Federal court, we will jeopardize our national security and place ourselves in greater danger. In fact, of course, the opposite is true.

We have heard these kinds of arguments before during trying and turbulent times in American history, such as when the Government shamefully interned tens of thousands of Japanese-

Americans during World War II. We should know by now that it hurts this country, and especially our men and women in uniform, when we allow public policy to be guided by fear, rather than by American values and freedoms.

The critics of habeas restoration resort to scare tactics because they know that history and the facts are against them.

The truth is that casting aside the time-honored protection of habeas corpus makes us more vulnerable as a nation because it leads us away from our core American values and calls into question our historic role as the defender of human rights around the world. It also allows our enemies to accomplish something they could never achieve on the battlefield—the whittling away of liberties that make us who we are, the liberties we fought during the Revolutionary War to preserve, the liberties we fought a civil war to preserve, the liberties we defended not only our own freedom but the freedom of much of the Western World in two world wars to preserve.

The need for the Great Writ has never been stronger than it is today. We have an administration that at every opportunity has aggressively sought unchecked executive power while working to erode or to eliminate constitutionally enshrined checks on that power by the courts and by Congress. Stripping away habeas rights which allow people to go to court to challenge detention by the executive is just the latest brazen attempt in a 6-year-long effort to consolidate power in the executive branch. You could have picked up somebody, locked them up, and all that person wants to say is: I am not the person named here. Before we did this, someone could at least get a writ of habeas corpus, go to the court, and say: I am not going to contest the case or anything else, but just the fact that you picked up the wrong person. They can't even do that now. This is America?

The writ of habeas corpus is not some special benefit to be honored only when it is convenient. As no less a conservative than Justice Antonin Scalia has written, "[t]he very core of liberty secured by our Anglo-Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the Executive." Habeas has served for centuries to protect individuals against unlawful exercises of state power.

Habeas corpus is the only common law writ enshrined in the Constitution. Article I, section 9 provides that the "Writ of Habeas Corpus shall not be suspended, unless when in Cases of rebellion or invasion the public Safety may require it." The Judiciary Act of 1789 specifically empowered federal courts to issue writs of habeas corpus "for the purpose of an inquiry into the cause of commitment." In more than two centuries since then, habeas has only been suspended four times, all of them at times of active rebellion or in-

vasion. Even this administration does not claim that we are at such a point now.

The Military Commissions Act of 2006 spurned centuries of tradition and empowered the executive to detain noncitizens potentially forever, with no meaningful check by another branch of Government. With this act, Congress permanently eliminated the writ of habeas corpus for any noncitizen determined to be an enemy combatant or even awaiting such determination. If the determination hasn't been made, we are going to spend a few years making up our minds whether you are an enemy combatant, but you still can't contest the fact that we have picked up the wrong person. So a mere accusation by the executive is enough to keep a person in custody indefinitely, and that detention is not subject to review. As our Founders knew well, no administration—no administration, not this one, not the next one, not the one after that—can be trusted with that kind of power.

The Specter-Leahy amendment would restore the proper balance of power between the branches of Government by reestablishing the law on habeas as it existed prior to the passage of the Detainee Treatment Act and the Military Commissions Act. It creates no new legal rights. The U.S. Supreme Court confirmed in the *Rasul* case that American and British courts have routinely assumed jurisdiction over habeas claims made by aliens.

British courts in the 18th century considered habeas claims of aliens held as enemy combatants, as did the U.S. Supreme Court during World War II, a war where we faced the possible destruction of democracy. These courts considered habeas claims of alien enemy combatants who had already received military trials—meaning even before their habeas claims, they had already received more process than most noncitizen detainees will ever get now. Our legendary Chief Justice, John Marshall, in one instance granted relief to an alien enemy combatant bringing a habeas claim. In most of these historical cases, though, habeas petitioners lost and were not granted any relief, and indeed most habeas petitioners have their claims dismissed with a simple, one-page ruling from a judge. This historical record is evidence that habeas can be relied upon as a necessary, but entirely reasonable, check on Executive power.

As in the past, noncitizen detainees alleged to be enemy combatants should at least have the right to go into an independent court to assert that they are being held in error—not to have a trial but at least to say: Hey, we read the warrant, this is not the person—I am not the person named; you picked up the wrong person. They can't even ask an independent court to determine that.

As in the past, a court will only grant habeas relief if the petitioner is able to, in fact, establish this effort.



We are not talking about having a trial with all of these red herrings we have heard from those on the other side, who say that somehow we would have to bring in battlefield tactics or we would have to bring in classified information. That is not it. That is not it. We are talking about just being able to at least contest the fact that they have been picked up.

If the detainees held at Guantanamo truly are the worst of the worst of our enemies, as this administration claims, surely it will be easy for the Government to make a baseline showing in court that they are lawfully detained. If they are really such enemies, we ought to at least know that and know that they were lawfully detained. Of course, senior government and military officials have told the press a story very different from the party line. They have told the New York Times that the Government detained many of the Guantanamo detainees in error.

In any case, the sweep of the Military Commissions Act goes well beyond the few hundred detainees held at Guantanamo Bay. It threatens the civil liberties of an estimated 12 million lawful, permanent residents of the United States. They work here, they pay taxes in this country, and under current law, any of these people can be detained forever without the ability to challenge their detention in Federal court simply on the executive say-so, even if the Government made a mistake and picked up the wrong person. As we heard from Professor Mariano-Florentino Cuellar at the Judiciary Committee's hearing on this issue, this is of particular concern to the Latino community, which includes so many of the hard-working lawful permanent residents in this country.

The cursory review process set up by Congress for detainees, called combatant status review tribunals or CSRTs, is no substitute for habeas corpus because, among many other deficiencies, it does not provide a neutral arbiter—a Federal judge—to review the factual record for error. This summer, LTC Stephen Abraham, a military lawyer who participated in the CSRT process, said in a sworn affidavit that the evidence presented to CSRTs “lack[s] even the most fundamental earmarks of objectively credible evidence.” He also said that superiors pressured the officers on review panels to find detainees to be “enemy combatants.” That is neither just nor fair, and rigged tribunals are not the way this country has ever dispensed justice, nor the way it should. Court review allowed under current law that relies on the findings of such a flawed system falls well short of the independent review that our system of checks and balances demands.

Restoring habeas would send a clear message that when we promote democracy and the importance of human rights to the rest of the world, we are practicing what we preach. I have heard so many speeches on the floor of this body—and I agree with them—

criticizing other countries for doing what we have done. How do we go to these other countries and say: You can't do this. And they say: But you do it. And we say: Oh, well, that was the war on terror; we are facing this great threat, so we have to do it, but you shouldn't do it. Well, we need to listen to our military leaders and our foreign policy specialists on this point who disagree with what we have done.

The former Navy Judge Advocate General Donald Guter told the Judiciary Committee in May that by stripping even our enemies of basic rights, we are providing a pretext to those who capture our troops or our civilians to deny them basic rights. What do we say the next time an American civilian, lawfully in another country, is picked up and detained and not even allowed to raise the point that they picked up the wrong person, and we go to that country, and they say: Hey, wait a minute, that is what you do in your country; don't preach to us. Your American citizen is going to stay behind bars. We are just doing to you what you are allowed to do to us.

William H. Taft IV, former Deputy Secretary of Defense under President George H. W. Bush, and a former State Department adviser in the current administration, told us that stripping the courts of habeas jurisdiction sacrificed an important opportunity to enhance the credibility of our detention system. Restoring habeas to detainees will improve our strategic and diplomatic positions in the world and remove a rallying point for our enemies.

The right to habeas corpus is a limited right. Habeas, as I said before, does not give a person the right to a trial. It does not give a habeas petitioner a right to personally appear in court. It most certainly does not mean that U.S. service men and women will be pulled from the battlefield to testify in such proceedings, notwithstanding the alarmist comments made on the other side of the aisle. All the Government must do to defeat a habeas claim is demonstrate to a judge by a preponderance of the evidence that the detainee is being lawfully held. That is all.

Most habeas petitions are rejected by the Federal courts without the need to call a single witness. I certainly knew that when I was a prosecutor. Any time I ever sent anybody to prison for more than a year, I knew there would be half a dozen habeas petitions filed. They would usually be denied without even ever having called a single witness. In fact, habeas petitions can be, and routinely are, disposed of in Federal court based on a single affidavit by a Government agent explaining the basis for detention. I simply sent over an affidavit showing the date and time of conviction to the court clerks. That is all I had to do. Habeas simply provides an opportunity for a detainee to argue to an independent Federal judge that he or she is being held in error. If the detainee is properly held, the Govern-

ment can easily overcome that claim. The distinguished Presiding Officer was a distinguished U.S. attorney. He understands very well that point.

Recent history makes clear that restoring habeas will not invite habeas litigation from abroad, as some have claimed. The Supreme Court found habeas jurisdiction at Guantanamo Bay because Guantanamo is, for all intents and purposes, a U.S. territory. U.S. courts have found no habeas jurisdiction in the case of enemies captured, detained, and held in Iraq. There was no flood of international habeas petitions following the 2004 Rasul decision validating the extension of habeas rights at Guantanamo, and there is not going to be if habeas is restored now.

Guantanamo detainees had habeas rights until those rights were conclusively taken away last year. Between 2002 and late 2006, these claims were handled by judges in the U.S. District Court in Washington, DC. The judges in that court released no detainees, and they issued no orders compelling the Government to alter the detainees' conditions of confinement. Habeas is a necessary and appropriate check on executive power, but it is a far cry from a get-out-of-jail-free card.

Opponents of habeas restoration suggest other countries will not open their courts to petitions from enemy aliens. But if a foreign country imprisoned an American, as I said before—say an aid worker or a nurse or a civilian contract employee—and held that person without any charge as a combatant, or simply said: We are going to “determine” whether that person is a combatant because he or she has supported the U.S. military, for example, or had a “Support Our Troops” sticker on their car, the U.S. Government would surely demand that American have a chance to go to court. Our consul would be down there immediately demanding that. What kind of a reaction would there be in this country if we read in the paper where another country said: No, you have no right to challenge the fact that we picked them up; you have no right to challenge even that we picked up the wrong person. When we screamed about that in editorials all over this country saying how horrible that is, they would simply answer: We are just doing what you do. By denying basic rights to alien detainees, we encourage other nations to do the same to American civilians, and they will. They will. That is why we hear from so many of our military, so many distinguished people that we should change this.

Critics of the Specter-Leahy bill also point to released detainees who they assert went back to the battlefield, as a reason not to restore habeas rights. But the truth is that those Guantanamo detainees who have been released since 9/11 have been freed by the military following its own process, not by Federal judges on habeas review.

The critics' assertions that habeas proceedings in Federal court will somehow lead to the sharing of classified information with terrorists is

cockamamie. It is merely fear-mongering. This argument demeans our Federal judiciary. It ignores the procedures established by Congress to ensure that classified information is safeguarded in Federal proceedings. Federal judges have significant discretion in determining what kinds of evidence to consider, what witnesses, if any, to allow for a habeas claim. Many detainee habeas claims could be resolved with no recourse to classified documents at all. Where classified evidence is relevant, all Federal judges are cleared to view such information, and they are well equipped to deal with it without compromising national security.

We must not succumb to baseless, fear-driven arguments. The sky will not fall if we vote to restore habeas. Quite the contrary: Congress will take a positive step toward returning to our core American values of liberty, due process, and checks and balances. In doing so, we will increase America's security and bolster our place in the world. That is why this amendment has support from across the political and ideological spectrum.

I thank Senator DODD, Senator MENENDEZ, Senator BINGAMAN, Senator LEVIN, and Senator SPECTER for coming to the floor and eloquently calling for a return to basic American values and the rule of law.

Yesterday, 41 Republicans voted to filibuster a bill that would have given to hundreds of thousands of residents of the District of Columbia the fundamental right to vote for Congress—the District of Columbia, which has roughly the same population as my own State of Vermont. I hope they will not follow that sad day with a filibuster today of legislation to restore the fundamental right of someone held by the Government without any charge to at least go to court and ask why.

The most daunting challenge in the age of terrorism is to strike the proper balance between maintaining our national security against very real threats but also preserving the liberties that are the proudest legacy of our Founders. It is our Founders who were willing to risk capture and hanging to bring about a nation based on the principles that you, Mr. President, and I have always supported and which we supported in our oath of office.

More than ever, especially in the wake of September 11, we have to remain vigilant against security threats, but let's never forget that our values are the foundation that makes our Nation strong. Now is the time to reaffirm those values, to be renewing this country's fundamental, longstanding commitment to habeas corpus review. I urge every Senator to support the Specter-Leahy amendment to restore habeas corpus.

Mr. President, I wish Members would look at those who support this. Support from this amendment goes across the political spectrum, from the American Conservative Union to liberal

groups, to some of our leading citizens, including former Secretary of State Powell and others who have spoken out for this. We should pass this amendment.

Mr. President, how much time remains?

The PRESIDING OFFICER. All time has expired.

Mr. LEAHY. I thank the Chair. Mr. President, if the yeas and nays have not been ordered, I will ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays are mandatory.

Mr. LEAHY. I thank the Chair.

#### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the clerk will report the motion to invoke cloture.

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, hereby move to bring to a close the debate on amendment No. 2022, regarding restoration of habeas corpus, to H.R. 1585, the Department of Defense Authorization bill.

Harry Reid, Dick Durbin, Carl Levin, Christopher Dodd, Jeff Bingaman, Barack Obama, Robert Byrd, Ken Salazar, Debbie Stabenow, Dianne Feinstein, Patrick Leahy, Sheldon Whitehouse, Daniel K. Akaka, Russell D. Feingold, Amy Klobuchar, Bill Nelson (FL).

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call be waived.

The question is, Is it the sense of the Senate that debate on amendment No. 2022, offered by the Senator from Michigan, Mr. LEVIN, to amendment No. 2011 to H.R. 1585 shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. The following Senator is necessarily absent: the Senator from Georgia (Mr. CHAMBLISS).

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

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 340 Leg.]

#### YEAS—56

Akaka	Hagel	Nelson (NE)
Baucus	Harkin	Obama
Bayh	Inouye	Pryor
Biden	Johnson	Reed
Bingaman	Kennedy	Reid
Boxer	Kerry	Rockefeller
Brown	Klobuchar	Salazar
Byrd	Kohl	Sanders
Cantwell	Landrieu	Schumer
Cardin	Lautenberg	Smith
Carper	Leahy	Snowe
Casey	Levin	Specter
Clinton	Lincoln	Stabenow
Conrad	Lugar	Sununu
Dodd	McCaskill	Tester
Dorgan	Menendez	Webb
Durbin	Mikulski	Whitehouse
Feingold	Murray	Wyden
Feinstein	Nelson (FL)	

#### NAYS—43

Alexander	Crapo	Lott
Allard	DeMint	Martinez
Barrasso	Dole	McCain
Bennett	Domenici	McConnell
Bond	Ensign	Murkowski
Brownback	Enzi	Roberts
Bunning	Graham	Sessions
Burr	Grassley	Shelby
Coburn	Gregg	Stevens
Cochran	Hatch	Thune
Coleman	Hutchison	Vitter
Collins	Inhofe	Voinovich
Corker	Isakson	Warner
Cornyn	Kyl	
Craig	Lieberman	

#### NOT VOTING—1

Chambliss

The motion was rejected.

The PRESIDING OFFICER. On this vote, the yeas are 56, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BAUCUS. 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. LEVIN. 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. LEVIN. Mr. President, I have been talking with Senator MCCAIN, and it is our understanding the agreement now is the Graham amendment, which would be next in order under the previous UC, would be laid aside temporarily—we think we are making some progress on working out that amendment—and then we would now have Senator WEBB recognized to introduce his amendment.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I wish to thank my friend from Michigan. We would like to get a time agreement on debate on the Webb amendment, but I do not know how many speakers we have on our side. We will be proposing an amendment that has been put together by my other colleague from Virginia, Senator WARNER, as a sort of side-by-side effect.

I thank the Senator from Virginia, Mr. WARNER, for working on an amendment that I think expresses very clearly we all want all our troops home. We understand the stress and the strain that has been inflicted on the men and women in the military—and the Guard and Reserves—and we admire the motivation and the commitment of Senator WEBB from Virginia. We are, obviously, in opposition to his amendment and think his colleague from Virginia has an alternative idea that expresses the will of practically all of us to relieve this burden on the men and women in the military.

So I wish to thank my friend from Michigan, and I also wish to say again, hopefully, within a relatively short period of time we can get a time agreement on debate and vote as soon as possible on this issue. This same amendment has been debated before in the Senate and it is pretty well known to our colleagues, although it is very clear that many want to speak on it because of its importance.

So I thank my friend from Michigan and both Senators from Virginia, for whom I have the greatest respect, and we will look forward to a rather unusual situation here in the Senate—a vote on a resolution by one Senator from Virginia and a resolution from another Senator from Virginia on the same issue. I look forward to this debate. I know it will be both educational and, I hope, enlightening and informative not only to our colleagues but to the American people.

Mr. LEVIN. Mr. President, I now ask unanimous consent that the pending amendments be set aside and that Senator WEBB be recognized to offer his amendment.

The PRESIDING OFFICER. Is there objection?

Mr. McCain. Reserving the right to object, and I would not object, but I ask my friend from Michigan, will the vote on this amendment have a 60-vote requirement?

Mr. LEVIN. I think that is the intention, as part of a unanimous-consent agreement. It is my understanding that is the intent, however, that will be part of a larger UC.

The PRESIDING OFFICER. Is there objection?

Hearing no objection, it is so ordered.

The Senator from Virginia.

Mr. WEBB. Mr. President, I assume you are calling on this particular Senator from Virginia.

I rise to offer, along with Senator HAGEL, as the lead Republican cosponsor, and 35 of my colleagues a bipartisan amendment that speaks directly to the welfare of our servicemembers and their families.

I have learned from Senator McCain's comments that Senator Warner will be offering a side-by-side amendment that goes to the sense of the Congress rather than the will of the Congress, and I would like to state emphatically at the outset this is a situation that calls for the will of the Congress. It calls for the Congress to step in and act as, if nothing else, an intermediary in a situation that is causing our men and women in uniform a great deal of stress and which again calls for us in the Congress to do something about this.

We have been occupying Iraq for more than 4 years—more than 4½ years. During that time, it is sensible to assume our policies could move toward operational strategies that take into account the number of troops who are available rather than simply moving from one option to another, one so-called strategy to another, and contin-

ually going to the well and asking our troops to carry out these policies. This amendment would provide a safety net to our men and women in uniform by providing a minimum and more predictable time for them to rest and retrain before again deploying.

If you are a member of the regular military, this amendment basically says that as long as you have been gone, you deserve to have that much time at home. This is a 1-to-1 ratio we are trying to push. Many of our units and our individuals are below that, even when the Department of Defense's stated goal and the restated goal of the Commandant of the Marine Corps not long ago was to move back to 2 to 1. In other words, our troops right now are being deployed in environments, many of them, where they are spending more time in Iraq than they are spending at home, when traditionally they should have twice as much time in their home environments to refurbish their units, retrain, get to know their families, and then continue to serve their country. For the Guard and Reserve, we have a provision in here that would require that no member or unit be deployed to Iraq or Afghanistan within 3 years of a previous deployment.

I would like to emphasize this amendment is within the Constitution. There have been a number of Members, including the Senator from Arizona, who have stated publicly this is blatantly unconstitutional. It is well within the Constitution, and I read from article I, section 8:

The Congress has the power to make rules for the government and regulation of the land and naval forces.

This constitutional authority has been employed many times in the past, most significantly during the Korean war, when the administration in charge at the time was sending soldiers to Korea before they had been adequately trained. The Congress stepped in under that provision of article I, section 8 and mandated that no one be deployed overseas until they had at least 120 days of training. We are doing essentially the same thing in terms of a protective measure for the troops of our military but on the other end. We are saying, as long as you have been deployed, you deserve to have that much time at home.

This amendment is responsible. It has been drafted with great care. We have put waivers that would apply to unusual circumstances into it. The President can waive the limitations of this amendment in the event of an operational emergency posing a threat to vital national security interests. People who want to go back, can go back. It does not stop anyone from volunteering to return if they want to waive this provision.

I have spoken with Secretary Gates, spoken with him at some length last week. I listened to his concerns. We put in two additional provisions in this amendment to react to the concerns the Secretary of Defense raised. The

first is a 120-day enactment period, which is different from the way this amendment was introduced in July. In other words, the Department of Defense would have 120 days from the passage of this legislation in order to make appropriate plans and adjust to the provisions.

I also have a provision in this bill that would exempt the special operations units from the requirements of the amendment. Special operations units are highly selective, their operational tempos are unpredictable, and we believe it is appropriate they be exempted.

This amendment is not only constitutional, not only responsible, but it is needed. It is needed in a way that transcends politics. After 4½ years in the environment in Iraq, it is time we put into place operational policies that sensibly take care of the people we are calling upon to go again and again.

That is one reason why the Military Officers Association of America took the unusual step to actually endorse this amendment. The Military Officers Association of America is not like the Veterans of Foreign Wars, not like the American Legion. They rarely step into the middle of political issues. But this organization, which comprises 368,000 members, military officers, took the step of sending a letter of endorsement for this amendment, calling upon us in the Congress to become better stewards of the men and women who are serving.

It is beyond politics in another way. We are asking our men and women in uniform to bear a disproportionate sacrifice as the result of these multiple extended combat deployments with inadequate time at home. We owe them greater predictability.

This is this week's issue of the Army Times. The cover story in the Army Times this week talks about brigade redeployments, who has gone the most, who has gone the least, who is going next. At least eight of the Army's active combat teams have deployed three or four times already. These are year or 15-month deployments. Another six, including three from the 101st Airborne, leave this month for either round three or round four.

There is one brigade in the 10th Mountain Division, which is now nearing the end of its 15-month deployment, that is on its fourth deployment. When these soldiers return in November, they will have served 40 months since December 2001. That is about two-thirds of the time we have been engaged since December 2001. This amendment is needed for another reason, and that is that it has become clearer since the testimony of General Petraeus and Admiral Crocker that the debate on our numbers in Iraq and our policy in Iraq is going to continue for some time. We have divisions here in the Senate. We have divisions between the administration and the Congress. We are trying to find a formula, the right kind of a formula that can undo

what I and many others believe was a grave strategic error in going into Iraq in the first place. But we have to have this debate sensibly. In the meantime, because this debate is going to continue for some time, we need to put a safety net under our troops who are being called upon to go to Iraq and Afghanistan.

I noted with some irony on Monday, as I was presiding, when the Republican leader expressed his view that it would not be an unnatural occurrence for us to be in Iraq for the next 50 years. This comparison to Korea and Western Europe is being made again and again.

I go back to 5 years ago this month when I wrote an editorial for the Washington Post, 6 months before we invaded Iraq. One of the comments I made in this editorial 5 years ago was that there is no end point, there is no withdrawal plan from the people who have brought us to this war, because they do not intend to withdraw.

I said that 5 years ago. It is rather stunning to hear that ratified openly now by people in the administration and by others who have supported this endeavor. We need to engage in that debate. We need to come to some sort of agreement about what our posture is going to be in the Middle East. And, as we have that debate, it is vitally important that we look after the well-being of the men and women who are being called upon, again and again, to serve.

We are seeing a number of predictable results from these constant deployments. We are seeing fallen retention among experienced combat veterans. We are seeing soldiers and marines—either retained on active duty beyond their enlistments in the “Stop Loss” program or being recalled from active duty after their enlistments are over—being sent again to Iraq or Afghanistan. We are seeing statistics on increased difficulties in marital situations and mental health issues.

There was a quote in this week’s Army Times by one Army division’s sergeant major who was saying:

After the second deployment, it’s hard to retain our Soldiers. They have missed all the first steps, they’ve missed all the birthdays; they’ve missed all the anniversaries.

I have seen that again and again with people I have known throughout their young lifetimes. One young man who is a close friend of my son just returned with an army unit, back for his second tour in Iraq. One of his comments at his going-away party was: 15-month deployments mean two Thanksgivings, two Christmases, two birthdays.

What we are trying to do with this amendment is to bring a sense of responsibility among the leadership of our country in terms of how we are using our people. It is an attempt to move beyond politics as the politics of the situation are sorted out. Again, it is constitutional, it is responsible, it has been drafted with care, it is needed beyond politics. I hope those in this

body will step forward and support it to the point that it could become law.

I note my colleague, the Senator from Nebraska, has arrived, my principal cosponsor, for whom I have great regard. He and I have worked on many issues over nearly 30 years. I am grateful to be standing with him today and I yield my time and hope the Senator from Nebraska is recognized.

AMENDMENT NO. 2909 TO AMENDMENT NO. 2011

Mr. President, I had assumed the amendment was called up by the chairman. I erred. I ask amendment No. 2909 be called up.

The PRESIDING OFFICER (Mr. CASEY). The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WEBB] for himself, Mr. REID, Mr. HAGEL, Mr. LEVIN, Ms. SNOWE, Mr. SMITH, Mr. OBAMA, Mrs. CLINTON, Mr. BYRD, Mr. KENNEDY, Mr. SALAZAR, Mr. HARKIN, Mr. BROWN, Mrs. LINCOLN, Ms. KLOBUCHAR, Mr. DODD, Mr. BIDEN, Mr. LAUTENBERG, Mr. KERRY, Mr. DURBIN, Mr. TESTER, Mrs. MCCASKILL, Mr. SCHUMER, Mr. PRYOR, Mr. SANDERS, Ms. MIKULSKI, Ms. CANTWELL, Ms. STABENOW, Ms. LANDRIEU, Mr. JOHNSON, Mr. CARPER, Mr. ROCKEFELLER, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. AKAKA, and Mr. MENENDEZ, proposes an amendment numbered 2909.

Mr. WEBB. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To specify minimum periods between deployment of units and members of the Armed Forces deployed for Operation Iraqi Freedom and Operation Enduring Freedom)

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

**SEC. 1031. MINIMUM PERIODS BETWEEN DEPLOYMENT FOR UNITS AND MEMBERS OF THE ARMED FORCES DEPLOYED FOR OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM.**

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

(1) Congress expresses its grateful thanks to the men and women of the Armed Forces of the United States for having served their country with great distinction under enormously difficult circumstances since September 11, 2001.

(2) The all-volunteer force of the Armed Forces of the United States is bearing a disproportionate share of national wartime sacrifice, and, as stewards of this national treasure, Congress must not place that force at unacceptable risk.

(3) The men and women members of the Armed Forces of the United States and their families are under enormous strain from multiple, extended combat deployments to Iraq and Afghanistan.

(4) Extended, high-tempo deployments to Iraq and Afghanistan have adversely affected the readiness of non-deployed Army and Marine Corps units, thereby jeopardizing their capability to respond quickly and effectively to other crises or contingencies in the world, and complicating the all-volunteer policy of recruitment, as well as the retention, of career military personnel.

(5) Optimal time between operational deployments, commonly described as “dwell time”, is critically important to allow members of the Armed Forces to readjust from combat operations, bond with families and friends, generate more predictable oper-

ational tempos, and provide sufficient time for units to retrain, reconstitute, and assimilate new members.

(6) It is the goal of the Armed Forces of the United States to achieve an optimal minimum period between the previous deployment of a unit or member of a regular component of the Armed Forces and a subsequent deployment of such a unit or member that is equal to or longer than twice the period of such previous deployment, commonly described as a 1:2 deployment-to-dwell ratio.

(7) It is the goal of the Department of Defense that units and members of the reserve components of the Armed Forces of the United States should not be mobilized continuously for more than one year, and that a period of five years should elapse between the previous deployment of such a unit or member and a subsequent deployment of such unit or member.

(8) In support of continuous operations in Iraq, Afghanistan, and other contested areas, the Army has been required to deploy units and members to Iraq for 15 months with a 12-month dwell-time period between deployments, resulting in a less than 1:1 deployment-to-dwell ratio.

(9) In support of continuous operations in Iraq, Afghanistan, and other contested areas, the Marine Corps currently is deploying units and members to Iraq for approximately seven months, with a seven-month dwell-time period between deployments, but it is not unusual for selected units and members of the Marine Corps to be deployed with less than a 1:1 deployment-to-dwell ratio.

(10) In support of continuous operations in Iraq, Afghanistan, and other contested areas, the Department of Defense has relied upon the reserve components of the Armed Forces of the United States to a degree that is unprecedented in the history of the all-volunteer force. Units and members of the reserve components are frequently mobilized and deployed for periods beyond the stated goals of the Department.

(11) The Commander of the Multi-National Force-Iraq recently testified to Congress that he would like Soldiers, Marines, and other forces have more time with their families between deployments, a reflection of his awareness of the stress and strain placed on United States ground forces, in particular, and on other high-demand, low-density assets, by operations in Iraq and Afghanistan.

(b) MINIMUM PERIOD FOR UNITS AND MEMBERS OF THE REGULAR COMPONENTS.—

(1) IN GENERAL.—No unit or member of the Armed Forces specified in paragraph (3) may be deployed for Operation Iraqi Freedom or Operation Enduring Freedom (including participation in the NATO International Security Assistance Force (Afghanistan)) unless the period between the deployment of the unit or member is equal to or longer than the period of such previous deployment.

(2) SENSE OF CONGRESS ON OPTIMAL MINIMUM PERIOD BETWEEN DEPLOYMENTS.—It is the sense of Congress that the optimal minimum period between the previous deployment of a unit or member of the Armed Forces specified in paragraph (3) to Operation Iraqi Freedom or Operation Enduring Freedom and a subsequent deployment of the unit or member to Operation Iraqi Freedom or Operation Enduring Freedom should be equal to or longer than twice the period of such previous deployment.

(3) COVERED UNITS AND MEMBERS.—The units and members of the Armed Forces specified in this paragraph are as follows:

(A) Units and members of the regular Army.

(B) Units and members of the regular Marine Corps.

(C) Units and members of the regular Navy.

(D) Units and members of the regular Air Force.

(E) Units and members of the regular Coast Guard.

(C) MINIMUM PERIOD FOR UNITS AND MEMBERS OF THE RESERVE COMPONENTS.—

(1) IN GENERAL.—No unit or member of the Armed Forces specified in paragraph (3) may be deployed for Operation Iraqi Freedom or Operation Enduring Freedom (including participation in the NATO International Security Assistance Force (Afghanistan)) if the unit or member has been deployed at any time within the three years preceding the date of the deployment covered by this subsection.

(2) SENSE OF CONGRESS ON MOBILIZATION AND OPTIMAL MINIMUM PERIOD BETWEEN DEPLOYMENTS.—It is the sense of Congress that—

(A) the units and members of the reserve components of the Armed Forces should not be mobilized continuously for more than one year; and

(B) the optimal minimum period between the previous deployment of a unit or member of the Armed Forces specified in paragraph (3) to Operation Iraqi Freedom or Operation Enduring Freedom and a subsequent deployment of the unit or member to Operation Iraqi Freedom or Operation Enduring Freedom should be five years.

(3) COVERED UNITS AND MEMBERS.—The units and members of the Armed Forces specified in this paragraph are as follows:

(A) Units and members of the Army Reserve.

(B) Units and members of the Army National Guard.

(C) Units and members of the Marine Corps Reserve.

(D) Units and members of the Navy Reserve.

(E) Units and members of the Air Force Reserve.

(F) Units and members of the Air National Guard.

(G) Units and members of the Coast Guard Reserve.

(d) INAPPLICABILITY TO SPECIAL OPERATIONS FORCES.—The limitations in subsections (b) and (c) shall not apply with respect to forces that are considered special operations forces for purposes of section 167(i) of title 10, United States Code.

(e) WAIVER BY THE PRESIDENT.—The President may waive the limitation in subsection (b) or (c) with respect to the deployment of a unit or member of the Armed Forces specified in such subsection if the President certifies to Congress that the deployment of the unit or member is necessary to meet an operational emergency posing a threat to vital national security interests of the United States.

(f) WAIVER BY MILITARY CHIEF OF STAFF OR COMMANDANT FOR VOLUNTARY MOBILIZATIONS.—

(1) ARMY.—With respect to the deployment of a member of the Army who has voluntarily requested mobilization, the limitation in subsection (b) or (c) may be waived by the Chief of Staff of the Army (or the designee of the Chief of Staff of the Army).

(2) NAVY.—With respect to the deployment of a member of the Navy who has voluntarily requested mobilization, the limitation in subsection (b) or (c) may be waived by the Chief of Naval Operations (or the designee of the Chief of Naval Operations).

(3) MARINE CORPS.—With respect to the deployment of a member of the Marine Corps who has voluntarily requested mobilization, the limitation in subsection (b) or (c) may be waived by the Commandant of the Marine Corps (or the designee of the Commandant of the Marine Corps).

(4) AIR FORCE.—With respect to the deployment of a member of the Air Force who has

voluntarily requested mobilization, the limitation in subsection (b) or (c) may be waived by the Chief of Staff of the Air Force (or the designee of the Chief of Staff of the Air Force).

(5) COAST GUARD.—With respect to the deployment of a member of the Coast Guard who has voluntarily requested mobilization, the limitation in subsection (b) or (c) may be waived by the Commandant of the Coast Guard (or the designee of the Commandant of the Coast Guard).

(g) EFFECTIVE DATE.—In order to afford the Department of Defense sufficient time to plan and organize the implementation of the provisions of this section, the provisions of this section shall go into effect 120 days after the date of the enactment of this Act.

Mr. WEBB. I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HAGEL. Mr. President, I wish to acknowledge my friend, the junior Senator from Virginia, and also recognize his leadership, not just on this issue that he has framed over the last few minutes on which the Senate will be voting, as we did in July, but his years of contributions to this country—specifically his efforts on behalf of our military. I think most of us recognize the distinguished record of Senator JIM WEBB, that service to his country. We appreciate that, and in particular his leadership on this amendment is important.

Senator WEBB and I wrote this amendment many months ago. We introduced it on the floor of the Senate in July. We received 56 bipartisan votes for it. As Senator WEBB has noted in his explanation of what this amendment does, it is relevant to our Armed Forces, to our country, and to our future. I wish to take a little time to expand on a couple of the points Senator WEBB has made.

First, a democracy of 300 million people, the greatest democracy in the world, the oldest living democracy in the world, finds itself in a situation today where we are asking about 1 percent of our citizens to carry all the burden, make all the sacrifices. We will be dealing with this issue for many years to come, because the consequences of what has been going on are that we are doing great damage to our military force structure, great damage to our Army and our Marines.

Senator WEBB noted some examples. These are not isolated episodes. The fact is, you cannot grind down your people, you cannot grind down your force structure as we have been doing to our force structure over the last years—redeployment after redeployment, and longer and longer deployments.

We know, because our generals and admirals tell us, that this will come to an end sometime next spring, the rate of redeployments. Why is that the case? That is the case because we can't sustain the force structure we have assigned in Iraq today. It is not because I say it or Senator WEBB says it, but our professional military leaders say it.

It doesn't do us much good to go back and review the mistakes we have

made over the last 5 years, first when we invaded and occupied a country. The fact is, we never had enough force structure in that country. Many Senators, including the distinguished ranking Republican on the Armed Services Committee, our friend JOHN MCCAIN, noted that. He still talks about it, as many of us do. This administration refused to take the counsel of the then Chief of Staff of the U.S. Army, General Eric Shinseki, when he, in open hearing before the Senate Armed Services Committee, was asked the question: What will it take, General, to invade, occupy, and help stabilize Iraq? He said it would take hundreds of thousands of American forces.

He was right. He was right. But this administration chose not to listen to the Chief of Staff of the Army, who knew far more about the details of manpower requirements than anyone in the White House.

We are not going to go back and unwind all that series of bad decisions. We are where we are, and we are in a mess in Iraq today by any dynamic, any measurement, any qualifications. We heard about that, I think in some detail, as we probed General Petraeus and Ambassador Crocker's testimony last week—two distinguished Americans. General Petraeus and Ambassador Crocker are two of our best. But the military doesn't set policy. The civilian leadership sets policy. So we hand that off to the military. They salute; they say, Yes, sir. Now, you go implement the policy.

What we are addressing in this amendment is not only a basic component of fairness in how you treat your people—because, after all, as we know, it is people who represent the greatest resource of an institution, of a country, of a society. When you grind those people down to a point where they just cannot be effective, but when the morale is gone, when they leave the institution as we are seeing happen in the Army and Marines, when you are 15,000 short of Army captains and lieutenant colonels and majors, and senior enlisted, and story after story—every Senator in this body can relate these specific stories like I had in my office yesterday. A Marine Corps officer, couple of years in Iraq, 14 years in the Marines, got out. He loved the Marines. It pulled his heart out to leave the Marines.

I said, Why did you leave?

He said, Sir, I tried to balance my family life. The last time I got back from Iraq my youngest daughter said, Daddy, I am going to tape you to the refrigerator so you don't have to leave again.

The Chairman of the Joint Chiefs of Staff, Admiral Mullen, said in his confirmation hearing a few months ago, and I quote from Admiral Mullen, Chairman of the Joint Chiefs of Staff:

I am concerned about the number of deployments, the time when they're home—in fact, even when they are home, there's training associated with that, so they spend

weeks, if not months, out of their own house, again, away from their families, and I believe we've got to relieve that.

That is the end of the quote from the new Chairman of the Joint Chiefs of Staff. So, are we really asking so much here when we say that our brave fighting men and women, who are bearing all the burden, carrying all the sacrifice for this country, that 1 percent of our society, that we say they ought to have at least the same amount of downtime off as they serve in a war zone in combat? Is that outrageous?

We in this town are very good at abstractions. We talk about policies. We act like moving men and brigades in combat—that somehow this is a chess game. Somehow these people are objects.

No, humanity is always the underlying dynamic of the world and life and it always will be. As Senator WEBB has often said: Who speaks for the military? The National spokesmen.

Their leaders are appointed by the President. They have spokesmen, they are Governors, if no one else. But who speaks for the rifleman? Who speaks for the people whom we ask to go fight and die and their families?

Now, let's be very clear about another issue. As Senator WEBB has noted, this certainly is within the constitutional authority and responsibility of the Congress of the United States. Senator WEBB said article I of the Constitution is about the Congress. Section 8 of the Constitution, in article I, speaks specifically to Congress's responsibilities. We can have disagreements about policies and strategies, and that is appropriate, should be, absolutely, in a democracy. But let's not be confused about our responsibilities as well.

The fact is, as General Shinseki warned us in his comments before the Senate Armed Services Committee before we invaded Iraq, that it would take hundreds of thousands of American soldiers.

What has happened is we have a mission that does not match our manpower capabilities. So what is this administration's answer? Keep grinding down the people out there who have been fighting and dying. Keep grinding them down more because we do not have any choice. Are you going to suit the Boy Scouts up on the weekends?

Where is the manpower going to come from? So the easy answer is—because who speaks for the rifleman? Who speaks for the military? You keep asking them to do more. You keep pushing more down on them.

By the way, the so-called surge the President of the United States announced to America in January—by the way, I do not find the term “surge” in any military manuals. Surge is not a policy, it is not a strategy, it is a tactic.

But the President said: This is temporary. That escalation of troops, that 30,000 more troops on top of the 130,000 troops they already had over there,

that is temporary. Because we are going to buy time for the Iraqi Government to find an accommodation so there can be political reconciliation. In the end, that is all that counts. As General Petraeus and everybody, every one of our great generals has said, there is no military solution in Iraq.

General Petraeus and every general has said that. They know it better than anyone knows it. The only solution in Iraq is going to come from, must come from, some political accommodation resulting in a political reconciliation.

So let's buy more time, let's grind those guys down more. Well, it will automatically come to some kind of an end. But in the process, what are we doing to our society, to our country, to our Armed Forces, that is going to take years to rebuild, just as General Schwarzkopf and General Powell and other great generals after Vietnam, they stayed in the military and rebuilt the military after what we had done to it during Vietnam.

This is a very modest step forward, of clear thinking. This is relevant. It is rational. This has at least a modicum of humanity in it. If we do not take these steps, the consequences we are going to continue to face are going to be severe.

I know the questions, the concerns on the other side of this issue are appropriate. Is this not a back-door way of trying to micromanage the war, micromanage our force structure? Well, the fact is, as I have already noted, we have inverted the logic. In order to carry out a mission or a policy or strategy, you have to match the resources for that. Those resources were never matched to that mission.

So the easy answer for all of us in Washington, and 99 percent of the American people, is: Well, let those guys over there do more. So we have 15-month deployments, in some cases they are 18-month deployments, in some cases they are longer than that. So what if they go over there three times.

That is not a good enough answer. That is a failed answer. That is irresponsible.

So I hope our colleagues take a hard look at this, and I hope they would give some intense thought to what we are doing, not only for the immediate term but for the long term. This is essential for our country. This has ramifications, societal implications that go far beyond our force structure.

I am very honored to be the original cosponsor and coauthor of this amendment with my distinguished colleague, the Senator from Virginia.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, before I begin my comments on the pending amendment, I think—I hope it is appropriate to mention our colleague from Nebraska, Senator HAGEL, has announced his intentions not to seek reelection in this body.

I have the highest degree of affection and respect for my friend; we have adjoining offices in the Russell Senate Office Building. He has served this Nation in many capacities, including in combat during the Vietnam War. I think he has been an outstanding Member of this body and a dear friend. I will say a lot more about him in many venues, but I wish to express my appreciation for his outstanding service in the Senate, to the people of Nebraska, and to this country.

On July 11 of this year, I spoke against Senator WEBB's amendment on dwell time, as it is now called. The amendment has not changed substantially since then. I thought the debate at the time was comprehensive and adequately addressed the merits of the proposal. But here we are again. Here we are again. Why?

In July, Senator WEBB said:

This is an amendment that is focused squarely on supporting our troops who are fighting in Iraq and Afghanistan; it speaks directly to their welfare and the needs of their families by establishing minimum periods between deployments.

More recently, he has called it a “safety net for the troops.” I have no doubt of Senator WEBB's sincerity and his concern for our ground troops and their families. No one in this body has served his family more honorably than Senator WEBB.

I share Senator WEBB's concerns for the well-being of our troops and their families, as I know all Senators do. But let me be clear: Senator WEBB's amendment is not a litmus test for whether you care about the troops. Would it not be great if our choices were that easy.

I argued back in July, and I repeat today, that the amendment would do more harm than good and should not pass. But the question remains: Why are we arguing again? Why are we arguing again about this proposal?

Unfortunately, the reason is obvious. It was spelled out in a New York Times article on September 15, by David Herszenhorn and David Cloud, who stated:

The proposal by Senator Webb has strong support from top Democrats who say that the practical effect would be to add time between deployments and force General Petraeus to withdraw troops on a substantially swifter timeline than the one he laid out before Congress this week.

Senator BIDEN was quoted in the article as calling the proposal the “easiest way for his Republican colleagues to change the war strategy,” to change the war strategy. The reporters referred to the amendment as a “back-door approach” aimed at influencing the conduct of the war. That is what this amendment is about.

I say to my colleagues, I will say it again and again, the President's present strategy is succeeding. If you want the troops out, support the present mission, support the mission that is succeeding. Don't say you support the troops when you do not support their mission. Excuse me, I support you but not the mission you are



embarking on today as you go out and put your life and limb on the line in a surge that is succeeding—that is succeeding.

We will have a lot of discussion on the floor of this body about the Maliki Government and the national police and the other challenges we have, but the military side of this is succeeding. This goes at the heart, this goes at the heart of the surge that is showing success in Anbar Province, in Baghdad, and other parts of Iraq.

Now, maybe someone does not agree with that. Maybe that is the point. But the effect of this amendment—the effect of this amendment—would be to emasculate this surge. That is why the Secretary of Defense, Mr. Gates, sent a letter to my colleague, Senator GRAHAM, which I intend to quote from in a minute. So what is this debate about? This debate is about whether we will force, as Senator BIDEN was quoted, as the easiest way for his Republican colleagues to change the war strategy, this backdoor approach aimed at influencing the conduct of the war.

Not only that, it is blatantly unconstitutional. Are we going to have, in conflicts the American people engage in—if it is unpopular with the American people, the way the Korean war was unpopular—and somehow designate who should stay and who should not and how long?

That is a micromanagement of the military that is very difficult to comprehend. The President is the Commander in Chief because he is the Commander in Chief. Nowhere in the Goldwater-Nickles bill, nowhere in the Constitution do I see the role for Congress to play in determining the parameters under which the men and women who have enlisted and are serving in the military, in an enterprise which the majority of this body voted to support, being embarked on.

Secretary Gates echoed this assessment last weekend in various interviews, stating the Webb amendment is:

Really pretty much a backdoor effort to get the President to accelerate the drawdown so that it is an automatic kind of thing, rather than based on conditions in Iraq.

So I would say to my colleagues, let's not conceal or fail to mention the intended effect or purpose of this amendment. I wish to repeat, every one of us, every one of us cares about the men and women who are serving in the military, every single one of us on an equal basis. It is clear that in the wake of General Petraeus's report, the majority has brought this back in order to reduce the numbers of fully trained and combat-experienced troops available to our military commanders and thus to force an accelerated drawdown of troops and units in Iraq and Afghanistan.

Why don't we be clear about that? Let's consider the impact of this amendment on the force. The effect of the amendment would be to exclude

fully trained, combat-experienced officers, NCOs, soldiers, and marines from military units that need them to perform in combat. I think we should ask the question: Will an unintended consequence of this amendment be to cause harm to our troops? I argued in July, as did various other Senators, that the amendment would cause harm to the mission, the units, and members who would have to succeed in combat despite the obstacle this amendment would impose.

Now we have the view of Secretary Gates to consider in a letter regarding the Webb amendment, which without objection, Mr. President, I ask unanimous consent to have printed in the RECORD.

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

THE SECRETARY OF DEFENSE,  
Washington, DC, September 18, 2007.

Hon. LINDSEY GRAHAM,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR GRAHAM: Thank for your recent letter requesting my views on the Webb amendment.

I understand that the specifics of this amendment may be changing so my comments are based on the version filed for Senate consideration in July (the only version available publicly).

As drafted, the amendment would dramatically limit the nation's ability to respond to other national security needs while we remain engaged in Iraq or Afghanistan. Although the amendment language does provide the President a waiver for "operational emergencies," it is neither practical nor desirable for the President to have to rely on waivers to manage the global demands on U.S. military forces. Moreover, the amendment would serve to advance the dangerous perception by regional adversaries that the U.S. is tied down and overextended.

Further, the amendment, if adopted, would impose upon the President an unacceptable choice: between 1) accelerating the rate of drawdown significantly beyond what General Petraeus has recommended, which he and other senior military commanders believe would not be prudent and would put at real risk the gains we have made on the ground in Iraq over the past few months, and 2) resorting to force management options that would damage the force and its effectiveness in the field.

The first choice is not acceptable. The latter choice would require one or more of the following actions for units deployed or deploying to Iraq and Afghanistan:

Extension of units already deployed beyond their current scheduled rotation.

Creating "gaps" in combat capability as units would rotate home without a follow-on unit being available to replace them. Rearranging schedules to close such gaps would, even if possible, further limit the ability to continue the sound practice of overlapping unit rotations to achieve smooth hand-offs and minimize casualties.

Increase in the use of "in lieu of" units that are either minimally or not normally trained for the assigned mission. We will always deploy trained units, but the quality, depth of experience and thus combat capability associated with the broader use of "in lieu of" forces will invariably degrade combat readiness.

Return to the cobbling together of new units from other disparate units or unassigned personnel. We have discouraged this practice by adopting a unit rotation policy.

As the options for and availability of active duty units is constrained, the broader and more frequent mobilization of National Guard and Reserve units would be inevitable.

I am told that one of the possible modifications to the original amendment is to allow a transition period of a few months before its requirements are binding. While transition periods are generally helpful, such a modification would not alleviate the damaging impact this amendment would have on our military force and our efforts against violent extremists.

In sum, the cumulative effect of the above steps necessary to comply with Senator Webb's amendment, in our judgment, would significantly increase the risk to our service members. It would also lead to a return to unpredictable tour lengths and home station periods that we have sought to eliminate for our service members and their families.

The above impacts on managing the flow of military units pale in comparison to the disruptive and harmful effects the amendment would have if we have to comply with its requirements at the level of each individual service member. Such an approach would make it exceedingly difficult to sustain unit cohesion and combat readiness.

Finally, the amendment would unreasonably burden the President's exercise of his Constitutional authorities, including his authority as Commander in Chief. In particular, the amendment would hinder the President's ability to conduct diplomatic, military, and intelligence activities and limit his ability to move military forces as necessary to secure the national security.

I believe that the intent of those who support this amendment is honorable and motivated by a desire to advance the welfare of our service members. Unfortunately, I also believe the amendment would in fact result in the opposite outcome while restricting our nation's ability to respond to an unpredictable and increasingly dangerous world.

Sincerely,

ROBERT M. GATES.

Mr. MCCAIN. He said:

As drafted, the amendment would dramatically limit the nation's ability to respond to other national security needs while we remain engaged in Iraq or Afghanistan.

He said the amendment would cause the Army and Marine Corps to resort to force management options that would further damage the force and its effectiveness on the field and would result in the following actions for units deploying to Iraq and Afghanistan:

Extension of units [in Iraq and Afghanistan] already deployed beyond their current scheduled rotation.

Creating "gaps" in combat capability as units would rotate home without a follow-on unit being available to replace them.

This, in turn, would squeeze "the ability to continue the . . . practice of overlapping unit rotations to achieve smooth hand-offs and minimize casualties." And minimize casualties. That seems important, minimizing casualties.

Secretary Gates goes on. The Webb amendment would:

Increase the use of 'in-lieu of' units that are either minimally or not normally trained for the assigned mission.

[Would] return to the cobbling together of new units from other disparate units or unassigned personnel.

A practice discouraged by the adoption of a unit rotation policy. As a result of the Webb amendment, it would

result in the “broader and more frequent mobilization of National Guard and Reserve units [which] would be inevitable.”

Secretary Gates, in his letter, said the Webb amendment would impose an unacceptable choice upon the President and our military to either, one, accelerate the rate of drawdown significantly beyond what General Petraeus has recommended, which he and all of our military commanders believe would not be prudent and would put at real risk the gains we have made on the ground in Iraq in the last few months; two, resorting to force management options that would further damage the force and its effectiveness in the field.

Not surprisingly, Secretary Gates has stated unequivocally that if this amendment were included in the authorization act, he would recommend the President veto it. I urge my colleagues to reject, again, the Webb amendment.

My friend from Nebraska, Senator HAGEL, pointed out accurately—and he has played an incredible role—the terrific mistakes made in the conduct of this conflict under Secretary Rumsfeld and other leaders. This strategy, the Senator from Nebraska and I knew, was doomed to failure. As far back as 2003, we came back from Iraq and said: This strategy has to change or it is doomed to failure. As I have said, it was very much like watching a train wreck. Those mistakes and errors in the strategy have been well chronicled in a number of books that have been written, among them, and which I strongly recommend, “Fiasco” by Tom Ricks and “Cobra II” by General Trainor and Michael Gordon. But we are where we are.

I would be glad, along with my friends from Nebraska and Virginia, to chronicle those many mistakes. Those mistakes were made with expressions of optimism which were, on their face, not comporting with the facts on the ground in Iraq: a few dead-enders, stuff happens, last throes, on and on. The fact is, the American people became frustrated, and they have become saddened and angry. Nothing is more moving than to know the families and loved ones of those who have sacrificed, nearly 4,000 in this conflict, not to mention the tens of thousands who have been gravely wounded. But we have a new strategy. We have success on the ground.

As I said earlier, all of us are frustrated by the fact that the Maliki government has not functioned with anywhere near the effectiveness we need. We also acknowledge that there are portions of the national police which are “corrupt,” which is a kind word, a kind description. But the facts were made very clear last week by the President of Iran, the President of a country that has dedicated itself to the extinction of Israel, a country that is developing nuclear weapons, a country that is exporting explosive devices of the

most lethal kind into Iraq today that are killing young Americans. He said: When the United States of America leaves Iraq, we will fill the void. That is what this conflict is now about. It may not have been that when we started. The President of Iran has made Iranian intentions very clear. The Saudis will feel that the Sunnis have to be helped. Syria continues to try to destabilize the Government of Lebanon and continues to arm and equip Hezbollah. By the way, there is a standing United Nations Security Council resolution that calls for the disarmament of Hezbollah. Has anybody seen any effect of that lately? Jordan has 750,000 refugees in their small country.

The situation as regards Afghanistan, as far as Pakistan is concerned, is certainly murky at best, and perhaps we could see a nuclear-armed country, which Pakistan is, in the hands of people who may not be friendly to the United States or interested in controlling the Afghan-Pakistan border areas which are not under control now.

As Henry Kissinger wrote in the Washington Post over the weekend, a precipitous withdrawal would have profound consequences. As GEN Jim Jones testified, on the results of his commission, his last words were, a precipitous withdrawal would cause harm to America’s national security interests, not only in Iraq but in the area.

The reason I point this out is because the effect of the Webb amendment—and whether it is intended by the Senator from Virginia or not but it is interpreted by many, including others whom I have quoted—would be to force precipitous withdrawal before the situation on the ground warranted.

I hope we understand that America is facing a watershed situation. We have grave challenges in Iraq. I believe if we set a date for withdrawal or, through this backdoor method, force a date for withdrawal, we will see chaos and genocide in the region, and we will be back.

I fully acknowledge to my friends and colleagues that we have paid a very heavy price in American blood and treasure because of failures for nearly 4 years. I understand their frustration. I understand their anger. But I am also hearing from the men and women serving in Iraq as we speak. Always throughout this long ordeal, the most professional and best-equipped and best-trained and bravest military this Nation has ever been blessed with were doing their job. They were doing their job under the most arduous conditions of warfare that any American, Army and Marine Corps and military, has ever been engaged, ever.

But now in the last few months, we are hearing a different message from these brave people; that is, they believe they are succeeding. They believe they are succeeding. In Anbar Province, the marines are walking in downtown Ramadi, which used to be Fort Apache. Neighborhoods in Baghdad are safer. They are not safe, but they are safer.

Al-Qaida is being rejected in many areas. I pointed out the difficulties in the other part of it, but I also believe, from my study of history, that when you have a condition of military security, it is very likely and much more possible that the commercial, social, and political process moves forward in a successful fashion. I keep saying over and over: We have not seen that with the Maliki government, and we have every right to see it. But I believe the conditions have been created, if they seize it, that we will also see political progress in that country.

I believe the people of Iraq, not wanting to be Kurds or Sunni or Shia but Iraqis, harbor the same hopes and dreams and aspirations to live in a free and open society where they can send their kids to school and live in conditions of peace and harmony. That can be achieved over a long period of time.

Let me finally say that success in Iraq is long and hard and difficult, but I also believe the options are far worse than to pursue what has been succeeding.

This amendment will probably define our role in Iraq as to how this whole conflict will come out. I question no one’s patriotism. I question no one’s devotion to this country. I am sure there are Members on the other side of this issue, supporting this amendment, who are more dedicated than I am, perhaps. But the fact is, this is a watershed amendment. We need to defeat it. We need to make sure these brave young men and women who are now serving and succeeding have more opportunity to succeed and come home with honor. We all want them home. We don’t want to see the spectacle of another defeated military. Overstressed, overdeployed, weary, but not defeated—that is our military today. The Webb amendment could easily bring about their defeat.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WEBB. Mr. President, I would like to yield further time to the Senator from New Jersey, but before doing so, I would like to respond to some of the things the Senator from Arizona said in his statement, just to clarify the intention of this amendment and the environment in which it is being offered.

Contrary to what the Senator from Arizona said, this amendment has been changed since July. There is a 120-day implementation provision in it, after my discussion with Secretary Gates. There is also an exclusion of special operations units from the requirements of the amendment. There are, as always, clear waiver provisions in here which would address a number of the situations Secretary Gates mentioned.

The Senator from Arizona may believe the impact of this amendment would be to alter the strategy in Iraq, and he has made a few implications

that people cannot support our military people unless they support a political mission. I don't believe that is correct. I believe it is the role in American society to question missions when one believes they are heading in the wrong direction. I believe many of our troops have that option and also exercise it. You can look at poll after poll on that.

The one thing we can say about the U.S. military is that it has always controlled the tactical battle space into which it has been put. We can clearly say that in Iraq today. We can say that about other engagements. That is the job the military is being called upon to do.

When the Senator from Arizona talks about what is this debate really about, to characterize this as a debate about defeat is inappropriate. The narrow purpose of this amendment is not to question so much whether the strategy is working but how do you feed troops into an operational environment. Where do we draw the line? I suppose we could have a decision from an administration that we would put all of American forces in Iraq until the war was over. When does the Congress decide that the policies of the executive branch have reached an imbalance? This is a very modest amendment.

With respect to the constitutional implications, this is a tired old argument. I addressed it in July. I addressed it again today. There is a third provision in article I, section 8, which clearly gives Congress the authority to make these sorts of decisions.

Senator MCCAIN rightly talks about the loss of qualified officers and NCOs. My experience, looking at the U.S. military today, is that we are now losing them permanently. If you look at the retention rates from West Point, they are clearly on a marked downside. That is the canary in the bird cage.

With respect to the letter of Secretary Gates, I respect Secretary Gates. I talk with him. He is a political appointee. We can expect political answers to a number of these questions.

When Senator MCCAIN speaks of the implications of withdrawal, we are in a box, I agree. The same implications being addressed right now for withdrawal were the implications that people such as myself, General Zinni, General Scowcroft, General Hoar, and many others with long national security experience were warning about if we went in in the first place. We have a region that is on the edge of chaos. We have oil now at \$82 a barrel. We have a situation with the Turks, who once were our greatest supporters in the region, being roundly critical of the United States, complaining about guerilla activities emanating out of the Kurdish areas. We need to get the Saudis to the table. We need to address Iran. The only way for us to do that on a permanent basis is through aggressive diplomacy.

I, too, read Henry Kissinger's article last Sunday. A big portion of it at the

end was about the need to move forward more strongly with diplomacy.

All of those issues are legitimate. They are all going to be thoroughly debated. The purpose of this amendment, again, is to put a safety net under our Active-Duty military and our Guard and Reserve while these debates are taking place.

With that, I yield the floor and note the Senator from New Jersey wishes to speak. Perhaps the Senator from Arizona wants to speak.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from Virginia for his comments. I would like to point out that the Senator from Virginia says his amendment has a waiver associated with it, so, therefore, it should be acceptable to us. I would like to quote from Secretary Gates's letter to Senator GRAHAM. He says:

Although the amendment language does provide the President a waiver for "operational emergencies"—

"Operational emergencies"—not just a waiver, but there has to be an operational emergency—

it is neither practical nor desirable for the President to have to rely on waivers to manage the global demands on U.S. military forces. Moreover, the amendment would serve to advance the dangerous perception by regional adversaries that the U.S. is tied down and overextended.

So I think we ought to understand what this waiver really means. Of course, Secretary Gates is a political appointee. That is the way the Government functions. But to somehow, therefore, question his judgment because he is a political appointee is inappropriate, I say to the Senator from Virginia.

GEN Brent Scowcroft, whom the Senator from Virginia referred to, said: The costs of staying are visible. The costs of getting out are almost never discussed. If we get out before Iraq is stable, the entire Middle East region might start to resemble Iraq today. Getting out is not a solution.

Now, that is the view of one of the most respected men in America. He also was a political appointee at one time as the President's National Security Adviser. He believed very strongly we should not have gone to Iraq, and I would be glad someday, along with Senator WEBB and Senator HAGEL, to talk about all the reasons why we should or should not have. But the fact we are where we are today, in his view, is very clear.

Now, on the issue of constitutionality, it clearly violates the principles of separation of powers. Congress has no business in wartime passing a law telling the Department of Defense which of its fully trained troops it can and cannot use in carrying out combat operations.

As we all know, this dwell time provision, as I said, has been tried before. The President, when it was included in the Emergency Supplemental Appropriations Act, said:

[T]he micro-management in this legislation is unacceptable because it would create a series of requirements that do not provide the flexibility needed to conduct the war.

This legislation is unconstitutional because it purports to direct the conduct of operations of the war in a way that infringes upon the powers vested in the Presidency by the Constitution, including as Commander in Chief of the Armed Forces.

The Senator from Virginia referred to article I, section 8 of the Constitution, which gives Congress the power "to make Rules for the Government and Regulation of the land and naval Forces." Well, clearly that applies to pay, equipment, end strength, basing, and most of the training, equipping, and organizing functions that are vested in the services under the Goldwater-Nichols Act. But the article I power cannot be employed to accomplish unconstitutional ends, and that would include restricting the President's authority as Commander in Chief in wartime to direct the movement of U.S. forces.

Justice Robert Jackson, who served as President Franklin Delano Roosevelt's Attorney General, said:

The President's responsibility as Commander in Chief embraces the authority to command and direct the armed forces in their immediate movements and operations, designed to protect the security and effectuate the defense of the United States.

I submit that current policies regarding combat unit rotations, tour length, and dwell time that affect our brave men and women in uniform fall squarely under that authority.

In his letter, as I mentioned before, Secretary Gates addressed this constitutional question. He said:

The amendment would unreasonably burden the President's exercise of his Constitutional authorities, including his authority as Commander in Chief. In particular, the amendment would hinder the President's ability to conduct diplomatic, military, and intelligence activities and limit his ability to move military forces as necessary to secure the national security.

Let's consider other legislation—the Goldwater-Nichols Act of 1986—which fundamentally reorganized the Department of Defense and reflected some serious thought about how wars ought to be conducted. The act says:

Unless otherwise directed by the President, the chain of command to a unified or specified command runs—

from the President to the Secretary of Defense; and

from the Secretary of Defense to the commander of the combatant command.

I see no mention of Congress in that chain of command.

The Goldwater-Nichols Act also has a section titled "Responsibilities of the Combatant Commanders" that says: The commander of a combatant command is responsible to the President and to the Secretary of Defense for the performance of missions assigned to that command by the President or by the Secretary with the approval of the President. Again, no mention of Congress in that chain of command.

I want to clarify to my friend from Virginia, I have—again, I repeat, and I

am sure I will repeat several times in the conduct of this discussion—I have no doubt that the intent of the Senator from Virginia is to relieve this terrible burden of service that is being laid upon a few Americans. He and I both know people who have been to Iraq and Afghanistan three and four times—an incredible level of service. The National Guard has never, ever that I know of in my study of history borne the burden they have today. These citizen soldiers have performed not only at the same level but sometimes at a higher level of our professional standing Army, Marine Corps, Air Force, and Navy. But the fact is, the amendment of the Senator from Virginia—I believe and am convinced from my study of the Constitution, my view of the role of the Commander in Chief, what is at stake in Iraq, as I pointed out—will have the effect of reversing what has been a successful strategy employed by General Petraeus, General Odierno, and the brave men and women. I have no doubt of the intention of the Senator from Virginia in this amendment, but I have great concerns and conviction that the effect of this amendment would have impacts that would lead to greater consequences and require, eventually, over time, because of chaos in the region, greater sacrifice of American blood and treasure.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, I rise in strong support of the Webb-Hagel amendment. Both of our colleagues have served our country not only in the Senate but also in uniform, and they have done so honorably. So they speak from experience, and I, for one, do not question their sincerity of purpose. I do not know how every Member of the Senate will decide on how they will cast their vote, but I do not question their sincerity or the purpose of what they are driving at.

This is about preserving our troops, enhancing their ability, and in the long term being able to continue to enlist people who want to serve their country, who bear the overwhelming burden of the national security of the United States by a small percentage of the population. That is what I believe Senator WEBB is doing, and that is why I join him strongly in support of his and Senator HAGEL's amendment.

This amendment provides an important opportunity to recognize the courageous efforts of our men and women in uniform. This amendment provides a critical opportunity to ensure the care and safety of our troops—the care and safety of our troops—now, but I would argue not only now but for the long term. To those who believe this amendment is only about now, to change the current course of events, I believe the amendment has longstanding import now and for the long term. It sets our policy as to where we are going to be headed in the deployment of troops—

the respites they need, the ability for us to sustain a voluntary Army under all of the circumstances.

This amendment provides a great opportunity for us in the Senate to ignore politics and work together on behalf of our troops. This amendment simply says that our troops should have at least—at least—the same time at home as they spend deployed abroad. It ensures that no unit, including the National Guard, which is clearly citizen soldiers who have been asked to do far beyond what many of them thought they were ever going to be called upon to do on behalf of their Nation—they would get the same treatment.

This amendment simply says that after 4½ years of bravely fighting for our country, we must honor the sacrifice of the troops and their families. This amendment simply says we must make sure we are taking care—underline “taking care”—of our troops. We believe we must protect our troops fighting in combat now, just as we must take care of our veterans when they return home from combat.

Let me be clear. I do not believe this amendment ties the hands of the administration in the case of a clear threat to our national security. Senator WEBB has been responsive in providing a fair and reasonable waiver for the President, as well as a waiver for those individuals in service who want to volunteer to return early. If they want to return, if they feel they are ready to return, they will be able to do so and provide the continued leadership they have been providing. I am sure many may. But the bottom line is, there are many who may not feel they can do that. So, therefore, their ability to perform at the optimum is not being preserved under the present circumstances.

This amendment also responds to specific concerns raised by the Secretary of Defense and other military leaders. It allows the Department of Defense time for a transition period, for an implementation period that is well within the scope that is necessary. It also provides a specific exemption for special operations forces since the nature of their deployment schedule is much different.

So I think Senator WEBB has listened and responded since the last time he offered this amendment, as has Senator HAGEL.

Now, unfortunately, the war in Iraq has taken a terrible toll on our military. I am deeply concerned about our ground forces. I am deeply concerned about severe mental health issues, such as post-traumatic stress syndrome, which comes out of extended and repeated deployments. I am deeply concerned about our ability to retain experienced servicemembers and our ability to recruit new forces.

Clearly, if someone is looking at whether to be engaged, in addition to their great desire to serve their country, especially if they have family, they are going to be looking at: Well,

how are these deployments taking place? Are they taking place in a way to respond to my desire to serve but also to be able to sustain my family? That is why we have to adopt this amendment. It is about now and the long term.

Some here have argued that Congress should not interfere. But the Founding Fathers put it right up there early in the Constitution. They did not wait for various later articles; they put it right up there in article I. Article I, section 8 of the Constitution is where they gave the Congress the right, the power “to make Rules for the Government and Regulation of the land and naval Forces.”

I have heard other statutory references here, but none of those statutory references have the power to undermine the Constitution. The Constitution is supreme. It comes first above all other acts. So, therefore, the Founders understood how important it was for the Congress to have the role “to make Rules for the Government and Regulation of the land and naval Forces,” and they put it up early in the Constitution to make it very clear. Those who wish to ignore or reject that provision of the Constitution, in my mind, undermine the Constitution by doing so.

This President often acts as if the only role for the Congress is to provide a blank check for his failed war policy. I believe he is definitely wrong in believing that Congress's only role is to provide a blank check. That is not the role of the Congress. As a matter of fact, that would be an abdication of the duties and responsibilities of the Congress in its role under the Constitution. We have a fiduciary responsibility to the American people, both in national treasures and, most importantly, in lives. We have a responsibility to the men and women in uniform.

This amendment before us reflects the reality on the ground and the will of the American people, but most importantly the welfare of those sacrificing the most. I have heard a lot from our colleagues in the time I have been in the Senate, and before in the House, about supporting our troops. Well, we are providing here a plan to fully support our troops who volunteer to put their lives on the line for our country. Senator WEBB has referred to the Military Officers Associations' unusual movement or action of supporting this amendment. I think we need to listen to those who serve, especially when they act out of the norm and say: We believe this is in the interests of those men and women who serve. And it comes from the association of those men and women who are actively engaged in serving. I have so often heard our colleagues say: Let's listen to those on the ground. Well, this is a reflection of those in boots in service. Our brave troops have answered the call of duty. Let us now answer the call to do what is right by them.

I urge all of our colleagues to support this amendment. It goes to the heart of how we truly honor those people who are serving our country, sacrificing for our country, and in my mind, when we talk about supporting the troops, making sure our long-term security can be preserved and enhanced goes to the very core of how we are going to treat them in their service. That is why I strongly support Senator WEBB's and Senator HAGEL's amendment, and I hope all of our colleagues will do so as well.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, I rise in opposition to the Webb amendment. I guess if I can pick up where my colleague from New Jersey left off, what is the best thing for the Congress to do in terms of supporting our troops? What are our duties? What are our obligations? I would argue the worst thing the Congress can do at a time of war is to start taking over operational control of deployments.

Many of us are up for reelection next year. This Iraq war has become one big political commercial. There are commercials being run out there—I don't know if they are on the air right at this moment, but every time there is a vote in this body, a Republican in a tough State will have an ad run in their State saying: Senator so-and-so has voted six times not to withdraw from Iraq. There are political commercials being run around every policy debate we have regarding this war. This is a political consultant's dream, this war.

Well, this war is not about the next election; this war is about generations to come. The commercials will keep coming. Every time we have a vote like this, somebody is going to take a work product, turn it into a political ad, and try to get some political momentum from the dialog we have on the floor.

None of us question each other's patriotism. That is great. To those who have served in combat, my hat is off to you. But we all have our independent obligation to make our own decisions here, and those who have never worn the uniform, you are just as capable of understanding this issue as I think anybody else. If you have been to Iraq, you understand how tired people are. They are tired. If you visit the military on a regular basis, you know they are stressed.

Let me give my colleagues some numbers here. The 1st Cavalry Division, their retention rates are 135 percent; The 25th ID, 202 percent; the 82nd Airborne, 121 percent retention rates. Recruiting and retention is very good because people who are in the fight now understand the consequences of the fight and they don't want to lose. I was in Baghdad on July 4. We had 680-something people reenlist in theater.

The troops are tired. That is not the problem. They understand the war. They understand the enemy because

they deal with the enemy face-to-face, day-to-day. They realize that if we don't get this right—and in spite of the mistakes we have made, we can still get it right—if at the end of the day we don't get it right in Iraq, their kids are going to go back. The No. 1 comment I get from the troops after having been there many times is: I want to do this, Senator GRAHAM, so that my children do not have to come over here and fight this war. Let's get it right now.

Well, let's help them get it right. I think we are not helping them if the Congress mandates troop rotations that will undercut the ability for the surge to continue.

Everyone cares about the troops, but the politics of this amendment are such that it would get—the bill would be vetoed. The President has said that if this amendment gets to be part of the underlying Defense authorization bill, he would veto it. I think any President would veto this bill. The Secretary of Defense's letter to me is a chilling rendition of what would happen to the force if this amendment was adopted. So we know the Defense authorization bill would get vetoed, and all the good things in it we do agree on—about MRAPs, support for the troops, better health care—all that gets lost.

Now, why are we doing this? Some people have a very serious concern that the force is stressed, and they want to take pressure off the force by giving them as much time at home as they have in the theater. Some people want to use this amendment to make sure the surge can't go forward because that would be the effect of it. People are all over the board. The consequence to the Defense authorization bill is it would get vetoed over this provision. Now, if that is what my colleagues want to happen, this is a way to make sure it happens.

The idea of telling the Department of Defense how long someone can stay in combat once they are trained and ready to go to the fight is probably the most ill-advised thing any Congress could do in any war. The Congress is a political body that is driven, appropriately, by the moment, by the next election, the voices of constituents, concerns of the public. Wars are not fought that way. Decisions in wars are not poll-driven—I hope. Decisions of politicians appropriately incorporate political consequences to the Member. Let's not make military policy based on the political consequence to the Member of Congress. That is what you would be opening a can of worms to.

If we take on this responsibility of managing troops from a congressional point of view, setting their rotation schedules, how many can go and how long they can go, then their presence in whatever battlefield or theater we are talking about in the future is very much tied to the political moment back home. Think about that. If we begin to adopt this way of managing a war where the Congress takes this

bold, unknown step of saying: You can only go in theater this long and you can't do A and you can't do B, but you can do C, what happens in the next war? Is it wise for political people who worry about their own reelection—which is an appropriate, rightful thing to be worried about if you are in politics—to have this much power? Is it good for the military for the Congress—535 people—to have this much power over military deployments? Our Constitution gives them a political Commander in Chief—a single person—who has to answer to the public at the ballot box.

The Congress can, as part of our constitutional responsibilities, terminate any war because our constitutional role allows us to fund wars. So to my colleagues on the other side and those on this side who want to support this amendment, you would be doing the country a service and eventually, I think, the troops a service by trying to stop this war by cutting off funding, if that is your goal. If you think the war is lost and you believe it is the biggest foreign policy mistake in a generation and that it is a hopeless endeavor and that Iraq will never get any better, then just come to the floor and offer an amendment on the appropriations bill to say we will not continue to fund this war and create an orderly withdrawal. If you do that, I will disagree with you, but you will have followed a constitutional path that is well charted, and if you believe all the things I have just said, you will be doing the troops a great service because you will not create a precedent in the future where some other politician may take up your model and use it in a way you never envisioned.

Once we legitimize politicians being able to make rotation deployment schedule decisions, once we go down that road, we have opened up Pandora's box where the politics of the next war could dramatically affect the ability to operate on the battlefield. If we limit our actions to cutting off funding, that will be a sustainable way for Congress to engage in terms of wars they believe have been lost.

Now, the majority leader, HARRY REID, said the war was lost in April and the surge has failed. If you really believe that, let's have a debate not about micromanaging troop schedules and deployment schedules; let's have a debate that would be worthy of this Congress and this Nation. Let's come back onto the floor and put an amendment on the desk to be considered that would end the war by stopping funding for the war. That is not going to happen. The reason that is not going to happen is because the surge has been somewhat successful and the politics of ending this war—everybody is trying to hedge their bet a little bit now. The politics of the next election are affecting the politics of this body when it comes to war policy in a very unhealthy way.

We have a side-by-side alternative to Senator WEBB that puts congressional

voice behind the idea that we would like the policy of Secretary Gates to be implemented of ensuring the dwell time at home is consistent with the amount of time one is in theater. It is a sense-of-the-Senate that gives voice to Secretary Gates's goal and policy of dwell time without retreating into the Commander in Chief's functions, without getting out of our constitutional lane. Senator McCAIN has introduced this side-by-side. It will be called up at an appropriate time, and I can talk about it later on. It is a sense-of-the-Congress where we all agree that it would be a great policy to have if the conditions on the ground would warrant it, to give our troops a little bit of rest.

But what our troops need more than anything else is a commander who knows what he is doing and who can carry out his mission unimpeded by a bunch of politicians who are scrambling to get an advantage over each other. This whole debate is unseemly. It is destructive to our constitutional system. It brings out the worst in American politics. You have an ad being run against the very general in charge of our troops that is sickening and disgusting, and we are just absolutely going to a new low as a nation over this war.

So if you think all the things I said before—the war is lost, hopeless, stupid; the worst decision ever made in terms of U.S. foreign policy—end the thing. End it. Cut off funding. Don't play this game of having 535 people become generals who have no clue of what they are talking about. I respect everybody in this body, and those who have served, I respect you, but there is not one person here who I think has anywhere close to the knowledge of General Petraeus in how to fight a war. You could dig up Audie Murphy, and he could come back and tell me to vote for this amendment, and I would respectfully disagree. To those who have been in battle: God bless you. You deserve all the credit and honor that comes your way.

This is about winning a war we can't afford to lose. This is about who should run this war—a group of politicians who are scared to death of the electorate and who will embrace almost anything to get an advantage over the other, who is at 14 percent approval rating in the eyes of their fellow citizens? You want to scare the military? You want to give them something to be afraid of? Let them read in the paper Congress takes over operational control of Iraq. We would have some retention problems then. Anybody in their right mind would get out.

There are a lot of choices to be made in our constitutional democracy about war and peace. The one choice we have never made before is to allow the Congress to set rotation schedules, deployment schedules, and if we do it now, not only will we hurt this war effort, we will make it impossible for future commanders and future Presidents to protect us.

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

Mr. GRAHAM. Yes.

Mr. MCCAIN. It is my understanding that Senator GRAHAM, the senior Senator from South Carolina, is a member of the Air Force Reserve and the JAG Corps; is that correct?

Mr. GRAHAM. Yes, sir.

Mr. MCCAIN. I understand you just spent a couple of weeks in Iraq serving in active duty and in your capacity as an Air Force colonel?

Mr. GRAHAM. Yes, sir.

Mr. MCCAIN. And despite the mistake that was made in the promotion system, you did form impressions over there from the day-to-day interface with the men and women who are serving there?

Mr. GRAHAM. Yes.

Mr. MCCAIN. I think it might be appropriate, given the Senator's recent probably longer stay than any Member of Congress has ever had in Iraq, maybe he can talk to us a bit on the record not only about where the troops' morale is, what they believe in, and about the issue that was the reason he went there, and that is this enormous challenge of the rule of law, and whether we are making progress in that area, and what he expects, particularly in the area of the prisoner situation.

Mr. GRAHAM. Mr. President, I will try my best. No. 1, my time in the service has been as a military lawyer. I am not a combat operational guy. If you want to talk about my experiences in the military, I am glad to talk about them, but they are limited, and I know how far they should go—not very. As a JAG colonel, I cannot tell you how to deploy troops. I don't know. That is out of my line. I have to make a decision as a Senator when the general comes, as Senator MCCAIN says, as to whether it makes sense to me. I would not advise any Member of this body to follow a four star general's recommendation just because of the number of stars.

Here is what I would advise the Members of this body to do. Listen to what the general says. Use your own common sense. Go in theater and see if it makes sense. For 3½ years, we went to Iraq and we were told by the generals in the old strategy that things were fine. On about the third trip with Senator MCCAIN, I would say we were in a tank. I am a lawyer, so I don't understand military deployments and how to deploy combat troops. But I can tell you this from a lawyer's perspective and from good old South Carolina common sense: After the third visit to Iraq, if you thought things were getting better, you were crazy. We blamed it on the Republican side. The media doesn't tell the story right. It wasn't the media's fault. We were losing operational control of Iraq because we didn't have enough troops. You could see it if you wanted to look. If you were blinded by the partisanship that exists in this building, you will find some other group to blame it on. But it was there to be seen.

I have been seven times—twice in uniform—working on issues where I think I have a little bit to offer. My contribution is insignificant, inconsequential, but I am honored to have been able to be allowed to go, because I am cheering on people over there and I am still in uniform and I am the only one left, and I wish I could stay over there longer because I feel an obligation to do so.

Here is the morale as I see it this time around. A year ago, I was in Iraq—maybe a little bit longer—sitting at lunch across the table with a sergeant. I asked him: Sergeant, how is it going? He said: Senator, I feel like I am driving around waiting to get shot. Not going very well.

This last tour, when I was there for 11 days, I got to have three meals a day with them in Baghdad and meet folks with different missions and responsibilities, including combat guys coming in from the field. I sat down with them every night and I asked: How is it going? I was told: Colonel, we are kicking their ass.

Morale is high because of the new strategy. They are fighting and living with the Iraqi troops out in the field. Their army is getting better. When you talk to the marines in Anbar, they will tell you with pride: Look at what we did here.

For us politicians to deny what they did is an insult to their hard work. They liberated Anbar Province because there were enough of them this time around to join up with the Sunnis in Anbar to make a difference and drive out al-Qaida. This new strategy—and everybody has been asking for something new for a long time—is working. It is working. There are areas in Iraq, as Senator MCCAIN described, that are liberated from a vicious enemy.

On the rule-of-law front, judges have a new level of security because of the surge that they have never known before. The first thing General Petraeus did when he went in theater was create a rule-of-law green zone for judges. We have taken an old Iraqi base and built housing for judges and created a perimeter of security. We have a jail inside the complex, judge housing, a police station, and a brandnew courtroom, so that the judges can implement the law without fear of assassination. I have never seen such growth in an area as I have in the rule of law since the surge began. The judges now are able to do their job without their families being assassinated, and we have seen dramatic improvements.

I will give you two examples. There was a Shia police captain accused of torturing Sunnis at the police station he was in charge of. He is now facing a long-term prison sentence because the Iraqi legal system didn't listen to the fact that he was a Shia and the people he abused were Sunni. They gave a verdict based on what he did, not who he did it to. It is sweeping the whole legal system.

Judges are going into areas that al-Qaida operated from just months ago



and they are rendering justice, but not based on what sect you come from; it is based on what the person was accused of. I witnessed a trial downtown Baghdad where two people of the three were Shia police officers in the Iraqi police force. There was a raid on the house they were living in by the American forces. Coalition troops were the only witnesses and these two defendants who were in a house full of IED material, rocket-propelled grenades, explosive devices that were meant to kill Americans. The defense said: Who are you going to believe, us or the invader? The lawyers in the trial looked the judge in the eye and started citing one verse of the Koran after another to tell the judge he had a duty to stand beside his Muslim brothers and reject the testimony of the infidels. I was there; I saw it.

The three judges conducted a trial that everybody who witnessed that trial would have been proud of. They asked hard questions. They separated the defendants, and rather than listening to dictates from the Koran coming out of the mouth of their lawyer, they asked questions such as how were they in the house, and how could they not have known the weapons were there? They did a great job proving these guys were lying through their teeth. When they reconvened, they got convicted, getting 6 years in jail.

There is progress going on in Iraq. There are people in Iraq who are bigger than sectarian differences. There are judges, lawyers, and average, everyday people who are risking their lives to make their country better. One of the biggest problems they have had is that we screwed up early on and let security get out of hand. With better security, people are beginning to engage in a way I have never seen before.

This idea of pulling back now, reducing our military footprint, at a time when we have made a real difference, is too disheartening to the troops. They are watching what we are doing. I was stopped every 30 feet with questions such as: What are we going to do? Is the war going to go on? Are they going to cut it short? The people fighting want one thing, and that is the ability to finish the job. Do they want to come home? Yes, God knows they want to be home. Are they tired of going over? Yes. But above all others, they want to win.

Senator McCAIN said he met people for the third and fourth time. Well, nobody stays in this military unless they volunteer, to begin with, and when their enlistment is up, there are stop-loss problems, but there is an end to this war for them; it is an end of their choosing. This force, unlike others, chooses when to end the war for them when their enlistment comes. What they are choosing to do we need to understand. They are choosing to reenlist at numbers greater than any other area of the military. Why can't this body sit down and think for a moment; what do they see about this war that I

don't see? Why do they keep leaving their families and going to a dangerous place time and time again, in numbers larger than any other group in the military? Do you know why they do it? I think they do it because they interact with the judges I have just described to you. They see hope. They understand the enemy. They know an enemy that will take a 5-year-old child and put that child in front of their parents, douse him with gasoline and set him on fire, is an enemy to their family. They understand that Iran is trying to drive us out of Iraq because they want to be stronger. And they understand that will mean they are likely to have to fight a bigger war.

From the troops' perspective, from my view, they want to come home, and they want a lot of things; but they want, above all others, the chance to win a war they believe they can win and one we cannot afford to lose.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the author of the amendment, Senator WEBB, be recognized, and that following his comments, Senator WARNER from Virginia be recognized, Senator VITTER be recognized, and that I follow Senator VITTER.

The PRESIDING OFFICER. Is there objection?

Mr. McCAIN. Mr. President, at this point, I have to object, unless the Senator from Georgia will agree that if there is a person on the other side who wants to speak in opposition, we can go back and forth. If we can modify the request that a speaker in support of the amendment may be interjected into that lineup, if there is a speaker in support of the amendment, I will not object. Is that agreeable to the Senator from Virginia?

Mr. WEBB. That is agreeable.

Mr. CHAMBLISS. I say to my friends, I already discussed that with Senator WEBB. I agree to that.

The PRESIDING OFFICER. Without objection, the request, as modified, is agreed to.

Mr. McCAIN. Mr. President, can I hear the unanimous consent request again, please?

Mr. CHAMBLISS. Yes. I ask unanimous consent that the Senator from Virginia, Senator WEBB, be recognized; that following him, Senator WARNER be recognized; that following him, Senator VITTER and myself be recognized; that if there is a member of the other side of the aisle who comes in after Senator WARNER or after Senator VITTER, they be given the opportunity to be interjected into the rotation.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### VOTE EXPLANATION

Mr. CHAMBLISS. Mr. President, I neglected to vote on rollcall vote No. 340. Had I voted, I would have voted negatively.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WEBB. Mr. President, I want to take a few minutes and clarify, from my perspective, the intention of this amendment in the context of a number of the things the Senator from South Carolina spoke about. That was quite a lengthy speech. There was a lot of material in it.

This amendment is a very narrow amendment. It is talking about a minimal adjustment in terms of troop rotation ratios. That is all this amendment is doing.

When the Senator from South Carolina mentioned we should not have the politics of the next election being the driving force in these sorts of situations, I hasten to clarify that my election occurred last year. It is going to be a while before that decision is faced again. The principal cosponsor on the Republican side, Senator HAGEL, has indicated he is retiring from the Senate. These issues we are attempting to put before the Senate have nothing to do with the politics of being reelected.

Another point that I think needs to be made is that no one I know of is trying to push a precipitous withdrawal from Iraq. The Senator from South Carolina made a lot of comments about if you want to end the war, if you believe it is the worst strategic error we have ever made, we should call for cutting off the funding. There are a lot of us, including myself, who believe this was a huge strategic blunder and said so before we went in. As I said to General Petraeus when he was testifying: That was then, this is now.

We have to find a way out of Iraq, for those of us who want to remove our residual forces eventually. That doesn't include everybody in this body. For those of us who want to remove all residual forces eventually, we have to do so in a way that will not further increase the instability in the region and will allow us to focus on international terrorism and our other strategic interests around the world. There is no debate on that. That is not what this amendment is about. We must do that through a proper, regionally based diplomatic solution. That will only take place with the right sort of leadership out of the administration. But that is not on the table. That is not what we are trying to address in this amendment.

There have been questions on the constitutional issues. Again, I go to article I, section 8. The Congress has the power "To make Rules for the Government and Regulation of the land and naval Forces. . . ."

There has been some discussion about how this should not apply to movement of forces during a time of war. I don't see this as a movement of forces in a time of war, and I do see precedent, again, from the Korean war. This is a very similar situation; it is on the other end of it.

In the Korean war, an administration was sending our troops into combat before they had been properly trained.

The administration would say that is proper. The Secretary of Defense would come in and say that is proper, we need these troops in Korea. But the Congress decided it was not proper, that once our people step forward and take the oath of enlistment or oath of office, there is some protection that should come if there is a belief from the Congress that the executive branch has not used them properly.

This is an intrinsically limited power. It is limited by the nature of this process. All one has to do is take a look at the votes we need today to move it forward. But it is a power that belongs in the Congress when the right vote is taken.

Senator MCCAIN and Senator GRAHAM had a lengthy colloquy about service. Believe me, I am indebted to both of them and to the others who have served our country for the service they have given. Thirty years ago this year, I started as a committee counsel in the Congress. I was the first Vietnam veteran to work as a full committee counsel. At that time, two-thirds of the Members in the Congress had served in the military. That number is a very small percentage today. So it affects, in some cases, the ability of people to understand the movements on the ground, but it also increases the importance of people such as Senator MCCAIN and Senator GRAHAM, both of whom I respectfully disagree with on this particular amendment, but it increases the importance of what they are saying and the insight they are bringing. I greatly respect both of them for their service.

I know there is going to be a sense of the Senate submitted after our vote is taken—I assume after our vote is taken. I wish to say again this is basically a figleaf. This is not a time for the Congress to be giving advice. It is a time for the Congress to step in and put a floor under those people who are serving us.

This is a very minimal adjustment, but it is, in my view and in the view of others, an essential adjustment in terms of how we are handling the welfare and well-being of people who are going again and again.

On that point, I again remind the Senate that for the first time in all the years we have been involved in Iraq, we are seeing people from the administration and from the other party openly saying they expect we might be in Iraq for the next 50 years. I was warning 5 years ago this month, in an editorial in the Washington Post, that there was no exit strategy from the people who wanted us to go into Iraq because they didn't intend to leave. Now we are seeing graphic evidence of that. That is a debate we are going to have. That is a debate we are going to have separate from this amendment. The only purpose of this amendment is to provide some stability in the rotational cycles, particularly of our traditional ground forces in the Army and Marine Corps, so we can have that debate in a way

that calms down the instability in the forces.

I yield the floor.

The PRESIDING OFFICER (Mr. MENENDEZ). The Senator from Arizona.

Mr. MCCAIN. Mr. President, while my friend from Virginia is on the floor—my other friend from Virginia—I apologize to him for misspeaking this morning about his sponsorship of any amendment. I know he has a number of proposals he may bring before the Senate in the course of this debate, and I apologize to him for assuming he hadn't had any of those ready at that particular time.

Again, I thank him for the enormous input he has made in this debate and his wisdom and knowledge, and his leaving will create a void around here. Voids are always filled, but I think it may exist for a long time because of the many years of leadership on national security issues he has provided to this body, the State of Virginia, and the Nation. I say to the Senator, please accept my apologies.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my colleague. The factual basis that this follows—I wish to thank him and I wish to indicate to my colleague from Virginia the exact background. I first saw the amendment, prepared by, I believe, Senator MCCAIN and Senator GRAHAM, yesterday when it was circulated to the members of the Armed Services Committee. At that time, I promptly suggested a change in the amendment or, more specifically, an addition that a waiver be put in. I suggested the President. The draft now has the Secretary of Defense.

I say to my good friend—and, indeed, Senator WEBB and I share a very strong bond of friendship. It actually goes back over 30 years, when I was in the Navy Secretariat. Senator WEBB, at that time, a young—still young but anyway a bit younger—Marine captain who, fortunately for me and others in the Secretariat, was assigned to our staff. He had just finished his tour in Vietnam, where he displayed a measure of courage few in uniform in the history of our country can equal. For that he received our Nation's second highest decoration.

I stand in awe of his military career. My modest career pales in comparison to his. Nevertheless, we did form at that time a friendship and resumed it once he came here.

I would like to also say, Senator WEBB and I were both privileged to serve as Secretaries of the U.S. Navy. As I look back on the good fortune I have had in life, that was a chapter—5 years, 4 months, 3 days as Secretary of the Navy—that I cherish as the very foundation for whatever I have achieved thereafter in life. It was the association, the learning I had from men and women of the Armed Forces, that gave me a certain sense of confidence and inner strength that has enabled me to go on and do other things,

most humbly, I say, to serve Virginia for now my 29th year in this chamber.

I have come to know Senator WEBB, of course, in the perspective of being a Senator. I said to others that he possesses the intellectual ability, the sincerity, the feeling about people to make him a great Senator. His career is before him; my career is behind me. When I leave some 14 months from now, having finished 30 years in the Senate, I leave with a sense of confidence that this fine young Senator will represent Virginia well, and they can take righteous pride in his leadership.

But the amendment by Senator GRAHAM is one I somewhat disagree with my colleague on. It embraces the principles he put forth in his amendment, principles which led me to join him when he first laid down his amendment and vote for that amendment. So the question arises: Why, at this point in time, would I go into a very intense deliberative process of reconsidering that process? I will enumerate those reasons.

But I wish to go back again to the service we both had as Secretary of the Navy. It was the management of a force of men and women in uniform. During my period, it was somewhat larger in number than when Senator WEBB was Secretary of the Navy. But nevertheless, we both learned the difficulty, the challenges of managing under the all-volunteer force the men and women of our Armed Forces.

One of the reasons I joined my good friend was the all-volunteer force. I was in the Department of Defense, as I stated, from 1969 through 1974, serving under three Secretaries of Defense, Melvin Laird being the first. He had the concept of going to the all-volunteer force. That concept was not by any means readily accepted. There was considerable and, I think, justified doubt among the uniform ranks at that time, in the White House, and elsewhere, that this daring concept, this unique concept would be able to adequately serve America, given the troubled world, not only at the time of Vietnam but subsequently and particularly at that time in the midst of the Cold War when the Soviet Union, in many respects, had challenged us potentially in terms of their military prowess. Nevertheless, in the wisdom of the executive branch, we went forward, and the Congress subsequently endorsed it.

Senator WEBB's amendment, I say without any equivocation, is designed to help protect the concept of the all-volunteer force. It was for that reason that I joined him because I felt, having been in the Department of Defense at the period of time when the formative stages of that concept were developed, I had a stake in it.

I have said many times on this floor it is a national treasure that the members of today's Armed Forces, every one of them, are men and women who have raised their hands and volunteered. They were not subjected, as

previous generations had been, to a draft and compelled to go into uniform. They were there, every one of them, because they wanted to be there, they wanted to be a part of the Armed Forces that would protect our country.

If we add up all the men and women in the Armed Forces today and include the very valuable Reserve and Guard—because the Reserve and Guard are as much a part of our defense structure, more so than they have ever been—and how magnificently the Reserve and Guard have proven throughout the conflicts in Iraq and Afghanistan, their ability to take on in every way responsibilities, dangers, and personal risk equal to the regular force.

I come back to that little chapter when both of us served as Secretary, and then he subsequently served in the Department in other capacities where Senator WEBB gained a basic knowledge of personnel management, management of not only the Navy Secretariat but prior thereto, when he was looking at all the force structures of the Department of Defense. I readily acknowledge he is an expert and, in some ways, more current than I am, in terms of the management of our forces in uniform.

We have a difference, Senator WEBB and I, and I will spell it out, with regard to the amendment. I endorsed it. I intend now to cast a vote against it. The reasons are as follows:

I went forward some months ago and informed the Senate and, indeed, informed the country, having returned from my 10th trip to Iraq, that I was gravely concerned about the situation over there and gravely concerned about the turbulence here at home, gravely concerned that the U.S. Army and the U.S. Marine Corps were being pushed to the limits, greatly concerned that our Guard and Reserves were being pushed to the limit. Furthermore, I felt that the surge—although I did not fully support the surge, and the record of this body, the Senate, clearly reflects my concerns—at that time, I felt that far more of the responsibility should be borne by the Iraqi forces. In January of this year, 2007, when the President announced his policy regarding the surge, I believed that Iraqi forces should take on a far greater role, particularly as it related to the sectarian violence—the criminal elements that are striking against our forces, and for nothing more than a few bucks undertaking, to put at risk the lives of our great soldiers, airmen, marines, and sailors. I thought that the Iraqi force should take on that and we should concentrate more on the security of that nation, to maintain the sovereignty and integrity of its borders and tighten the borders.

I won't go into the details, but the record is clear that I questioned the surge. Once the decision was made, I think I felt, like most Senators, that I should support the President, and I have tried to do so.

But back again to the force structure problem. At that time, I felt that we

should send a signal to the Iraqi Government by putting some teeth in what the President had repeatedly said; namely, we are not going to be there forever. Our Ambassador in Iraq at that point in time had said something to that same effect. At the time that I announced the recommendation to reduce the forces and have that reduction take place so they could be home by Christmas, Ambassador Crocker had said: We are not giving you a blank check. They were just verbal statements directed at the Maliki government and all levels of the Iraqi Government to say that we are not going to be there forever, but you had to put teeth in it.

I felt if we first announced that we were going to take the first group home—and I carefully said that the President should consult with the ground commanders before he accepted any recommendation from me or anybody else to reduce force levels and begin to send people back such that they would be back home with their families before Christmas, and the President obviously did that. In his message of a week or so ago, he indicated—not necessarily agreeing with me—that he agreed with the concept; that after consultation with General Petraeus and other on-scene commanders, that they could now, based on certain successes of the operation of the surge and visible successes that the intelligence community verified. Indeed, Senator LEVIN and I, on our trip a few weeks ago, saw with our own eyes, where there had been measurable success of the surge—but consequently the President agreed with the thought that troops could begin to depart Iraq ahead of schedule and come home. There are further details of that well-known to Members of this body.

So first and foremost, I asked for that, the administration and the uniformed side agreed with it, and it was done. That put me in a different posture because I felt my thought that it was time to bring some people home was accepted, and therefore I could then turn to the Webb amendment and the need to go back and get a clear understanding from the U.S. military, the uniformed side, of the consequences of the well-intentioned principles of the Webb amendment.

I would like to also digress momentarily to talk about politics. The Senator felt challenged. I wasn't here for the earlier debate. I was holding a briefing with senior members of the military from the Department of Defense on this very subject—the Webb amendment. And I can tell you without any equivocation whatsoever, knowing Senator WEBB as I do, that politics is not a factor in his judgment. He honestly believes—he honestly believes—based on his long experience and his current knowledge of the readiness of the situation of our Armed Forces today that we need a policy, and we need it now, of a 1-month home for every month served abroad in a combat zone.

As I said, I agreed with him. But in that subsequent period of time, I have had consultations with a lot of senior military officers and just concluded a briefing with Lieutenant General Ham, the Director of Operations of the Joint Staff and Lieutenant General Lovelace, the Deputy Chief of Staff for Operations for the U.S. Army. Two respected three-star generals, whom I invited to come over here and further brief me and several other Senators who were present. They are not politically motivated. They are motivated by what they have to do to be fair to those serving in Iraq today.

It is their professional judgment that if this amendment were to be adopted and become law—and I will put aside all the other issues of a possible veto, and I just don't want to see another veto scenario here right in the middle of the war, and that is another reason—but they are absolutely convinced, and have now convinced me, that they cannot effectively put into force that amendment at this time, without causing severe problems within the existing forces and those who are serving there.

One of the consequences that could change in some fashion could be the very thing I advocated—namely, let us bring some of the troops home by Christmas. That might not be feasible if this amendment were adopted. The announced schedule of withdrawals—bringing the force structure down by July 2008 to what we call the pre-surge level, announced by the President and General Petraeus that might not be achievable, the reason being that on any day, if you look at the totality of the U.S. Army, about one-third of it is globally deployed beyond our shores—some 250,000 men and women in uniform. There is a rotation in and out of Korea of roughly 20,000 a year and rotation in other areas of concentration. You just cannot simply look at Iraq or Afghanistan; you have to look at the totality of the Army.

A soldier coming out of, say, Korea, having spent a year over there and expecting to have a year back at home, joins a unit for further training, and that unit is suddenly called to go to Iraq. Well, the only recourse is to begin to pull that soldier and some others out because of their need to have 12 months back here. In fairness, that soldier should have 12 months back here, but that unit has to deploy.

These generals, again putting all politics aside, they have not been ordered to do this; they are simply trying to manage the U.S. Army today in a way that is equitable to every single soldier, and they have convinced me they cannot manage it in this time period. If this amendment were changed to be effective at, say, the beginning of fiscal year 2009—starting in October of 2008—they feel they could manage it, certainly with regard to the combat units that are going over. But they still have a problem with—for example, in Iraq today there are some 50,000 soldiers who are in what we call combat support roles, not just cooks and bakers,

although they are essential, but the people who are performing the removal of the IEDs over which the combat trucks roll to go forward to the front. If there is any single front in Iraq, and I don't think there is, the concept being they are deployed there to different parts of Iraq. Iraq is a 360-degree battle zone, in my judgment. And how well we know that the IED is causing the most severe damage to our soldiers in terms of loss of life and limb in Iraq today. They explained to me that the persons, the explosives experts who know how to go in and detect and remove these lethal weapons, are in short supply. The Army is doing everything it can, the Marine Corps everything it can, to train sufficient numbers of these individuals to come in and do these jobs, but they, too, have to be treated with a sense of fairness. They cannot be subjected to having to stay there maybe 15 months, maybe even longer, because we have no replacement for them.

So at another time, because I don't want to go into greater detail here—there was point after point these generals made in our briefing and that I have studied that clearly documents the difficulty, the unfairness, to others now serving in Iraq if this amendment were to become law.

Now, to the credit of Senator WEBB and in my conversations with him—although I don't know that I was the one who persuaded him—he went ahead and added an extension to his amendment, so that it goes into effect 120 days after the authorization bill is signed into law. Well, that still does not carry it anywhere near the October 2008 date, which is the earliest date that the Army feels it can now follow the Webb amendment and its goals. These generals told me there is no one who wants to move to the 1-to-1 ratio with any greater fervor or desire than the senior military staff of the U.S. Army and, indeed, others in the Department of Defense. They want it. They would do everything within their realm of professional responsibility to make it happen. But they simply cannot make it happen in the time frame as it is now couched in the provisions of the Webb amendment.

Mr. President, for those reasons and others—and I know I am taking generously of the time of others here—I feel I will have to cast a vote against my good friend's amendment. It is a change of vote for me, I recognize that, but I change that vote only after a lot of very careful and analytical work with the uniformed side of the Department of Defense.

The Secretary of Defense has written me on this subject, in a very detailed letter. I have a great deal of respect for him. I traveled with him this week and talked to him, and I tried to explain that possibly there are changes which could be made to the Webb amendment which would enable us to go forward and enact it into law, as opposed to a sense of the Senate, which I do hope we

vote on later, but that was not achievable. I did my very best, but it was not achievable.

So I say to my good friend from Virginia, I agree with the principles you have laid down in your amendment, but I regret to say that I have been convinced by those professionals in uniform that they cannot do it and do it in a way that wouldn't invoke further unfairness to other soldiers now serving in Iraq.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I want to thank the Senator from Virginia for his knowledge, his wisdom, and his in-depth analysis of the situation. All of us who know him are appreciative of the very difficult process he has gone through as he has attempted to balance the needs of the military, America's national security, and the frustration and sorrow and anger that is felt by many Americans over our failures in this war. I thank him for the consultation process he has gone through. I have never known the Senator from Virginia to arrive at a decision without a thorough and complete analysis of it. He has used the wisdom he has acquired since World War II, when he served as a brave marine.

Mr. WARNER. Sailor, you rascal. How could you forget that?

Mr. MCCAIN. Excuse me—sailor, and later in the Marine Corps. He went wrong—I mean he did very well by serving both in the U.S. Navy and the U.S. Marine Corps, and then, of course, as Assistant Secretary of the Navy and as an outstanding chairman of the Armed Services Committee. So I thank him for his in-depth analysis, I thank him for his leadership and guidance to all of us and to all of our citizens, and for a very thoughtful and persuasive discussion.

As we move forward on this issue, no matter what happens with the Webb amendment, we will be faced with the situation in Iraq. I hope the situation improves and these debates can be eliminated over time. I am not sure they can. I hope and pray they can, but in the meantime we will rely on the judgment and guidance of our friend from Virginia.

Mr. WARNER. Mr. President, if I might ask the Senator a question because, indeed, the Senator has a career of active-duty service to the country that cannot be paralleled, certainly by this humble Senator or many others. But don't you believe in your heart of hearts the Webb concept of 1 to 1 is a good one, and if it were possible for the military to achieve it they would do so, and we would all vote for this amendment?

Mr. MCCAIN. I say to my friend, he is exactly right. He is exactly right. Among the many failures, as my friend from Virginia knows very well, is that at the onset of this conflict it was believed by the then Secretary of Defense and others in the administration, in-

cluding the President of the United States, this was going to be quick, it was going to be easy, it was going to be over.

There were people such as the Senator from Virginia—and, I might add, and me—who said you have to have a bigger Army. You have to have a bigger Marine Corps. The Army and Marine Corps is one-third smaller than it was at the time of the first gulf war. We should have paid attention to our friend and comrade, General Powell, and the Powell doctrine, and we obviously should have understood the requirements in the postinitial combat phase, which I think would have relieved this terrific burden we have laid on the men and women in both the Active Duty and the Guard and Reserve. God bless them for being able to sustain it. It is a remarkable performance on their part.

Mr. WARNER. Mr. President, on that point, I grilled these officers today very intensely. You may recall that in January, subsequent to the President's announcement of the surge, the Secretary of Defense stepped up and said: Hold everything. I am going to put in place a callup policy for the Reserve and the Guard which will enable them to have a clearer understanding of how much active service they will be called upon to do and, more important, once that active service is completed, how much time they can remain home.

Now, a reservist has to maintain two jobs, in a way: his Reserve job and his job with which he puts, basically, the bread on the table for his family, in the private sector. So they are different than the regulars.

I was told today that, if the Webb amendment became law, they would have to go back and revisit and change that policy that the Secretary of Defense enunciated for the Guard and Reserve in January, this year.

Is that your understanding?

Mr. MCCAIN. That is my understanding, I would say to the Senator from Virginia, and I also say that is why I think we need to have a Sense-of-the-Senate resolution, to reflect the overall opinion of the Senate that we need to fix this situation. Obviously, the unintended consequences of putting it into law at this time are myriad. The Senator from Virginia has, in the most articulate fashion, described those. I agree with the Senator from Virginia.

Mr. WARNER. Mr. President, I conclude my remarks by saying—others are waiting to speak—the reason I brought up Senator WEBB's distinguished career as former Secretary of the Navy, and indeed in the Department of Defense in an earlier assignment, is he understands these arguments. He has looked at them. I respect his views. We have a personal difference of opinion on the professional viewpoints, that it can or cannot be done.

He believes honestly it can be done. I believe, based on what I related this

morning and that my ranking member has stated—we feel it can't be done. Therein is the problem.

I, in no way, in any way denigrate what Senator WEBB is trying to do. It is just that we have an honest difference of opinion, mine based on basically the same facts that have been given to him. He has a different analysis than do I.

Mr. MCCAIN. Mr. President, I wish to add one additional point, though, that I think is important. I also believe that it is unconstitutional for this body to dictate the tours of duty and the service of the men and women in the military and how that is conducted. I am absolutely convinced, from my reading of history and of the Constitution, that to enact such an amendment would be an encroachment on the authority and responsibility of the Commander in Chief which could have significant consequences in future conflicts, particularly if those conflicts at some point may be unpopular with the American people. So I have additional reasons, besides our desire to—the impracticability, as the Senator has so adequately pointed out.

I see my friend from Illinois is waiting.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. OBAMA. Mr. President, let me begin by expressing my utmost support for Senator WARNER. I am absolutely convinced of his commitment to our troops. I do not think there are many people in this Senate Chamber who understand our military better or care more deeply about our military. So I have the highest regard for him.

I have to say I respectfully disagree on this issue and must rise in strong support of the amendment offered by Senator WEBB to require minimum periods between deployments for members of our armed services who are serving in Iraq and Afghanistan. This amendment protects our brave men and women in uniform and ensures that our Armed Forces retain their ability to meet any challenge around the world. That is something that ultimately all of us have to be concerned about. I am proud to be a cosponsor of this amendment.

I opposed the war in Iraq from the beginning and have called repeatedly for a responsible end to the foreign policy disaster that this administration has created. Over 3,700 American service men and women have died in this war. Over 27,000 have been seriously wounded. Each month, this misguided war costs us a staggering \$10 billion. When all is said and done, it will have cost us at least \$1 trillion.

There are different views of the war in this Chamber, but there is no disagreement about the tremendous sacrifice of the men and women who are serving in Iraq and Afghanistan. They have performed valiantly under exceedingly difficult circumstances. They have done everything we have asked of

them. But they have also been stretched to the limit. The truth is, we are not keeping our sacred trust with our men and women in uniform. We are asking too much of them, and we are asking too much of their families. We owe it to our troops and their families to adopt a fair policy that ensures predictable rotations, adequate time to be with their families before redeployment, and adequate time for realistic training for the difficult assignments we are giving them.

Our service men and women will always answer the call of duty, but the reality is extended deployments and insufficient rest periods are taking their toll. The effects of the strain are clear: Increasing attrition rates, falling retention rates among West Point graduates, increasing rates of post-traumatic stress disorder and unprecedented strain on military families.

This amendment is a responsible way to keep our sacred trust while restoring our military to an appropriate state of readiness. It ensures that members of our Armed Forces who are deployed to Iraq or Afghanistan have at least the same amount of time at home, before they are redeployed. It would also ensure that members of a Reserve component, including the National Guard, cannot be redeployed to Iraq or Afghanistan within 3 years of their previous deployment.

After 4½ years of fighting in Iraq and almost 6 years of fighting in Afghanistan, we owe it to our troops and their families to provide them with a more predictable schedule with sufficient time home between deployments. As the Military Officers Association of America, which represents 368,000 members, has stated:

If we are not better stewards of our troops and their families in the future than we have been in the recent past, the Military Officers Association of America believes strongly that we will be putting the all-volunteer force at unacceptable risk.

There are scores of anecdotes that bear out the strain on our families. One woman from Illinois recently wrote my office telling me how her husband was facing his fourth deployment in 4½ years. She described how her husband had spent so much time in Iraq that, in her words: "He feels like he is stationed in Iraq and only deploys home." That is not an acceptable way to treat our troops. That is not an acceptable way to treat their families.

This amendment is not only important for military families, it is also important for our national security. Our military simply cannot sustain its current deployments without crippling our ability to respond to contingencies around the world.

This is all the more important since the administration has squandered our resources on the war in Iraq and neglected to address serious threats to our safety. According to the National Intelligence Estimate in July, al-Qaida has "protected or regenerated key elements of its homeland attack capa-

bility," including a safe haven in Pakistan's tribal areas, operational lieutenants, and its top leadership.

Ensuring the readiness and capabilities of our troops will be crucial to confronting the threat of al-Qaida in Afghanistan and other parts of the world and deterring other threats to America's national security.

Over the coming months, I will continue to push for a new course in Iraq that immediately begins a safe and orderly withdrawal of our combat troops, that changes our military mission to focus on training and counterterrorism, that puts real pressure on the Iraqis to resolve their grievances, and that focuses our military efforts on the real threats facing our country.

I believe this amendment is an important part of that new course. I strongly urge my colleagues to support this proposal.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I was on the floor when the Senator from Virginia, Senator WARNER, made his comments a little bit earlier. I hope a lot of the American people were listening to what Senator WARNER had to say because there is nobody in this Senate who has more respect, not just on military issues but principally on military issues, than does Senator WARNER. He not only has a lot of expertise, and great experience, but he is known to be very thoughtful in his deliberations. He doesn't arrive at decisions of major importance very easily or very quickly. For him to come to the floor and to make the statement he made earlier this afternoon, having thought through this issue and having now decided to change his vote on this particular amendment, is of monumental importance. It is the type of decision that makes all of us proud to serve in this great institution.

I rise in opposition to the Webb amendment. This amendment is about restricting the President and his military leaders' ability to prosecute a war we have asked them to execute and which we unanimously confirmed General Petraeus to carry out. It is an unwise and harmful effort to limit the ability of the President and his military leadership and to handicap their use of personnel and resources available to them.

Senator WEBB's amendment would preclude deployment of certain Active and Reserve Forces based on the number of days they have spent at home. Keep in mind, these restrictions would apply to the Nation's most experienced and capable troops during a time of war, when we face an unpredictable and highly adaptive enemy.

That statement is very similar to what Senator WARNER said a little bit earlier.

There is no one in this body who would not like to see every single one of our troops come home tomorrow. There is nothing pretty about a military conflict. There have been times in

the history of our country when we have had to bow our backs and when we have had to stand up to an enemy that sought to destroy what America stands for. That is exactly what we are doing in Iraq today.

What Senator WARNER said is that if we make a decision in this body to micromanage the war, let's make no mistake about it, if this amendment passes, what we are really going to be doing is subjecting our men and women to greater harm and to the possibility of even greater inflicting of injuries and greater numbers, possibly, of making the ultimate sacrifice. This amendment says there are 435 Members of the House of Representatives and 100 Members of the Senate who have determined that this is the rotation that should be carried out by our military leadership relative to the conflict in Iraq, and that is a micromanagement of the war from the Halls of Congress versus the management of this conflict on the ground in theater by our military leadership in Iraq.

If we do micromanage this war, exactly what Senator WARNER said is what is going to happen, and that is, today in Iraq, the most dangerous weapon that is being fired at our brave men and women who wear our uniform and are protecting the freedom is what we call the IED and the EFPs. These particular weapons are inflicting injuries on our men and women, and are inflicting death on our men and women, requiring them to make the ultimate sacrifice for our sake. We have a very limited number of trained military personnel who are experts in the area of detecting and defusing IEDs and EFPs. If we put those men and women on a mandatory rotation, then we are setting our men and women in uniform up for failure.

I have had a policy since I have been elected to Congress of not trying to make decisions on military issues relative to my personal feelings and my personal beliefs. My decisions have been based upon information I have received from our military leadership, both inside and outside the Pentagon, some civilian folks as well as men and women in uniform, who are more expert in these areas than I am.

In this case, I listened very closely last week as General Petraeus and Ambassador Crocker came to Congress and spent the whole day Monday with the House of Representatives, the whole day Tuesday in the Senate, testifying, answering every question that was propounded to them about what is going on relative to the new vision and the new strategy on the ground in Iraq. What I heard from those men who are the leaders from a diplomatic standpoint as well as from the military standpoint is we are seeing great progress made on the ground by our military that is unlike any progress we have seen during the last 4½ years. That is significant.

If you are not impressed by that, then you simply did not hear what they

had to say. So I think now to say to them: Well, we appreciate the great job you have done leading our troops, but we are going to take the decision-making process out of your hands, and we are now going to decide how the war is going to be prosecuted, that, I think would be a huge mistake.

The Pentagon and the civilian side have responded to the Webb amendment and said this, that if the Webb amendment passes:

Operations and plans would need to be significantly altered. Units or individuals without sufficient dwell time would need a waiver to deploy based on threat. This waiver process adds time, cost, and uncertainty to deployment planning.

Secondly:

In emergency situations, the waiver process could affect the war fight itself by delaying forces needed in theater.

Thirdly:

Units would need to be selected for deployment based on dwell criteria that may in fact cause significant disruption to needed reset, planned transformation or unit training schedules.

Fourthly:

The Department routinely deploys units at less than a one-to-one deployment-to-dwell ratio if the individuals within a unit meet minimum dwell requirements.

The proposed language stipulates minimum periods between deployments for both units and individuals. The requirement to meet both criteria for unit and individuals before deployment could severely limit the options for sourcing rotations.

And more specifically and directly to the point, in a letter dated September 18, 2007, from the Secretary of Defense, Robert Gates, to Senator LINDSEY GRAHAM, I quote a comment made by the Secretary. He says:

The cumulative effect of the above steps [and he had outlined the Webb amendment] necessary to comply with Senator WEBB's amendment, in our judgment, would significantly increase the risk to our servicemembers.

Now, this is one of the military experts in the United States of America, the chief civilian military officer, saying: If this amendment passes, it could significantly—it would significantly increase the risk to our servicemembers. And yet some folks are going to vote in favor of this amendment in spite of the fact that the chief civilian military leader of the United States says it has the potential to significantly increase the risk to our men and women in uniform.

The power of Congress under article I of the Constitution to make rules for the Government and the regulation of the land and naval forces is well understood, as is the President's authority under article II, to command our military forces as commander-in-chief. This amendment, however, is an unprecedented wartime attempt to limit the authority of the President and the military leaders by declaring a substantial number of troops and units unavailable.

Now, again, let me close by saying I wish we could bring everybody home tomorrow and that this conflict would be over. We know we are going to be in this conflict for a long time. The President could not have been clearer on that issue when, on September 17, 2001, in a statement to a joint session of both the House and the Senate, he said:

This is going to be a long and enduring war.

He was right then, and he is right now. This is a long and enduring war. It is not dictated by the brave and professional job our men and women are doing, but it is dictated by a vicious enemy that seeks to destroy everything that is good about America.

We have men and women who are serving today in an all-volunteer Army, Navy, Air Force, Marine Corps. They are very dedicated men and women. They know the mission they have to carry out in Iraq. I know because I have been there five times. I have talked with them with their boots on the ground, including about 3 months ago when I had an opportunity to visit with a number of soldiers in an area that had just been cleaned out, an area in Al Anbar Province called Ramadi.

Ramadi, a year ago this month, was the self-declared capital of al-Qaida in Iraq by al-Qaida itself. Today, because of the great job and the professional job our men and women, fighting side by side with members of the Iraqi Army and other coalition forces, is clear of al-Qaida. But if we seek to limit the ability of our leadership, if we seek to micromanage the war from the Halls of Congress versus on the ground by our leadership in Iraq, then the potential is certainly there for an immediate return of al-Qaida in Iraq to places such as Ramadi.

There is no more important time in the history of our country than the present. That has been the case in so many situations. Certainly this is a very critical time in the history of our country from the standpoint of the ability of future generations to live in the same safe and secure America every previous generation has enjoyed. There is no better way to ensure that, than to make sure we prevail and we win in Iraq.

It is my opinion and the opinion of military leadership, the passage of this amendment leads this nation down a trail of exposure to those who seek to do us harm, when what we need to be doing is listening those men and women who are serving proudly to secure our future generations from the enemy.

I yield the floor.

The ACTING PRESIDENT pro tempore (Mr. CARDIN). The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise as a supporter of the Webb amendment. I want to compliment the Senator from Virginia for offering that amendment. Although he is a freshman Senator, he certainly is no stranger to war a combat veteran, a warrior's warrior, and he



is fully aware of the stresses the men and our military are facing along with their families.

I support the Webb amendment, and I support it for several reasons. One, I want to talk about the surge. I called it an escalation. The escalation was to send more troops to give the Iraqis more time to come up with a political solution.

Well, I wish to salute our troops. For those who are on the ground, the basic number, for those who were part of the escalation, we want to support them for doing their duty, and doing their duty so well. I think by every account, regardless of how one feels about the war, one is very proud of the men and women who are part of our military, who have been on the ground, and have been on the job. They have done their part. And that is what the two reports we got last week are, that if you send in more people, the violence will temporarily come down. But what happens when you do not keep that level? Well, that is a point of discussion.

Let's go back to why they went. They went this summer, in blazing heat, with blazing guns, to give the Iraqis more time. And what did the Iraqis do while our guys and gals were out there in 100-pound armor, trying to avoid IEDs? The Iraqis took a vacation. More time. More time. More time. What is wrong with this picture? So what did more time get us? It got us nowhere. With their 2-month break, they still did not go anywhere near a political solution. Now we are told we have got to keep this up, and we could be there indefinitely because of what? The Iraqis need more time.

Well, I think we are out of time. I think we are genuinely out of time. This is why I support the Webb amendment, because I think we need a different direction. I think we need a different direction in Iraq to do what we can to contain the violence and also to move ahead with a political solution. I am going to support the Webb amendment because I am never going to vote to cut off money. I will vote to protect our troops, and the best way is at least to give them more time while we are giving the Iraqis more time.

How about giving our troops more time to be at home? I am really hot about this. One hundred six degrees in July, they took a break; 110 degrees in Baghdad, our troops are there, they took a break—they, the Iraqis, took a break.

I am also going to be supporting the Biden amendment, because if the Iraqis will not come up with a political solution, now with the so-called soft position, it is time to go to the international community and see if there needs to a hard solution.

I am beginning to explore and believe that perhaps Iraq needs to be partitioned. Part of our solution, though, is while the Iraqis want more time, I want more time for our troops. I want more time for our troops to be at home. That is why I am supporting this

brilliant amendment by Senator JIM WEBB, for our men and our women in the military.

We know what his amendment says is that they have to be at home for at least as long as the length of their last deployment. So if they were there for 15 months, they should be home for 15 months. Then, for the National Guard and for the Reserves, no one would be redeployed within 3 years of their previous deployment.

Why is that important? It is not only important for the Guard and the Reservists, but as the Presiding Officer knows, when a National Guards person goes to meet their duty, their employer in many instances is required to keep that job open, or they at least have that as a commitment of honor.

That used to be 6 months. Now it is 15 months, and home again, back again, while the Iraqis want more time. Our employers are wondering how they can keep those jobs open because they don't want to turn their backs on the military.

We have to get real here. A \$20,000 bonus for a quick fix, quickly trained military doesn't cut it. JIM WEBB is really onto something. Our military is overstretched. Our troops are exhausted. Their families are living with tremendous stress. Every day they wonder what is happening. Every day a family that hears a news report about another attack wonders if their loved one was in it. Every time they are at home and they hear: CNN, breaking, 4 U.S. military killed, 10 killed, 4 killed, they first listen; is it in the zone where my husband or my wife or my son or daughter is? Then when they hear that, they think: Is it the Army or the Marines? They want to know because what they are doing is wondering how close to home it is.

Then they hear that news. For some, it is unbearable news. But all of the news is unbearable for the families at home. We are crushing the very spirit these families have to keep them going. It is not that they went once; it is that they go again. And no sooner do they come back and say: Hello, honey, I think your name is Mary Beth, than they have to go back out again. What are we doing to our families?

I want more time for the troops. I want to give them more time the way the Iraqi politicians want more time. When we think about our troops, we know what they are laboring under. You have heard me say it before. I check the temperature every day in Baghdad. Yesterday, it was 102 degrees. For us, it was 73, a beautiful day. What a day to be out on the bay. I know a lot of our National Guard already deployed would love to be there. I think about our troops, carrying 100 pounds of armor in brutal heat, being shot at, being attacked by IEDs, while we have a policy that is going to give the Iraqis more time, while they are there doing their duty. Let's talk about these families.

In World War II, the military would say: If the Army wanted you to have a

wife, we would have issued you one. It was primarily a single military. That is not true today. For our families, the stress of maintaining a family during all of this while a spouse is at war is an enormous stress. Not only are they facing traumatic stress, but so is the spouse at home. They are trying to protect their children. They are trying to shield their children. The children wonder: How is daddy doing; how is mommy doing? The children learn e-mail. They e-mail mom. They e-mail dad. I know how they communicate. Mom and dad will communicate by e-mail. The little guys and gals will often read the first paragraph, but the last two paragraphs are spouse-to-spouse talking about what is going on. The tension, the fear, the anxiety and, I might add, the financial stress as well is amazing. We are talking about 19-year-olds, 21-year-olds. We are talking about people with two and three children. But we have to give the Iraqis more time.

Well, we are out of time. I know my time is up on the floor, but I will tell you, I am going to vote for this Webb amendment because I am going to give our troops more time. I am going to vote to give our troops more time at home.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent that the next speaker on our side be Senator KYL. He has asked to be in line on this side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BOND. Mr. President, I last came to the floor to speak on the subject of the way ahead in Iraq. Since that time, significant events, both good and bad, have occurred. First and foremost, General Petraeus has presented to the Congress a candid and encouraging assessment that the new strategy in Iraq has shifted the momentum in our favor. The testimony by the general and by Ambassador Crocker reinforced what I and my congressional delegation in May saw in Iraq and what I have heard directly from troops on the ground. The Petraeus counterinsurgency strategy, which is clear an area, move in with local forces, hold it, and then help them build their community, enlisting the locals in fighting the terrorist and showing them security is working—this is the strategy which, last year, I and many of our colleagues were asking for. The old strategy without enough people, without a permanent presence in the community, was not working. Well, it is starting to work now. But General Petraeus has proposed minor immediate withdrawals, withdrawals that are based on the commander's recommendations and security conditions, not Washington politics or micromanaging from this wonderful air-conditioned building.

The President used the term "return on success." That is the term I hope we

will embrace. These brave men and women went over there as volunteers to accomplish a mission. We need to allow them to work with the commanders to accomplish that mission. Even General Petraeus testified that the new strategy had reversed the trajectory of the war. He said: "Al Qaeda is on the run. Security incidents" since the surge began have fallen in 8 of the last 12 weeks. Civilian deaths have decreased by 45 percent. Ethno-sectarian deaths are down 55 percent, and attacks in Al Anbar are down 85 percent.

For all the attempts by the antiwar movement to discredit General Petraeus—and I will address that—he demonstrated enough military progress from his new counterinsurgency strategy to conclude that "we have a realistic chance of achieving our objectives in Iraq."

Secretary Gates on Monday gave a speech in which he said:

For America to leave Iraq and the Middle East in chaos would betray and demoralize our allies there and in the region, while emboldening our most dangerous adversaries. To abandon an Iraq where just two years ago 12 million people quite literally risked their lives to vote for a constitutional democracy would be an offense to our interests as well as our values, a setback for the cause of freedom as well as the goal of stability.

We must realize and recognize that the institutions that underpin an enduring free society can only take root over time.

Secretary Gates was absolutely right. One only needs to look at our own history to understand this. After a long, bloody revolution, a civil war, a struggle for women's suffrage, and a civil rights movement, some 150 years later, democracy is still a work in progress.

Just as Ambassador Crocker testified:

Iraq is experiencing a revolution, not a regime change.

Difficult challenges remain. Political progress in Iraq has been too slow. They have done some things. Actually, they have passed a few bills. In this body, we haven't passed an appropriations bill or a Defense authorization bill yet. We took August off ourselves. It is kind of tough for us to claim that the Iraqi Parliament is not doing its job when we can't seem to get our job done.

On the political front in Iraq, the Government is already sharing oil revenues among provinces. They are reaching out to former Baathists, allowing them to participate in the army and the Government. As I said, millions turned out to vote. It will take time for them, just as America's revolution did, but the benefits of a stable Iraq as an ally to the United States in the most volatile region of the world would be a major blow to terrorism, al-Qaida, and Iran's religious extremists.

Let me be clear: Our national security interest for the near and intermediate term is preventing chaos, genocide, and a regionwide war. That is our interest there, that is why our

troops are there, because if they left, we could be facing far greater challenges, likely attacks on the United States and potentially a regionwide war. Our Intelligence Committee has long warned that precipitous withdrawal would create chaos and those impacts. If we were to be driven out of Iraq on the terms of terrorists and political timelines, terrorists from the Middle East to Southeast Asia to Europe to Africa would be emboldened to spread their fear, oppression of women, death and destruction, just as they were emboldened when we failed to respond appropriately to bombings of the USS *Cole*, Khobar Towers, embassies in Iraq, and the 1993 attack on the World Trade Center—all instances in which civilians and servicemembers were murdered.

Despite General Petraeus's testimony, despite our intelligence community warnings, and despite Secretary Gates's recent remarks, some war opponents continue to want to cede defeat. They refuse to listen to the advice of commanders. They ignore the consequences of a political withdrawal and the problems about which the Intelligence Committee warned.

I am very concerned about the amendment before us. I urge my colleagues to think about it and then vote against it. This is an amendment which would micromanage the war. Even a few of its supporters have been forthright enough to admit that it is a backdoor way of achieving what they want, which is defeat in Iraq by a premature withdrawal, because they know the chaos this would spread. They know what would happen if we tried to implement this into law. As Secretary Gates said on FOX News, such congressional meddling would mean force management, make problems that would be extremely difficult, and affect combat effectiveness and perhaps pose greater risk to our troops. He said when lawmakers intrude into this process, they could produce gaps during which one unit pulling out would not be immediately replaced by another, and as a result, they would have an area of combat operations with no U.S. forces, and the troops coming in would be at greater risk.

Contrary to the notion of its supporters that the measure would give the Armed Forces relief, it actually might force greater use of the National Guard and reservists. I am concerned about the National Guard and Reserve; they have been overstressed. I am concerned about our military; they have been overstressed. You know what happened? After the first gulf war in the 1990s, we slashed the size of our military. We slashed it far too much. The President recommended; the Congress went along with it. We slashed it too far. We are starting to rebuild. We have a very dangerous world. We need to have a military ready to respond.

Let me talk about the troops. I hear from a lot of them. I hear from my son, who is on his second tour in Iraq. He is

a sniper platoon commander. He says he can only speak for 30 or 40 marines, but the one thing they understand is they want to complete their mission. They want to come home. Sure, they would like to be home. But they signed up for a mission. They don't want to withdraw, see all their contributions and sacrifices go for naught. They know that meddling in the war strategy, cut and withdrawal, cut and jog, or tying up the management of the war would be a disaster. They know that al-Qaida and the enemy is hoping that will happen.

This amendment is not as straightforward as cutting funding or withdrawing the troops, but it is perhaps more dangerous. That is why I urge my colleagues to stand up for the men and women who might be put at greater risk, and our national security interests, by refusing the amendment.

I want to talk about another part of this debate that is very shameful. MoveOn.org's attack depicting General Petraeus as "Betray Us" should be condemned, period.

It was an attack on the integrity of an intellectual, distinguished, and patriotic officer serving his Nation during a time of war, with the confidence of his troops behind him.

Make no mistake about it, discussing and condemning MoveOn.org's ad is not a sideshow or a distraction. In fact, it is paramount in a time of war we condemn the trashing of decorated military officers highly respected by their troops, and this one unanimously approved by this body, in order to achieve a political objective.

Marty Conaster, commander of the American Legion said:

As Americans, we all have a duty to speak up when our uniformed heroes are slandered.

He went on to say:

The libelous attack on a general is not the American Legion's primary concern about the anti-war movement. Our concern is for the private, the sergeant, the lieutenant and the major. If a distinguished general could be attacked in such a manner, what can the rank-and-file soldier expect when he or she returns home?

Sadly, the MoveOn.org ad is emblematic of a broader struggle by opponents of the war to muzzle other experts and discredit their views.

It is this tactic of desperation and, ironically, one that attempts to distract the American people from the realities of the threat our Nation and our allies face from terrorism.

Sadly, Mr. President, this effort is being used to attack another distinguished military man approved by this body. It has to do with the field of intelligence, and this is another area we learned is critically important on our Intelligence Committee delegation to Iraq in May.

When we were in Iraq, one of our key generals expressed his great frustration that old provisions of the FISA law were blocking him from keeping our troops in the field safe. Well, I have some good news on that front, and I

thank the Members of this body on both sides of the aisle who, on a bipartisan basis, approved the Protect America Act on August 3 and August 4. That has opened up the lines of communications, the lines of intelligence for our troops in the field, for our safety here at home and homeland security. It has been very important and it eliminated a blockage that was critical.

Now, after we passed it, I have heard some critics, most recently, notably, in the House who have been trying to rewrite history and say the law did things it did not do. They have tried to discredit ADM Mike McConnell, the Director of National Intelligence. I am compelled to set the record straight.

As vice chairman of the Senate Intelligence Committee and sponsor of the Protect America Act, I was the lead negotiator during the final hours as Congress acted to pass a critical short-term update to our Nation's law governing terrorist surveillance. As one who was there, I dispute the misinformation being spread by some, and largely those who were not there, and I will outline the events as they occurred. For my colleagues and members of the press who are interested in the other side of the story, here is what happened.

First, the timeline of events:

In January, the President announced his Terrorist Surveillance Program was being put under the FISA Court, the Foreign Intelligence Surveillance Act Court. Our Director of National Intelligence, the DNI, subsequently stated that after that time the intelligence community lost a significant amount of its collection capability because of the fact that the law, as interpreted, did not square with the technology now in place and it was imposing unwarranted limitations we had not had when we were collecting radio communications, and he asked the Congress to modernize FISA sooner rather than later.

As I said, when we toured Iraq in May, our Joint Special Operations Commander, LTG Stan McChrystal, told us the blockage in electronic surveillance by FISA was substantially hurting his ability to gain the intelligence he needed to protect our troops in the field and gain an offensive advantage.

On April 12, the DNI sent his full FISA modernization proposal to Congress. On May 1, DNI McConnell presented it in open session to the Senate Intelligence Committee. Immediately following the admiral's testimony, I urged that our committee mark up FISA legislation. The reply was until the President turned over certain legal opinions from the surveillance program, Congress would not modernize FISA.

That Congress would hold American security hostage to receiving documents from a program that no longer existed was disheartening. We have received an inordinate amount of docu-

ments from the Department of Justice and the DNI. Yet I do not dispute the desire or the right of Members to seek a few important documents from the executive branch. In fact, I have joined in requesting those. But I did disagree with holding up FISA modernization when those documents are not necessary to do that. Now, despite the urging from the DNI and knowing this outdated law was harming our terrorist surveillance capabilities, for more than 3 months Congress chose to do nothing.

In late June, Admiral McConnell briefed Members of the Senate again urging us to modernize FISA. Finally, his pleadings began to gain traction.

In mid-July, Members of Congress agreed to discuss a short-term, scaled-down version of FISA to protect the country for the next few months before we could address comprehensive reform this fall. Admiral McConnell immediately sent Congress his scaled-down proposal.

Over the next week, Admiral McConnell was given nearly a half dozen versions of unvetted proposals from various congressional staffs across Congress and then pressed for instant support of these proposals. The admiral returned a compromise proposal, including some of the provisions requested.

Finally, we in this body on August 3 and in the House on August 4 passed, on a bipartisan basis, the Protect America Act.

I am pleased that the admiral and I could include in the measure we passed several important changes suggested by members of the majority party. We recognized this legislation still needs to be clarified, but it allowed the intelligence community to collect very important foreign intelligence targeted at foreign sources to keep our troops and Americans here at home safe.

After the passage of the act, I spoke with a number of members of the Senate Intelligence Committee, and I am confident now that we will be able to craft an improved, permanent version of FISA. So there is good news on that front. But now that I have laid out the timeline of sorts, I do need to address some recent attempts, primarily in the other body, to discredit our Director of National Intelligence, Admiral McConnell.

As I said with General Petraeus, unfortunately, the M.O. for some is attacking military leaders. Here, as others attacked Petraeus, they are attacking personally another honorable man. I am disappointed with those who are charging Admiral McConnell with partisanship and duplicity for their own political gains.

Despite accusations to the contrary, Admiral McConnell never agreed to any proposal he had not seen in writing by congressional staff. There were indeed several dialogs where concepts were discussed, but I noted that Admiral McConnell at the end of every discussion said he needed to see and review with these leaders the congress-

sional language in writing before he could support it. It is a good thing he objected because I was present when several elements of FISA were agreed to that the DNI and I wanted but subsequently and notably were absent from congressional proposals later sent to the admiral.

Unfortunately, this bait-and-switch during negotiations was not the only disappointment. There were efforts by some to circumvent the committee process and craft legislation behind closed doors without input from the relevant committee or from the minority side of the aisle. Even as the vice chairman of the Intelligence Committee, I was excluded from most of the key meetings. Not only was I excluded, but most members of the Intelligence Committee, Republicans and Democrats, were left out of the process. Despite attempts to leave out key Members of Congress during the last negotiations, I think we are on the right track. I am confident the Senate Intelligence Committee can pass comprehensive FISA reform, and we have engaged in very positive and encouraging talks, not just—obviously, I have talked with the chairman, Chairman ROCKEFELLER. The Democrats and Republicans in the Senate are making great progress. We are working on the issue, and I have confidence that colleagues on both sides of the aisle can come together on this issue.

Unfortunately, again, today, another Member of the House is trying to demonize to the American public the Protect America Act that we passed in August, saying the bill went too far and was a power grab of executive power. They wrongly claim the law allows warrantless searches of Americans' homes, offices, and computers and reduces the FISA Court to a rubberstamp. That is absolutely flat dead wrong.

While I agree, as I said earlier, the law can be improved, clarified, nothing could be further from the truth. Quite the opposite, the law gave the FISA Court a greater role than it was ever meant to have when FISA was passed in 1978. This Protect America Act in no way allows for warrantless physical searches of Americans' homes, offices, and computers. This sort of inaccurate fear-mongering should have no place in this debate.

I am counting on cooler heads to prevail in the Senate Intelligence Committee, and in the committee we are making real progress. I think with the members we have on our committee, we have a great chance to get an even better bill forging bipartisan solutions that will deal with some questions probably not contemplated when the initial proposal came up to us. We have a lot of different opinions, but all our members want to do what is best for national security and best ensures privacy protections. The key is working out just the right balance, and I am optimistic we will do so.

As we saw in the strong bipartisan support for the Protect America Act,

we can act in a bipartisan manner to protect terrorist surveillance—a critical early warning system—while protecting the civil liberties of ordinary Americans.

Mr. President, I ask unanimous consent to have a brief editorial from Investor's Business Daily called "Mettle Vs. Meddle," referring essentially to the amendment before us, printed in the RECORD.

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

#### METTLE VS. MEDDLE

After last year's elections gave them a slim majority, Senate Democrats enthusiastically endorsed President Bush's choice of Robert Gates to replace Donald Rumsfeld as secretary of defense—with not a single one of them voting against his nomination.

As Senate Armed Services Chairman Carl Levin, the Democrat from Michigan, wished Gates well at that time, he said he hoped the new Pentagon chief would "speak truth to power." Gates certainly did that on Fox News Sunday—telling the powers that be in Congress the truth about their impending attempts at micromanaging the war in Iraq. Gates called the Democrats' plan to require that troops spend as much time at home as in the field "pretty much a back-door effort to get the president to accelerate the draw-down so that it's an automatic kind of thing, rather than based on the conditions in Iraq." While on Fox News, Gates also said:

"The president would never approve such a bill," and the secretary would personally recommend a veto.

Such congressional meddling would "force management problems that would be extremely difficult and . . . affect combat effectiveness and perhaps pose greater risk to our troops."

Intrusions by lawmakers would produce gaps during which "a unit pulling out would not be immediately replaced by another, so you'd have an area of combat operations where no U.S. forces would be present for a period, and the troops coming in would then face a much more difficult situation."

Contrary to the Democrats' notion that the measure would give the armed forces relief, it actually might force greater use of the National Guard and reservists.

Gates stressed that "the consequences of getting this wrong—for Iraq, for the region, for us—are enormous."

He added: "The extremist Islamists were so empowered by the defeat of the Soviet Union in Afghanistan, if they were to be seen or could claim a victory over us in Iraq, it would be far, far more empowering in the region than the defeat of the Soviet Union."

Compare that sober warning with House Defense Appropriations Subcommittee Chairman John Murtha's appearance at the National Press Club on Monday, in which the Pennsylvania Democrat blustered that Iraq would cost as many as 50 House Republican seats in the 2008 elections.

Gates and his boss are obviously interested in America and the rest of the free world winning the global war on terror. The war Murtha and so many of his fellow top Democrats seem interested in winning is the political one being waged in Washington.

Mr. BOND. Mr. President, I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Virginia is recognized.

Mr. WEBB. Mr. President, I would like to emphasize yet again the very

minimal adjustment this amendment is asking for in terms of policy and to also emphasize again it is well within the Constitution and within precedent—article I, section 8.

The precedent is a similar phenomenon as to the issues that are facing us today, just on the other side of the deployment schedule, from the Korean war. When our troops were being sent into harm's way without proper training, the Congress stepped in. It overruled an administration that was doing that. It set a minimum standard of deployment. We are attempting to do the same thing on the other end.

There seems to be a great deal of question in our national debate as to what exactly "dwell time" means. I was in a discussion with Lieutenant Colonel Martinez, who is an Army fellow in the Senate who has extensive command experience at all levels up to the battalion level, as I recall, in many different theaters, just trying to put together notionally what goes on when military units are home after deployment.

So I have an outline, Mr. President, which I ask unanimous consent to have printed in the RECORD.

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

#### MAJOR TASKS THAT OCCUR DURING A ONE YEAR DWELL TIME

Month 1: One week-two weeks to redeploy the BCT from theater; "Re-integration" training; normally 2-3 weeks long; Single Soldier Barracks reassignments.

Month 2: 21 days to 30 days "Block Leave"; Activation of Headquarters; Rear-Detachment Headquarters disbanded; Begin recovery of equipment that was shipped from OIF or OEF.

Months 3-5: Recovery operations of equipment; Personnel receive orders (if they haven't already) for reassignment—needs of the Army (Recruiting, Drill Instructor, Instructors at Training Centers); for individual requirements; and to fulfill reenlistment options; Newly assigned personnel arrive—intent is to create a one-for-one equation for losses.

Month 6: Individual training, crew training, team training, squad-level training; very limited platoon level training; Major reset and refit of major pacing items of equipment—major weapon systems are enrolled into maintenance; Leadership and key personnel receive plans and operational guidance for pending deployment (D-180); Small core of personnel deploy to Iraq or Afghanistan for a 10-day reconnaissance; logisticians deploy to Kuwait to inspect pending stocks; Deployment orders lock in personnel.

Month 7: Platoon and company level training—limited resources to conduct quality training; 2-3 weeks deployed in the field; Deployment training continues—key leaders deploy to a National Training Center (Fort Polk, Fort Irwin, Hoensfel, GE); 2-3 weeks deployed to these centers; Maintenance of critical weapon systems and equipment continues.

Month 8: Leadership and Key Leaders tied into Command and Control exercises and begin interfacing directly with units in Iraq or Afghanistan—reverse training cycle (evenings) to stay in touch with Baghdad and Kabul times-zones; Units begin reporting combat readiness and deployment issues to DA; Battalion (minus) collective training—2-

3 weeks deployed to the field; Maintenance of critical weapon systems and equipment continues.

Month 9: Ship equipment to a National Training Center for Mission Rehearsal Exercise; Ship equipment to theater; Short block leave period (2 weeks).

Month 10: Brigade and Battalion level Mission Rehearsal Exercise—3-4 weeks deployed (units at 75% strength, at best).

Month 11: Advanced Party Personnel pack equipment and depart; Final Non-deployment personnel are identified—unit request for fills is submitted; other divisional units and the Army begin to provide replacements; Main Body Personnel pack equipment; Limited individual to squad level training continues; Major equipment systems return to unit; inspected, packed, shipped to theater as required or will be taken with Main Body.

Month 12: Active Rear Detachment; Replacements continue to arrive; Begin final packing; Deployment Training (Administrative Tasks); Begin Deployment.

Mr. WEBB. But I would like to mention some points out of this outline. It is a very good survey of the types of things our soldiers have to do.

So put yourself in the mind of a soldier who has just finished a 15-month deployment in Iraq. When they come home for a year, which is all they get now after a 15-month deployment, they do not sit around and get to know their family and have rest time. There is a little bit of that, but month by month during these 12 months of dwell time before they have to redeploy, these are the types of things they do:

In the first month, they have 1 to 2 weeks of redeployment from the theater back home. That is a part of that first month. They have what is called reintegration training for a couple weeks.

In the second month, there is "block leave," but then they activate the headquarters. They begin recovery of equipment that was shipped.

In the third through the fifth months, they have recovery operations of their equipment. They have the requirement of bringing in newly assigned people, the typical adjustment at the top and at the bottom which requires a great deal of command supervision in terms of bringing these people and assimilating them into the units.

In the sixth month, they have individual training, crew training, team training, squad-level training, and begin platoon training. A small core of their personnel at the top actually have to deploy back to Iraq or Afghanistan for 10-day reconnaissance.

In the seventh month, they have more platoon and company-level training, and 2 to 3 weeks out of that 1 month are out in the field.

In the eighth month, they have command and control exercises. They have units beginning to report their readiness status to the Department of the Army. They do collective training, just below the battalion level. And 2 to 3 weeks, again, out of that month are in the field.

In the ninth month, they start shipping equipment, which is a 24/7 process, shipping equipment to a national training center, shipping equipment back to

theater. The 10th month, they have rehearsal exercises, brigade and battalion level. These are 3 to 4 weeks out of that one month where they—and at this point these units are approximately 75 percent full strength. So what happens then? You have a unit which is 75 percent full strength which is going to deploy, and they start bringing people in. They call it backfill. It is also predominant in the Marine Corps. They start bringing people in who have been home, in many cases, less than even the people in this unit.

The 11th month, you have the advanced party personnel leaving, packing their gear and going. You have your final personnel being selected. You go back to individual training, major equipment systems returning to the unit, inspected, packed, and shipped to theater.

The 12th month, you activate rear detachments, you assimilate your final replacements, and you deploy.

So that is the year, which is called dwell time after a 15-month deployment. Obviously, what occurs after that 12-month cycle of dwell time is another combat deployment.

So that is the situation we are addressing. That is the situation that, in my view, we need to bring the Congress in as a referee. Why? I will give you one example. When the Chief of Staff of the Army called me to tell me they were going to 15-month deployment cycles several months ago, moving from 12- to 15-month deployment cycles, I was stunned. I said: How can you do this? How can you not stand up and resist the notion that your troops are going to be deployed for 15 months with only 12 months at home? He said: Senator, I only feed the strategy; I don't make the strategy. Yet when we had General Petraeus before the Armed Services Committee and Senator NELSON of Florida asked him about this dwell-time problem, he basically said: Talk to the Chief of Staff of the Army. He is the person who gives us our people.

So when you have that kind of a situation, and this sort of activity that goes on when people are arguably out of theater, we need a result. We need a resolution. We need people who are going to stand up and say, basically, however long you have been gone, you get that much back.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I will take a minute to say to my colleagues we have several speakers lined up, and if Senators would come over and speak and also call as to whether you wish to speak and how much time, because we, I think, are close to entering into an agreement on speakers and also a time agreement so we can set a time for the vote on the Webb amendment.

Mr. President, I ask unanimous consent that following the disposition of the Webb amendment, that a side-by-

side alternative to the Webb amendment be considered, which is in keeping with the agreement—well, I withdraw my request because I will wait until Senator LEVIN comes so there is no misunderstanding, except to say we do intend, after the disposition of the Webb amendment, to propose a side-by-side amendment which then we, I hope, could act on quickly because it is basically the debate we have been having. There is also the habeas amendment pending, as I understand it, and negotiations I think are still going on with regard to that issue. I hope we could get that resolved, and then we will try to nail down the number of amendments so we can address the issue of Iraq and associated amendments so we can then move forward with the rest of the DOD authorization bill.

I will very soon have conversations with Senator LEVIN, but in the meantime, if there are those on either side who wish to speak on this amendment, please make their wishes known, and the length of their statement, so we can begin to put together a unanimous consent agreement, which would then allow for a vote on the Webb amendment. I say this after having had discussions with Senator WEBB on the issue.

I wish to make one additional comment. Dr. Kissinger had a piece in the Washington Post on Sunday which I had printed in yesterday's RECORD. I also comment to my colleague an article by Frederick W. Kagan entitled "A Web of Problems."

Mr. MCCAIN. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I will be brief. I know there are others who wish to speak. I would like to reiterate what Senator MCCAIN and Senator WARNER have said with regard to the pending amendment. All of us have the utmost regard for the junior Senator from Virginia and his intentions with respect to this amendment, but it is also true that despite those best intentions, there would be very unfortunate consequences should his amendment be adopted. It has been well presented by a number of my colleagues as to what those consequences are. Secretary Gates himself has personally responded to the possibility of such an amendment being adopted by noting the adverse consequences for his ability and those of the military commanders to deal with the constraints that such an amendment would place on their ability to deal with individuals and units being deployed.

Part of the problem, as I understand it, is the amendment applies not just to the units of military combat but the individuals within those units because it relates to the specific amount of time those individuals spend back home either in training or at rest while they are not deployed. Part of the problem, as Secretary Gates personally related to me, is the fact that when

you get ready to send a unit abroad into theater, especially for a combat mission, you want them to be not only trained together but prepared to do everything our military does in the middle of combat with a unit-cohesive approach to protecting their friends and carrying out their mission. They do this by training together and fighting together.

The concern expressed was that if you get into a situation where Congress imposes a law on the Executive, which is then binding on the military commanders about the exact amount of time that is permitted for troop rotation, that the individuals responsible for putting these units together are going to have to review each and every member within that battalion, for example, to determine whether the appropriate amount of time back home has been spent as opposed to in theater and, therefore, to the extent they do not meet the criteria, pull them out of the units so others then can be plugged in. This may be on the eve of deployment. It could be at any point. The result is you do not have the kind of unit cohesiveness you would otherwise. You have people who have been plugged into military units who should have been training with them all along, so when they go into combat, they fight as one. That could put forces at risk.

In addition to that, because you will have to draw people from other places, the concern is it could put greater strain on the Guard and on the Reserve, filling in for slots that are vacant from Active-Duty personnel. The Secretary has spoken to this, as I said. It has been well presented by Members on the floor as to what his concerns are.

The last point I would mention, and it is not a small point, is the attempt by Congress to dictate very specific terms of operational flow of individual members of our military, which is clearly not within the purview of Congress's jurisdiction. I know there has been an attempt to make an argument that the Constitution does not prohibit this. You have to stretch pretty far as a lawyer to make that argument. It is clear under the Constitution the Founders thought it would be best if the President, the Executive, be the Commander in Chief of the military forces. If anything should fall within his purview as Commander in Chief, and then within the chain of command to his military commanders, it should be the individual soldiers, sailors, airmen, and marines fighting in theater, it should be the individual—the decision of those commanders with respect to the deployment of those individuals. That is about as specific and personal as you can get with respect to a Commander in Chief's jurisdiction over these fine men and women who serve for us.

To suggest that Congress actually has the authority to override or to bind any future Commander in Chief in this

regard I think is to stretch the Constitution way beyond what the Founders thought and way beyond what makes sense. Somebody has to be in charge. You can't have all of us, as smart as we are, as "armchair generals" deciding all of these details of deployments with respect to the members of our military. It does not make sense. As Secretary Gates said, it could put our folks at risk. Why would we want to do anything that might put them at risk? I know this isn't the intent of the author of the amendment, but it is very clear that one of the unfortunate consequences of this is the indirect—the backdoor—influence on the amount of time we can spend in this surge.

It is probably true that as a result, were this amendment to be adopted, the way the surge is carried out, the time within which troops could be redeployed home will be adversely affected. That is an unfortunate consequence of the amendment.

So for all these reasons, I hope my colleagues will be very careful about binding future Presidents, about getting very close to the line in terms of constitutional policy—I think going over the line—and intruding into an area that could put our forces at risk. Take the concerns of the Secretary of Defense—whom I think all of us have a great deal of confidence in—take those concerns into account. Don't dismiss them. They are very real. I think he has expressed them in a most serious way.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I ask unanimous consent that the Senator from Washington be recognized for 14 minutes and then followed by the Senator from Kentucky for 12 minutes; and then I see the Senator from Montana on the floor, so the Senator from Montana for 5 minutes, followed by the Senator from Connecticut—this is going back and forth on both sides—for 14 minutes. I hope by then we will have been able to have the speakers and their times together so we could set a limit on this debate when everybody is heard.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. McCAIN. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I thank the Senator from Arizona for helping us work through that.

More than 4½ years into this war in Iraq, our troops are stretched thin, we all know the equipment is deteriorating, and the patience of the Nation is wearing out. We have now seen 3,700 of our servicemembers die and thousands and thousands more have been injured. Month after month, our fighting men and women are pushing harder and harder and our troops are leaving

their loved ones behind for months and years and putting their lives on the line without complaint. We owe them the best treatment and the best training possible. Unfortunately, the Bush administration has continually fallen short in doing that.

Our country is home to some of the finest fighting forces in the world, and we can all be very proud of that. We need our military to remain the best trained, the best equipped, and most prepared force in the world. Tragically, however, the war in Iraq and the President's use of extended deployments are now undermining our military's readiness. The current deployment schedule hampers our ability to respond to threats around the world. We know it causes servicemembers to leave the military service early. It weakens our ability to respond to disasters at home. It unfairly burdens family members and intensifies the combat stress our servicemembers experience.

We do need to rebuild our military, and the first step is giving our fighting men and women the time they need at home to prepare and train for their next mission. So that is why I am on the floor today, to speak to the readiness challenges that threaten our military strength and ultimately our Nation's security.

Two months ago, I came to the floor and spoke those very same words in my effort to support the Webb amendment—virtually the same measure we are now, this afternoon, considering. Member after Member did the same, pleading with our colleagues to join us in this most basic effort to truly support our troops. Unfortunately, even though 56 Senators voted in favor, it was blocked by the Republican Senators. Now since that time, 2 months later, more of our troops have died, more have been wounded, and more have been subjected to 15-month deployments, without hope for the same amount of time at home. Meanwhile, the administration has told us 15-month deployments will continue, and they have maintained their plan to keep 130,000 troops in Iraq.

Today we have another chance—another chance to support our troops, to support their families, and to return some common sense to our troop rotations. We need a few more courageous Senators to join us. Today I hope they will.

Sadly, our forces are being burned out. Many of our troops are on their third and even fourth tours in Iraq and Afghanistan. Months ago, the Department of Defense announced that tours would be extended from 12 months to 15 months. On top of all that, they are not receiving the necessary time at home before they are sent back to battle.

This is not the normal schedule. It is not what our troops signed up for. And we in Congress—those of us who represent these people—should not simply stand by and allow our troops to be pushed beyond their limits like this.

Traditionally, active-duty troops are deployed for 1 year and then they rest

at home for 2 years. National Guard and Reserve troops are deployed for 1 year and they rest at home for 5 years. But that, as we know, is certainly not the case today. Currently, our active-duty troops are spending less time at home than they are in battle, and Guard and Reserve forces are receiving less than 3 years rest for every year in combat.

With the increasing number and length of deployments, this rest time is even more critical for our troops. Unfortunately, though, our forces are not receiving the break they need, and that increases the chances that they become burned out. But this administration has decided to go in the other direction, pushing our troops harder, extending their time abroad, and sending troops back time and again to the battlefield.

The current rotation policy not only burns out servicemembers, but it hurts our military's ability to respond to other potential threats.

For the first time in decades, the Army's "ready brigade," that is intended to enter troubled spots within 72 hours, cannot do so; all of its troops are in Iraq and Afghanistan.

The limited time period between deployments also lessens the time to train for other threats. Numerous military leaders have spoken to us about this problem.

GEN James Conway said:

... I think my largest concern, probably, has to do with training. When we're home for that seven, eight, or nine months, our focus is going back to Iraq. And as I mentioned in the opening statement, therefore, we're not doing amphibious training, we're not doing mountain-warfare training, we're not doing combined-armed fire maneuvers, such as would need to be the case, potentially, any other type of contingency.

Those were not my words; those were the words of GEN James Conway, who spoke before the Senate Armed Services Committee in February of this year.

GEN Barry McCaffrey said that because all "fully combat ready" active-duty and Reserve combat units are now deployed in Iraq and Afghanistan, "no fully-trained national strategic Reserve brigades are now prepared to deploy to new combat operations."

This current deployment schedule is making us less ready for other contingencies we need to be ready for. It is also making us less secure at home. The current rotation policy has left our Guard units short of manpower and supplies, and it has severely hindered their ability to respond to any kind of disaster they might face here at home.

For years, those kinds of problems were the exception, not the rule. But I fear that the balance has shifted. Recently, USA Today reported that National Guard units in 31 States say 4 years of war in Iraq and Afghanistan have left them with 60 percent or less of their authorized equipment. Last month, LTG Steven Blum said the National Guard units have 53 percent of the equipment they need to handle



State emergencies, and that number falls to 49 percent once Guard equipment needed for war, such as weapons, is factored in. In fact, Blum said:

Our problem right now is that our equipment is at an all-time low.

That is deeply concerning to a lot of us who worry about national disasters in our States. Out in the West, where I live, we face forest fires; along the gulf coast, we have seen the destruction of hurricanes this season; and in the Midwest, entire towns can be decimated by tornadoes in minutes. So we are deeply concerned about our Guard and Reserve being ready for a disaster here at home.

This problem is about more than equipment. It is about retention rates. It is about real people and real families. We all know military life can be very tough on our troops and their families. They go for months, and sometimes years, without seeing each other. Our troops—these men and women—need adequate time at home to see their newborns, to be a part of their children's lives, to spend time with their husbands or wives, and to see their parents. This current rotation policy decreases the time families are together, and that places a tremendous strain on everyone. Our troops, who are facing these early deployments and extended tours today, have spoken out. When the tour extensions and early deployments were announced, our troops themselves expressed their displeasure.

In Georgia, according to the Atlanta Journal-Constitution:

Soldiers of a Georgia Army National Guard unit were hoping to return home in April, but instead they may be spending another grueling summer in the Iraqi desert. At least 4,000 National Guard soldiers may spend up to 4 extra months in Iraq as part of President Bush's troop increase announced last month.

SGT Gary Heffner, a spokesman for the 214th, said news of the extension came as a "little bit of a shock" to the Georgians.

In the 1st Cavalry Division, according to the Dallas Morning News:

Eighteen months after their first Iraqi rotation, the 2nd Battalion, 5th Cavalry regiment, and the last of the Fort Hood, Texas-based 1st Cavalry Division, returned to Iraq in mid-November.

These are the words of Brandon Jones, a veteran from my State of Washington. He testified before a field hearing on mental health care that I held in Tacoma last month. He said:

In November 2003, I was called to full-time duty with the 81st Brigade. I was given very short notice that my unit was being mobilized. In that time, I had to give up my civilian job—an income loss of about \$1,200 a month—and my wife had to drop out of classes at Olympic College to care for our children.

I went from living at home and seeing my children on a daily basis to living on base—just a mile from home—and visiting my children periodically. To my kids, I went from being their dad to the guy who drops by the house for a visit once in a while.

The 3 months of mobilization before my deployment were very stressful. We struggled financially. Although we reached out for help, we were told that the only financial re-

sources available were strictly for active duty soldiers at Fort Lewis. It wasn't until we were threatened with eviction and repossession of our car that my wife was able to obtain a small amount of assistance generally reserved for active duty soldiers. Our families helped us make up the rest—about 60 percent of what we were in need of.

The stress made it difficult for my wife to keep a positive attitude, for our children to feel comfortable, and for me to concentrate on the mission ahead of me. When my wife and I reached out for marriage counseling prior to my deployment, we were made to feel that the few sessions we were given were a favor to us and that we were taking up a resource meant for active duty soldiers from the base.

Let me remind you that all of this happened before I was even deployed.

As Brandon said, that was before he was even deployed. Just imagine the sacrifice these families have made when they go through these 15-month deployments. To me, it is very clear that we need to pass the Webb amendment. We hear a lot of rhetoric on the floor about supporting our troops, but I believe this amendment is the opportunity we need to end the rhetoric and start with action.

Troops should be at home for the same amount of time as they are deployed. That seems to me like a basic commonsense requirement. I applaud our colleague from Virginia for being a champion for our troops and for crafting this bipartisan measure that he and the entire Senate can be proud of.

Our troops have sacrificed a lot. They have already gone above and beyond the call of duty. We need to institute a fair policy for the health of our troops, for the health and well-being of their families, and for our Nation's security and our ability to respond to disasters here at home. This amendment does all of those things. I urge our Senators to support this amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, the Senator from Michigan, the chairman, will be recognized to point out that we will have a side-by-side amendment, which I will be prepared to introduce soon. We also wish to move forward with speakers so we can set a time for a vote on the Webb amendment, in keeping with the wishes of the respective leaders.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I discussed this with the Senator from Arizona. I ask unanimous consent that after the current lineup of speakers, Senator BROWN be recognized for up to 10 minutes, Senator STABENOW be recognized for up to 10 minutes, and then, as the Senator from Arizona mentioned, we will try to see if in the next few minutes we are able to come up with an agreement to schedule a vote—probably, I guess, around 5 o'clock, for the convenience of Senators.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky is recognized.

Mr. BUNNING. Mr. President, I rise today to voice my strong objection to the Webb amendment. I voted against this amendment when it was offered 2 months ago, and I will vote against it again today.

I will not support this slow-bleed strategy from Iraq. It ties the hands of our commanders. I cannot remember a time in history when the Congress of the United States has dictated to our commanders on the ground how to conduct their mission to this extent.

This is an extremely dangerous amendment. The junior Senator from Virginia would like for you to believe it helps our troops and that a vote in support of his amendment is a vote to support our troops. Wrong. Nothing can be further from the truth.

This amendment would be a nightmare to execute. It says a soldier must spend 1 day at home for every day the soldier is deployed. That may sound reasonable on its face, but anyone who knows how the military plans its missions knows it will be a logistical roadblock for our military planners.

The problem is when a unit returns from a deployment, its personnel are often reassigned to other units and other assignments. Divisions, brigades, battalions, and units don't stay together forever. In a military of millions of people, there are a lot of people reassigned each day.

This amendment would essentially require the Army and Marine Corps staff to keep track of how long each service man or woman has spent in Iraq or Afghanistan, how long they have been at home, how long their unit was deployed, and how long it was home. This is absurd. This would mean pulling soldiers out of units scheduled to deploy if the servicemembers did not have enough dwell time.

This breaks up leadership and soldier teams, the formations of which are the purpose of the Army and Marine training system. Requiring the President to issue a certification to Congress to waive this requirement for every individual servicemember who might be affected by this is even more absurd.

This amendment takes tools and flexibility away from our commanders on the ground, such as General Petraeus. That is why it is being offered today.

Commanders make estimates about the forces they need based on assumptions about current and future threats. If a commander in Iraq or Afghanistan concludes that some event might require the deployment of additional forces to his theater, this amendment would restrict the units and personnel that could be sent.

The junior Senator from Virginia claims to be concerned for the welfare of our troops. Not one Member of this body is opposed to troops getting rest after a long deployment. But we need to be equally concerned about the dangers our soldiers face when they do not

have the necessary resources and reinforcements available to do their mission. This is the true purpose of this amendment. It cripples the ability of Secretary Gates, General Petraeus, and our other commanders on the ground to accomplish their mission and forces a drawdown of our troops in Iraq and Afghanistan.

I will not support this strategy out of Iraq. It puts troops in harm's way, restricting the resources and reserves they need to successfully accomplish their mission.

This is not supporting our troops. It is wrong to cloak a troop pullout amendment in language that relates to troop rest, but that is exactly what this amendment does.

This week I had the pleasure of visiting with two brave Kentuckians who recently served in Iraq. They came to me directly to ask me to vote against the Webb amendment. These Kentuckians know the sacrifices their fellow soldiers and families make. They know and understand the importance of rest back home. They know the strains of war. They have experienced the heat of Iraq and the tragedy of knowing that some of their fellow soldiers never made it home.

But these two Kentuckians also know the intent of this amendment. They know why it was offered, and they do not want to tie the hands of the military so we are forced to leave Iraq and Afghanistan before the mission is completed. That is why they came from Lawrenceburg, KY, and Hebron, KY, to ask me to oppose the Webb amendment.

It is not Congress's role to mandate individual soldiers and unit deployments. I know the Democrats like to try to micromanage the war, but I am not the Commander in Chief and neither are any of my colleagues across the aisle. I want to remind everyone in this body of this fact.

If you want to truly support our troops, then vote against the Webb amendment. It was defeated 2 months ago on the Senate floor, and I can only hope it will be defeated again today.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

Mr. TESTER. Mr. President, I rise in support of the Webb amendment. I am pleased to be a cosponsor of this amendment. Much has been made about this amendment and the well-being of our troops and their families. Make no mistake, this amendment is about ensuring that we do not do permanent damage to the military's most valuable asset—its people.

Congress must make the health and well-being of our men and women overseas a priority. We know multiple deployments with short periods of rest back home raise the incidence of PTSD. Studies have shown that the likelihood of a soldier being diagnosed with PTSD rises by 50 percent when he or she is on a second or third deployment.

We know multiple deployments are causing a massive strain on our junior officer corps. Earlier this year, the Army's Deputy Chief of Staff told Congress these officers are getting out of the Army at nearly double the rate that the Army says is acceptable. That is why until this war, we have always given our active-duty soldiers a ratio of 2 days at home for every day in combat, and we have always given the National Guard and Reserve 5 days at home for every day in combat. That has been the standard until this war.

That is why the National Military Families Association supports this amendment. That is why the Military Officers Association of America supports this amendment. The Military Officers Association says:

If we are not better stewards of our troops and their families . . . we will be putting the all-volunteer force at unacceptable risk.

I urge my colleagues to listen to what our officers and their families are saying through their support of the Webb amendment.

As my colleagues know, I am a farmer; I am not a military expert. But I believe and the people of my State believe in no uncertain measure that we need to continue to have the strongest military in the world, not only today, not only 6 months from now, but 6 years from now as well.

The good news is we have a strong military. I represent 3,500 Air Force personnel, more than 300 of whom are serving in Iraq and other places around the world today. I represent another 3,600 Guardsmen, many of whom have spent a tour or two in Iraq. I can tell my colleagues that these people are the best in the world at what they do, and I am proud to represent them.

But the bad news is what I am hearing is we are in danger of losing too many young leaders in our military today who are leading a platoon but whom we will be relying on to lead brigades and entire divisions in the future.

I know some people on both sides of the aisle have raised the question of how this measure will impact the schedule for the surge General Petraeus has outlined. The fact is, even if this amendment becomes law, the Pentagon would still have another 4 months to prepare for the change in policy, and if there is a national emergency, there is an opportunity for even more time. The fact is, this amendment will have a much greater impact on tomorrow's military than it will impact on the military surge.

I believe we need the Webb amendment to ensure that we maintain a strong military today, tomorrow, and for years to come.

I congratulate Senator WEBB for this amendment. This has been a good debate. For the most part, it has been thoughtful and respectful. There have been differences of opinion, but it is time to allow this measure to have an honest vote before the Senate. Let's not simply debate whether to debate

this amendment. Let's have an up-or-down vote on the measure. Our troops, their families, and the American people deserve nothing less.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SANDERS). The Senator from Connecticut has 14 minutes.

Mr. LIEBERMAN. Mr. President, I rise to respectfully speak against the amendment offered by my colleague from Virginia.

Let me put this in context, as I see it. One week ago, the commander of our military forces in Iraq and our top diplomat in Baghdad returned to Washington to address the Members of this Congress. What General Petraeus and Ambassador Crocker offered us last week was not hype or hyperbole but the facts. They offered us the facts. What we heard from them was reality—hard evidence of the progress we have at last begun to achieve over the past 8 months—progress against al-Qaida, progress against sectarian violence, progress in standing up the Iraqi Army, progress that all but the most stubborn of ideological or partisan opponents now acknowledge is happening.

What we also heard from General Petraeus last week was a plan for the transition of our mission in Iraq which he has developed, together with our military commanders on the ground, that builds on facts on the ground, not on opinions over here, that builds on the successes our troops have achieved on the ground which will allow tens of thousands of American troops to begin to return home from Iraq starting this month.

So the question now before the Senate is not whether to start bringing some of our troops home. Everyone agrees with that point. Beginning this month, some of our troops will be coming home. The question before the Senate now is whether we are going to listen to the recommendations of our commanders and diplomats in Iraq, or instead whether we will reject them and try to derail the plan they have carefully developed and implemented and that is working. The question is whether we build on the success of the surge and the strategy of success led by General Petraeus, or instead whether we impose a congressional formula for retreat and failure.

I believe the choice is clear because we have too much at stake for our national security, our national values, and most particularly, of course, freedom is on the line and the outcome in Iraq. Are the victors going to be the Iraqis with our support and the hope of freedom and a better future for them or are the victors going to be al-Qaida and Iran and Iranian-backed terrorists? That is the choice. It is in that context that I believe the Webb amendment is a step in precisely the wrong direction. That is its effect.

The sponsors of the amendment say they are trying to relieve the burden on our men and women in uniform. I, of course, take them at their word. They

have an honorable goal that all of us in this Chamber share. It is not, however, what the real-world consequences of this amendment will be.

On the contrary, Secretary of Defense Bob Gates has warned us in the most explicit terms that this amendment, if enacted, would have precisely the opposite effect that its sponsors say they desire. It would create less security, more pressure on more soldiers and their families than exists now.

As many of my colleagues know, Secretary Gates is a man who chooses his words carefully. He is a former member of the Iraq Study Group. He is a strong believer in the need for bipartisan consensus and cooperation when it comes to America's national security, particularly in Iraq and Afghanistan. He does not practice the politics of polarization or partisan spin. So when he tells us this amendment would do more harm than good, so much harm, in fact, that he, as Secretary of Defense, would feel obliged to recommend to the President that if this amendment is adopted, the President veto the entire underlying Department of Defense authorization bill, well, then, when Bob Gates, Secretary of Defense, says that, I think we have a responsibility to listen and to listen to his words very carefully.

The reason for Secretary Gates' opposition to this amendment is not political, it is practical. As he explained in a letter to Senator GRAHAM of South Carolina earlier this week, the Webb amendment "would significantly increase the risk to our servicemembers"—significantly increase, not decrease, the risk to our servicemembers—and "lead to a return to unpredictable tour lengths and home state periods and home station periods." Exactly the opposite of the intention of the amendment.

By injecting rigid inflexibility into the military planning process, this amendment would force the Pentagon to elevate one policy—the amount of time individual members of the military spend at home—above all other considerations, above the safety and security of those same soldiers and their colleagues when they are deployed abroad, above the impact of implementing that policy would have on our prospects for success in Iraq and all that means to our country and, I add, to our soldiers. Secretary Gates also described a range of grim consequences that would result if this amendment is adopted.

To begin with, it would likely force the Pentagon to extend the deployments of units that are already in Iraq and Afghanistan beyond their scheduled rotations. So some of those units which are now scheduled to be there for 15 months might have to be extended beyond that because of the provision in this amendment that says you have to have an equal amount of time at home as deployed. Why? Because there aren't enough capable units to replace them that meet the inflexible requirements imposed by this amendment.

Far from relieving the burden on our brave troops in battle deployed overseas, this amendment would actually add to their burdens and keep our soldiers away from their families, certainly a goodly number of them, for even longer. It would also mean more frequent and broader callups of our National Guard and Reserve units, pulling forces into the fight that would otherwise be able to remain at home.

In other cases, this amendment will require the Pentagon to deploy units trained for one mission to go fight another mission, not because it makes military sense to do so but because they are the only ones left that meet this amendment's inflexible dwell-time rule. In plain English, we are going to be forced by this amendment to send less-capable units into combat.

In addition to imposing greater dangers thereby on our individual service men and women, this amendment would also have other baneful effects on our national security. At a time when our military is stretched and performing brilliantly, it would further shrink the pool of units and personnel available to respond to events, crises, not just in Iraq and Afghanistan but around the world. In doing so, this amendment—and again I quote Secretary Gates—"would dramatically limit the Nation's ability to respond to other national security needs while we remain engaged in Iraq or Afghanistan." Is that what any one of us desire? Is that what the men and women who serve us in uniform desire? No.

All of us recognize the extraordinary services our troops are giving our country and the burden that places on their family in this time of war. All of us want to do something to help relieve the burden they bear. But the answer is not to impose a legislative straitjacket on our men and women in uniform. The answer is not to impose an inflexible one-size-fits-all rule that will endanger their safety and hobble our military's ability to respond to worldwide threats. The answer is not, in our frustration, to throw an enormous wrench into the existing, well-functioning personnel system of the U.S. military. The answer is most definitely not to make it harder for us to succeed in Iraq.

I know there has been some disagreement among the supporters of this amendment about whether it is intended to be a backdoor way to accelerate the drawdown of our troops from Iraq, for which there is not adequate support in this Senate Chamber, fortunately, and thus discard the recommendations of General Petraeus and, if I may say so, put us on a course for failure instead of the course of success we are on now. My friend, the Senate majority leader, said he does not see this as a backdoor way to accelerate the drawdown. On the other hand, Congressman MURTHA said that is exactly what it is supposed to do and he hopes it will do.

The fact is many in this Chamber have argued honestly and openly for

months that General Petraeus and his troops were failing to make meaningful progress in Iraq and that Congress should, therefore, order them to begin to withdraw. That could be done by cutting off funding or mandating a congressional deadline for withdrawal.

I have argued against those recommendations, as my colleagues know. But I must say I respect the fact that those arguments by opponents of the war accept the consequences of their beliefs, and they are real and direct. Those in the Chamber who want to reject the Petraeus recommendations and his report of progress and impose on him their own schemes for the withdrawal of our troops from Iraq, I think ought to do it in the most direct way, rather than any attempt to derail this now successful war plan by indirection.

The fact is, regardless of the intention of its sponsors, the Webb amendment, if enacted, will not result in a faster drawdown of U.S. troops from Iraq. The fact is the Commander in Chief and the military commander in Iraq are committed to the success of this mission. On the contrary, therefore, it would only make it harder for those troops, along with their brothers and sisters in uniform in Afghanistan, to complete their mission successfully, safely, and return home but to return home with honor to their families and their neighbors.

Yesterday, a couple of Connecticut veterans from the Iraq war were in town and came to see me. At the end of a good discussion, in which they did urge me to vote against the Webb amendment, one of them said to me: Senator, we want to win in Iraq, and we know we can win. I said to them: Thanks to your bravery and skill—and now a good plan—and with the help of God, you are going to win, so long as the American people and their representatives in Congress don't lose their will. That victory will not only secure a better future for the people of Iraq and more stability and an opportunity for a course in the Middle East that is not determined by the fanatics, the haters, the suicide bombers of al-Qaida and Iranian-backed terrorism but is determined by the people themselves who pray every day and yearn every day for a better future.

I will say something else. There are different ways to burden men and women in uniform. One is the stress of combat, another is to force them into a position where they fail. I have had many conversations with soldiers from Connecticut and elsewhere who have served in Iraq, and I have had the conversations in Iraq and here. I don't want to mislead my colleagues in what I am about to report. I don't get this in 100 percent of those conversations, but in an overwhelming number of those conversations, they are proud of what they are doing, they believe in their mission, they believe they are part of a battle that can help make the future of

their families and our country more secure. They are proud. They are re-enlisting at remarkable numbers. That is the best indicator of this attitude.

If you want to burden them and their families in a way we can never quite make up for, then take us from the road of success, leading to the road of victory, and force us directly, force them directly or indirectly, to a retreat and defeat. That can break the will of an army. We don't have to do it, we must not do it, and I believe this Senate will not allow this to happen. I, therefore, urge my colleagues to vote against the Webb amendment.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized for 10 minutes.

Mr. BROWN. I thank the Chair, and I thank Senator WEBB for his leadership on this important issue as I rise in support of the Webb amendment.

This amendment, first and foremost, is about supporting our troops. It is about supporting the military families. Every Member of this body, some even more than others, talk about their support for our troops. Many put the yellow ribbon magnets on their cars, many wear other kinds of clothing to show their support for the troops. They talk about it at home, they talk about it here. This vote will put that support for our troops into action.

This amendment ensures that our military gets the rest at home they deserve; that our military readiness gets the support it needs. This amendment will ensure that our National Guardsmen will stay at home for at least 3 years after returning from deployment, the men and women of the Guard who leave businesses, jobs, and families on hold while bravely serving our Nation.

The current Iraq policy is overextending our troops and placing unacceptable burdens on families back home, with spouses often acting as single parents, doing their very best, in sometimes worse economic times, to keep their families together.

I have met with these families for 4 years, going back as early as 2003, soon after tens of thousands of American troops were deployed in Iraq. They would talk frequently about the shortage of body armor. They talked frequently about the shortage of bottled water, about hygiene products, and all kinds of things our troops needed as our Government rushed into war in 2003 without adequately supplying them. Families would raise money at events to provide the body armor and to send bottled water and hygiene products or whatever their loved ones needed in Iraq.

Our Government didn't do what it should have done back then because of the poor civilian leadership and its lack of preparation for this war in Iraq. I heard comments over and over about the difficulty of adjusting, as those troops came back home, due to the lack of foresight and the lack of plan-

ning on the part of the civilian leadership of our military.

Our Armed Forces have served bravely and honorably again and again, deployment after deployment, often without, as I said, the proper body armor, proper vehicle protection, proper training, and dwell time between deployments. We fought in this body and in the House for more body armor, we fought for more MRAPS, the triangular-bottomed vehicles. We shouldn't have to fight to allow our soldiers the proper amount of time between deployments.

The requirement in this amendment for dwell time is something the military has voluntarily done for decades because they know that serves the troops well, they know it serves the families well, and they know principally it serves the military well to have that dwell time between deployments. The 1-to-1 standard in the Webb amendment is actually below the historic standard of the Department of Defense for dwell time. We could do even better than this.

We can debate about our role in Iraq's civil war, we can debate timelines for ending our involvement, we can debate how much money we should spend in Iraq, but we shouldn't need to debate how much rest, preparation, and training our troops get before they go back off to war. Everyone in this Chamber talks about supporting our troops, even as our President failed to provide body armor and MRAPS, failed to provide support and supplies, and even as our President has failed to provide enough money for medical care for the Veterans' Administration for when our troops return home. Everyone in this Chamber talks about supporting our troops, but this amendment puts the soldiers and their families first.

They have done their job. It is time we do ours.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 10 minutes.

Ms. STABENOW. Mr. President, I wish to thank my colleague from Michigan, whom we are so proud of, for all his efforts in supporting our troops and leading our efforts as it relates to the defense of our country and for once again leading this very important bill on the Defense reauthorization.

It is time to put aside for a brief moment the overall debate of the war and focus on the troops. Regardless of whether you supported going into Iraq or, as I did, voted no on going into that war, we come together and we hear frequently from colleagues on both sides of the aisle that, of course, we support our troops. We want what is best for the brave men and women who are fighting in harm's way, who didn't take that vote and didn't decide the policy but who are, in fact, stepping up to defend that policy and defend our country.

The question is, What is best for the troops on the ground right now, in the

middle of these conflicts that have gone on now for over 4½ years? We are here today to talk about what is best for our military, our troops, and for their families.

We are not here to debate the merits of the mission. I certainly am willing to do that and do that with other amendments. But this particular amendment, the amendment of Senator WEBB, is an effort to determine what makes sense when it comes to deploying our armed services, what is best for those who have been willing to put their lives on the line for our country, who follow the leadership of the Department of Defense and operate under the policies that have been set by this Congress and this President.

What is very clear is that the current system is broken for our troops. We are forcing our troops into longer and longer combat deployments and giving them shorter and shorter rest periods. We are demanding multiple combat deployments over very short periods, with many units on their second, their third, or even their fourth redeployment in the war in Iraq. We are denying the men and women who put their lives on the line for America the time they need off from the front lines to recuperate, to retrain, to prepare themselves physically and mentally to return to combat and, just as important, to spend time with their families, to be able to reconnect with the loved ones they have left behind when they have gone into this war.

We are placing an unfair and unreasonable burden on those military families, families who are willing to sacrifice, who have sacrificed; families who count on us to be there for them, representing their interests and the interests of their loved ones who are on the front lines. They are doing all of it in the name of a policy that the military itself has indicated is not only unreasonable but unsafe. The Department of Defense itself has said that the conditions under which they are operating have been unreasonable and unsafe.

Historically, the Department of Defense, as has been said, has mandated a combat-to-rest ratio of 1 to 2—1 month on, 2 months off as an example; 1 year in combat, 2 years at home—to rest, retrain, and prepare for the next deployment. In fact, the historic 1-to-2 ratio is currently the stated policy of the DOD. We are hearing from colleagues on the other side of the aisle as if this is some outrageous idea, that we put some parameters around the deployment and redeployment of our troops. Yet it is the stated policy of the Department of Defense: 1 month or 1 year on, 2 months or 2 years here at home.

The Webb amendment merely sets a 1-to-1 ratio, a floor that only gets us halfway to the standard the Department of Defense itself has called for. The policies pursued by this administration have stretched our men and women in uniform to the breaking point. Our Armed Forces are getting the job done under the most extreme

and trying conditions imaginable. Most of us have had an opportunity, firsthand, to see them in action, to see what they are doing and the conditions under which they are operating. They are getting the job done. No one is surprised because we have the best and the brightest, but they are under extreme and trying conditions. They face an enemy who often cannot be identified. They face an environment that is harsh and hot and unbearable. They do their jobs with pride, with honor, with dignity, and most certainly with excellence.

The current deployment schedule places an unfair burden not only on our soldiers and sailors and airmen and marines but on the families they leave behind. Military families have, in their own way, been called to serve this country, been called to sacrifice. They demand our respect and support for the sacrifices they are making. What we are currently asking of them is simply unreasonable. When our troops go into combat, the people they leave behind shoulder the burden of keeping the family together while mom or dad—mother, father, sister, brother—is fighting in service to their country. They are left to face not only the practical problems that come with having a family member gone for long stretches of time but also the constant uncertainty and stress of simply not knowing what is happening to their loved one. Are they safe? Will they come home safely? Our troops and their families have done everything we have asked of them. They have been there for America. And now the answer to the question must be that we will be there for them.

The young Americans who volunteer to put on the uniform and fight for our country are truly our best. They are the best-trained, the best-equipped, the bravest fighting forces in the world, and they are one of the Nation's most valuable assets and greatest resources. Current administration policy is abusing their willingness and desire to serve. This has to stop. By straining and stretching our military, we are undercutting our own national security. We are compromising everything we have done to build up a force that can defend America and properly respond to the dangers we face in today's uncertain world.

Senator WEBB has crafted an amendment that addresses the concerns of our military leaders. It includes reasonable waivers in the face of unexpected threats to America. It includes a transition window that will allow a shift in the deployment schedule without a disruption of our fighting forces. We have worked with the military to develop a policy that makes sense. I commend Senator WEBB for his foresight and his willingness to work with the Secretary of Defense and others to make the changes, to make this even more workable. We compromised where it makes sense to strengthen the legislation, but we will not compromise on

the safety of our troops or on the support for their families.

This amendment is not about where we stand on the war. It is not about partisan politics. It is about doing the right thing for our troops and for their families. I urge my colleagues to stand up and vote for the Webb amendment. Stand with the people we have sent to war and their families waiting at home, and stand with all Americans who want us to have the right kind of policy to support our troops and to keep us safe for the future.

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. CARDIN. 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. CARDIN. Mr. President, I take this time first to thank Senator WEBB for bringing forward his amendment that I strongly support. I believe it is in the best interests of our troops, their families, our military readiness, and the proper deployment of our troops.

I also thank Senator LEVIN and Senator REID for their efforts in allowing us the opportunity to try to change our mission in Iraq. I believe it is not only in the best interest of the United States to do that but also the Iraqi people.

I also compliment Senator BIDEN for his efforts to bring forward an amendment that would give us a more realistic and achievable political game plan in Iraq. As has been recently reported, the Iraqi Government is dysfunctional, and the only way we are going to be successful in Iraq is if we can have a political solution to their problems.

On September 3, 2007, President Bush told troops at Al-Asad Air Base that the troop buildup has strengthened security—and that the military successes are “paving the way for the political reconciliation and economic progress” in Iraq. “When Iraqis feel safe in their own homes and neighborhoods,” said President Bush, “they can focus their efforts on building a stable, civil society.”

I believe that the last part of that statement, when an Iraqi can walk into the street without fear of being attacked, blown up, or bribed, of having family harmed, his house or his business taken, when he is confident that his children will have enough food and water and be able to attend school in peace, he will be able to focus on building a more stable civil society.

But what I don't see is any independent evidence that the increased U.S. troop presence has, as promised, led to greater civilian security, let alone paved the way for political and economic success.

The 2007 emergency supplemental appropriations bill required President

Bush to report to Congress and the American people in July and September on the progress Iraqis are making toward achieving certain critical benchmarks put forward by the Iraqi Government and affirmed by President Bush in his January “New Way Forward” speech. These were not benchmarks established by Congress. These were benchmarks established by the Iraqis, in this legislation. That same legislation asked the independent Government Accountability Office to undertake the same investigation and chartered the Independent Commission on the Security Forces of Iraq to investigate the progress those institutions are making toward independence. We now have each of those reports.

Not even President Bush claims that substantial progress toward political or economic benchmarks has occurred. As reported by his administration in July and September there has been little progress on deBaathification reform, oil revenue sharing, provincial elections, or amnesty laws.

The GAO reports that the Iraqi Government has met only 1/4 of the legislative benchmarks. The rights of minority party political parties in the Iraqi legislature are protected, though the same is not true for the Iraqi population whose “rights are often violated.”

Any prospects for further progress toward these goals have been dashed by the withdrawal of 15 of the 37 members of the Iraqi cabinet. The Congressional Research Service reported that the boycott has left “the Iraqi Government in essential collapse.”

That is another reason why we need The Biden amendment, and more important, for us to move forward implementing a new strategy in Iraq.

Just as important, there is no independent evidence that increased troop presence has created the security necessary to foster future political and economic progress in Iraq.

The GAO reports that it is not clear whether sectarian violence has been reduced and that the average number of daily attacks against civilians has remained about the same.

The August National Intelligence Estimate reports that the level of overall violence in Iraq, including attacks on and casualties among civilians, remains high and will remain high over the next 6 to 12 months.

According to figures compiled by the Associated Press, Iraqis are suffering double the number of war-related deaths throughout the country compared to this time last year.

In an August op-ed, seven non-commissioned officers wrote:

[T]he most important front in the counterinsurgency, improving basic social and economic conditions, is the one on which we have failed most miserably. . . . Cities lack regular electricity, telephone services and sanitation. . . .

In a lawless environment where men with guns rule the streets, engaging in the banalities of life has become a death-defying act. . . . When the primary preoccupation of average Iraqis is when and how they are likely

to be killed, we can hardly feel smug as we hand out care packages. As an Iraqi man told us a few days ago with deep resignation, "We need security, not free food."

Even if we assume a decline in violence, in certain regions in Iraq it is far from clear that increased U.S. troops are responsible. There are over 2 million refugees that have fled Iraq.

Internally displace persons are estimated at 2 million and are increasing by 80,000 to 100,000 each month. At that rate, Washington, DC would be empty by March.

The United Nations High Commissioner for Refugees found that 63 percent of those displaced moved because of threats to their security. Sixty-nine percent left homes in Baghdad. Baghdad is undergoing sectarian cleansing. If the death toll in a Sunni district falls because its residents have fled, the resulting reduction in violence is not attributable to increased troops, and that kind of development is not "progress."

The bottom line: the GAO report found the Iraqi Government has not eliminated militia control over local security or political intervention in military operations. It has not ensured evenhanded enforcement of the law or increased the number of army units capable of independent operations.

Are Iraqis more secure? For me, the 100,000 people fleeing their homes each month in fear for their safety answer the question. The truth, as everyone acknowledges, is that the security that Iraqi man wanted instead of free food will only come with political reconciliation.

Those same seven NOC's explained that:

political reconciliation in Iraq will occur, but not at our insistence or in ways that meet our benchmarks. It will happen on Iraqi terms. . . .

[I]t would be prudent for us to increasingly let Iraqis take center stage in all matters, to come up with a nuanced policy in which we assist them from the margins but let them resolve their differences as they see fit.

President Bush predicted that increased U.S. troop levels taking a more visible—rather than marginal—role would stabilize the country so that its national leaders could reach political agreement. They would enable us to accelerate training initiatives so that Iraqi army and police force could assume control of all security in the country by November 2007. President Bush sent over 28,000 more soldiers into Iraq to fulfill these goals.

The reports before us in September, like the reports before us in July, show us that President Bush's troop escalation is ineffective. It has failed to make Iraq more secure, failed to stem the civil war going on in Iraq, and failed to lead to political reconciliation. That failure was clear when I last came to the floor to discuss this issue in July, and it is clear today.

Since July, 150 more American soldiers have died; nearly 5,000 more have been wounded. My home State of Maryland has lost three more of its bravest

citizens. One of those seven NOC's, whose wisdom and insight I have quoted at length, was shot through the head and, just last week, two others were killed. Every month in 2007 has seen more U.S. military casualties over the same month in 2006.

Six years after 9/11, our policy in Iraq has distracted us from confronting the weaknesses those attacks revealed. Terrorist attacks around the world continue to rise. No progress has been made on the Arab-Israeli conflict. Our military might has been stretched thin.

The most recent intelligence analysis reports that al Qaeda in Afghanistan and Pakistan is stronger now than at any other time since September 11, 2001. Iran is as dangerous as ever.

Thomas H. Kean and Lee H. Hamilton, cochairs of the 9/11 Commission, wrote that "we face a rising tide of radicalization and rage in the Muslim world—a trend in which our own actions have contributed." Last week, Senator Warner asked General Petraeus whether continuing the strategy the general laid before Congress would make our country safer. General Petraeus responded, "Sir, I don't know actually."

He didn't know because he has been "focused on . . . how to accomplish the mission of the Multi-national Force in Iraq." That is what he should be focused on. That is his job. But the people focused on our Nation's safety and our overall strategy in the Middle East agree with Kean and Hamilton.

Admiral Fallon, chief of the U.S. Central Command, which oversees Middle East operations, has argued for accepting more risks in Iraq in order to have the necessary forces available to confront other potential threats. The Joint Chiefs have been sympathetic to Admiral Fallon's view.

In order to bolster our military and refocus attention on the global terrorist threat, this Congress has attempted to change the mission of our operation in Iraq. But President Bush and a minority in Congress have rebuffed the effort.

We cannot wait any longer to change the mission in Iraq. The cost of further delay in lives, matériel, treasure, and our standing in the world is too great. President Bush's strategy has put this Nation at greater risk—a risk that metastasizes each day that we sit by and wait.

A new policy starts by removing our troops from the middle of a civil war and giving them a more realistic mission: counterterrorism, training, and force and border protection.

The Independent Commission on the Security Forces of Iraq, chaired by retired GEN James L. Jones, and composed of prominent senior retired military officers and chiefs of police, suggests that:

Coalition forces begin to be adjusted, re-aligned, and re-tasked . . . to better ensure territorial defense . . . concentrating on the eastern and western borders and the active

defense of the critical infrastructures essential to Iraq.

The Commission also emphasized the importance of transferring responsibility to Iraqis, noting the "fine line between assistance and dependence." Iraqi citizens turn to our military for protection and the basic services the government has failed to provide. We want Iraqis to become loyal to their government, not to the local U.S. military commander.

We must begin to extricate ourselves and hand responsibility to the Iraqis themselves.

As the bipartisan Iraq Study Group noted, "There is no action the American military can take that, by itself, can bring about success in Iraq." But any effort must include stepped-up diplomacy—a "diplomatic surge," if you will. Iraq's neighbors have a stake in Iraq's stability. The war in Iraq means the spread of fundamentalist insurrection and sectarian violence, and an increase in basic crime and lawlessness, and not just in Iraq.

We must begin to have a broader diplomatic and economic vision in the Middle East. Currently, all of Iraq's neighbors are involved in the conflict, but they operate under the table. Iran supports the Shiite militias. Saudi Arabia supports the Sunni militias. Turkey plays a role in the North, Syria exerts control over Iraq's western border.

The United States engaged all of Afghanistan's neighbors at the highest levels and secured their cooperation at the beginning of that conflict. We must engage in that same high level effort with Iraq's neighbors no matter how much we wish circumstances or the current balance of power in the region were different.

We need our Nation's most senior officials engaged in bringing other nations and international entities such as the United Nations and the Organization for Security and Cooperation in Europe to the table.

The various agencies of the United Nations are well-suited to tackle matters of economic and community development and providing electricity, water, and sanitation service. OSCE could assist Iraq with collective border security, police training, and immigration and religious tolerance efforts.

A change of mission, an increased diplomatic effort, and a movement to engage international entities presents the best chance of helping the Iraqis build a government that has their confidence and would strengthen our own national security and military readiness.

The world has an interest in a safe and secure Iraq. We can no longer ignore the overwhelming evidence or recoil from the cold reality the facts on the ground reveal. It is time to change the mission, step up our diplomatic efforts with a realistic and workable game plan, recognize the limits of deployment of our troops and internationalize the effort to bring stability to the country and to the Middle East.



The PRESIDING OFFICER. The Senator from Virginia.

Mr. WEBB. Mr. President, I wish to take the opportunity, since it looks as if there are no other Senators who wish to speak at this moment, to clarify a few items in this amendment with respect to some of the criticisms that have been leveled against it.

Again, let me emphasize, this is a minimum amendment. It wants to make a small adjustment to our operational policy that is needed because of these continuous rotations that have been going on for the last 4½ years.

With respect to the constitutionality issue which has been mentioned a number of times, my staff has put together a fact sheet, which I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. WEBB. I have mentioned many times the situation in Korea during the Korean War, where the Congress passed legislation to provide that every person inducted into the military would receive full and adequate training for a period of not less than 4 months, and that no personnel during that 4-month period would be assigned duty overseas. This was the Congress stepping in to correct a situation that had been created by the executive branch in sending people to Korea before they were trained.

In 1940, the Selective Training and Service Act stipulated that people inducted into the land forces of the United States would not be sent beyond the limits of the Western Hemisphere, except in U.S. territories.

The Congress acted in similar ways multiple times prior to World War II. In 1915, the Army Appropriations Act restricted Army tours of duty in the Philippines to 2 years, and tours in the Canal Zone to 3 years. There are a number of other examples here. This is a matter that is clearly within the constitutional prerogative of the Congress should it choose to act.

There was a comment earlier by the junior Senator from Arizona regarding Secretary Gates's concern about the strain on the Guard and Reserve if this amendment were to pass. Again, let me reiterate that this amendment addresses the Guard and Reserve. It specifically states that National Guard and Reserve units that have been deployed will not be redeployed for a period of 3 years. This is not going to result in a greater strain on the Guard and Reserve if this amendment passes.

There was also some comment about individuals being difficult to manage if the amendment were passed, because we do single out in this amendment that not only units being deployed should be protected, but also individuals. The reason that language was inserted into this amendment is because there is a common practice now to backfill individuals who may have returned from a tour of duty much more

recently than the unit they have been assigned to.

At the same time, we do have this goal, a laudable goal, of having units train together and then deploy together. But even under today's circumstances—for instance, in the data sheet that Lieutenant Colonel Martinez has put together for us—and I have heard this from many people, that even by month 10, on a 12-month dwell time back here, the units are still putting people together.

So you want them to train together, but it is a fallacy to say they have been training for this entire period before they are deployed. Most importantly, this is not difficult to manage. Everyone in the U.S. military has a service record book of some sort, and in that record book, there are indications of when they have served overseas. In today's computer age, it is not very difficult to figure out who has come back and what period of time. Units are tagged to deploy at least 6 months before they deploy. So you know who in your unit has recently been returned and who has not. It is not a difficult problem to fix.

I wanted to make these clarifications.

#### EXHIBIT 1

##### FACT SHEET: CONSTITUTIONALITY OF SENATOR WEBB'S BIPARTISAN DWELL-TIME AMENDMENT

(1) There is clear constitutional authority and extensive legislative precedent for Congress to impose minimum periods between operational deployments. As then-Acting Secretary of the Army Geren stated during his confirmation hearing before the Senate Committee on Armed Forces earlier this year, "Article I of the Constitution makes Congress and the Army full partners."

(2) Among the many congressional authorities the Constitution delineates with regard to the armed forces and the nation's common defense, Article I, Section 8 empowers Congress "to make rules for the government and regulation of the land and naval forces." The Congress has exercised this authority to regulate land and naval forces many times with regard to military training and operational assignments. The most noteworthy example occurred during the height of the Korean War, when Congress passed legislation to require all service members to receive no less than 120 days of training before being assigned overseas.

(a) Despite pressing wartime exigencies in Korea, Congress amended the Selective Service Act in 1951 to provide that every person inducted into the Armed Forces would receive "full and adequate training" for a period not less than 4 months and no personnel, during this 4-month period, would be assigned for duty at a land installation located outside the United States, its territories, or possessions.

(b) This Korean-War legislation had as its precedent similar congressional action before and after World War II. In 1940, for example, the Selective Training and Service Act stipulated that persons inducted into the land forces of the United States under the Act would not be employed beyond the limits of the Western Hemisphere, except in U.S. territories and possessions. In 1948, the Selective Service Act provided that 18- and 19-year-old enlistees for 1-year tours could not be assigned to land bases outside the continental United States.

(c) Congress acted in similar ways multiple times prior to World War II. In 1915, for ex-

ample, the Army Appropriations Act restricted Army tours of duty in the Philippines to 2 years and tours in the Canal Zone to 3 years—unless the service member requested otherwise or in cases of insurrection or actual or threatened hostilities.

(d) Congress has continued to exercise its constitutional authority to pass laws to govern and regulate the armed forces. In 1956, a public law prohibited the assignment of female service members to duty on combat aircraft and all vessels of the Navy. Congress subsequently saw the wisdom of repealing this legislation.

(e) Later, during the 1980s and 1990s, Congress invoked the War Powers Resolution in the "Multinational Force in Lebanon Resolution" to authorize Marines to remain in Lebanon for 18 months. In 1993, the House used a section of the War Powers Resolution to stipulate that U.S. forces should be withdrawn from Somalia by March 1994. Congress also prohibited the expenditure of funds to support personnel end-strength levels above specific limits in NATO countries and other nations outside the United States during the post-Cold War era of the 1990s. Other examples also exist.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, we hope to be able in the next few moments, perhaps after Senator MARTINEZ has gone, to enter into a unanimous consent agreement which would hopefully schedule votes on both the Webb amendment and on the McCain amendment. We expect those votes would begin at approximately 5:15. We do not have a unanimous consent locked in yet, but we do expect, perhaps after Senator MARTINEZ has completed, to be able to offer a unanimous consent agreement.

Mr. MCCAIN. Mr. President, I mention to my friend, I think by 4:40 we would know for sure. That is when the meeting the principals are in now is over. But we fully anticipate that at 5:15 a vote would be agreed to.

If there are other Senators who want to speak between now and about 5:00, please come down and do so. But my understanding is that this agreement is, following the Webb amendment vote, there would be 10 minutes equally divided and a vote after that.

Mr. LEVIN. That is the expectation. So two votes and 10 minutes interviewing between the two, and then move on to other amendments.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MARTINEZ. Mr. President, I rise today to speak in opposition of the current amendment, the Webb amendment, to the fiscal year 2008 National Defense authorization bill.

The fact is that this amendment, in its good intentions to think about the care and condition of our men and women in uniform who have so bravely served us, in fact is very much misguided in that it attempts to dictate to the military leaders exactly what type and how troop rotations should take place.

I think it is a dangerous amendment because it could also interfere with the ability of our country to respond in times of a national emergency, even

though it has a waiver provision in the amendment for the President's ability to respond to the dangerous situations that can occur in the very dangerous world in which we live.

The fact is—I know it has been mentioned, but I reiterate—the Secretary of Defense, the person charged with the constitutional responsibility of deployment of the Armed Forces, has four-square clearly stated that this amendment, while well intended, is certainly not a good amendment. It would dramatically limit the Nation's ability to respond to other national security needs while we remain engaged in Iran and Afghanistan. Secretary Gates, in a letter of September 18 to Senator GRAHAM, indicated clearly his concern. He goes on to mention some other concerns.

General Petraeus announced—and the President affirmed—that there would be troop drawdowns in Iraq in the upcoming weeks. In fact, this amendment could have the effect of extending the tours of duty of troops in Iraq beyond their currently scheduled rotation.

There is another thing that bothers me. I think we also need to think about our constitutional scheme, how our Government is organized and ordered. Constitutionally to enact an amendment such as this would clearly be an encroachment on the constitutional duties of the Commander in Chief. This is not an area where the Congress is welcomed to dictate. We have one Commander in Chief, not 535. We only elect one at a time. This Commander in Chief has a Secretary of Defense. It is their responsibility under our form of Government to determine what our troop rotations should be.

There are other very practical considerations of why this should not happen, why this is a bad idea. The Secretary of Defense goes into several items in his letter. But it does make sense, when you look at it, that units do not always stay together. Following an individual rather than a unit and following the deployment of an individual rather than that of a unit is something that would be cumbersome, difficult, and, in fact, not a way in which we would be, in this very dangerous time, having to run our military. The fact is, there is something here which is maybe the most underlying and important reason of all why this amendment is not a good idea, which is the clear desire and design of the amendment to limit the options of our military forces to maintain the current policy in Iraq. We ought to not use the good intentions and the good ideas about our soldiers, about our troops and their rotations, to have an underlying mission of simply saying, they can't keep this up so they will have to pull troops out. We will change policy by dictating how troops are rotated in and out of the battlefield. The fact is, that could have serious consequences for our Nation as other nations would view this as a vulnerabil-

ity. It would be viewed as a weakness, as a fact that the United States is overextended and incapable of responding to crisis. It is these kinds of misperceptions and misunderstandings that can lead irresponsible states to take irresponsible actions that could lead to frightening scenarios in the very dangerous world in which we live.

It is important to also note that many of the members of our Armed Forces consider it a privilege and an honor to serve this Nation at this difficult time. My recent trip to Iraq was in Tikrit. While there, I visited with a number of troops, some of them Floridians, all proud of their service. Over 90 percent of those troops had already reenlisted, knowing full well of our involvement in Iraq, knowing what the expectations of their service would be during their time of reenlistment, and they had voluntarily reenlisted. Reenlistment rates of those serving in the theater are larger than those of any other. It is a testament to their courage, valor, and sense of duty to their country. We would demean their service if we were to say to them that there had to be parity between the time in service out of the country and the time at home.

The goal ought to be for us not to have 15-month deployments. The hope would be that these would never be necessary. But a mandate from Congress that this is how we must operate our Armed Forces is ill-conceived. It is dangerous and does not serve either the national interest of the Nation or the interest of the soldiers on the field whom it is intended to serve. We should not have a subterfuge of policy to change direction in Iraq heaped on the backs of our brave men and women in uniform. If, in fact, there is the thought that this policy is wrong and it should be changed—and I know many Members feel that way; there has been plenty of debate about this issue—there ought to be the courage to say: We will not fund the troops. If you can't do that, you shouldn't do it this way. This is unnecessary. It is cumbersome, and it will be detrimental to the national security of the country.

I yield the floor.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from Michigan.

#### DWELL TIME

Mr. SMITH. Mr. President, I rise today in support of the Webb-Hagel dwell time amendment. Our service men and women are under constant strain, spending more time in theater than they have with their families. These men and women are risking their lives to protect this country, some on their fourth tour in Iraq. Their bodies are aching and their minds are stressed, but by the time they become acclimated to home life, they are sent back into combat. Something must be done to prevent the breakdown of our military and the men and women who

serve. This amendment would provide our troops ample rest and recuperation, time to visit with family, and an opportunity to extract our troops from the stress of war.

The Oregon National Guard has served admirably since we began combat operations in 2001. I could not be more proud of their contributions to the war on terror while still serving as the foundation of their families and communities.

Many citizen-soldiers have been on multiple deployments for over a year at a time, placing a significant strain on their families, employers, and communities. The amendment will give our soldiers predictability by preventing surprise deployments. Providing a consistent schedule allows them to plan for this disruption. Often, these men and women are the core of the community, the major breadwinner of their family or a needed caregiver and require advanced notice to plan for such a major disruption in their lives.

If current enlistment levels do not allow us to provide our troops with the rest and recuperation needed to protect our Nation, then we must examine increasing the number of volunteer troops, both Active Duty and Reserve.

For the past 10 years, we have shrunk the National Guard and ignored their call for needed resources. As a country, we are finally realizing the importance of our citizen-soldiers. They serve admirably in combat operations overseas, they provide help at home in the face of a natural disaster or emergency, and they are the bedrock of our community. Giving them some stability in their lives is the least we can do.

I urge my fellow Senators to join me in supporting the Webb-Hagel dwell time amendment.

Mr. DODD. Mr. President, for 4 long years, our Nation has been engaged in a war without a clear objective, exit strategy, or international mandate, and the consequences of such policies have been devastating. Our moral standing in the world has plummeted. Iraq is now mired in civil war, and terrorists have found a recruiting and training ground for attacking American troops. But few effects of this war are more troubling than the destructive impact this war has had on our Armed Forces.

Approximately 3,800 brave American servicemembers have been killed in Iraq, and tens of thousands have been severely wounded. Military families have been forced to endure long and repeated stretches of time without their loved ones. And most significant, our forces have been stretched thin to a near-breaking point. This can be seen in the ever increasing number of suicides among our returning servicemembers, alltime low reenlistment rates, and the destruction of our military families. The adage is true—we recruit a soldier, but we retain a family. And if that family is broken, so, too, will be the soldier.

While long deployments are testing our troops in the field, they are also