The majority is also expected to fill the amendment tree to prevent Republican Senators from offering amendments and closing loopholes in the bill. All of that suggests to me that this is about politics, really, and not policy.

So the bill before us is almost like a sequel of the bill that was vetoed the last time. And like any sequel, it is even worse the second time around.

According to the Congressional Budget Office estimates, this bill actually covers 400,000 fewer children than the original SCHIP bill. Yet it costs more—a half billion dollars more.

Our friends on the other side argue that their do-over bill will serve low-income children first. But instead of requiring that low-income children be served first before expanding the program to cover those beyond 200 percent of the Federal poverty level, this bill expands the program to cover families making as much as 300 percent of the Federal poverty level.

This will repeal the requirement that the Secretary of Health and Human Services, Mike Leavitt, just recently put in place that States cover 95 percent of low-income kids before they expand.

This bill also contains an ''income disregard loophole'' that would allow States to ignore thousands of dollars of income when determining SCHIP eligibility. States could essentially define a family's income at whatever level they see fit.

Democrats also argue this do-over bill will only serve children, not adults. Even that is not the case. While this legislation would phase childless adults out of the program within 1 year, parents would still be eligible.

Put it all together, and we have a bill born out of a process that is focused more on scoring political points than making good policy, and it is certainly not one I intend to support.

I urge my colleagues to re-engage in communication and consultation with this side of the aisle. Together, we can craft a bill that keeps its focus on low-income children and can actually receive a Presidential signature. That is the way to accomplish real results for the American people. We Republicans stand ready and willing to do just that.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, what is the matter before the Senate?

The PRESIDING OFFICER. The motion to proceed to the Children's Health Insurance Program.

Mr. BYRD. I ask unanimous consent that I may speak as in morning business, and I speak out of order.

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

IRAN

Mr. BYRD. Madam President, I commend and offer my wholehearted support for the resolution that Senator DURBIN has submitted. His resolution, which I am proud to cosponsor, is a simple, clear statement of a fundamental constitutional principle; namely, that the Congress and only the Congress has the power to declare war. As this resolution states:

> Any offensive military action taken by the United States against Iran must be explicitly approved by Congress before such action may be initiated.

The President is the Commander in Chief of the Armed Forces. But the President of the United States, although Commander in Chief of the Armed Forces, is not a dictator. The President is not an emperor. He is President, who, like all Presidents, takes an oath of fealty to the Constitution of the United States.

It is the American people—the American people—who pay the price of war in blood and in treasure. And it is the American people, through their representatives in Congress—that means us—who must give their approval—the approval of the American people—for such a momentous decision. That is the system that George Washington recognized when he presented his resignation to the Continental Congress. That is the system that the wise Framers of the Constitution created when they drafted our most basic and sacred document. That is the system that every Senator takes an oath to defend.

Today is a fitting day to discuss the issue of Iran. Today is All Hallows Eve—Halloween—a day when people don masks and costumes to frighten others. The White House has been busy unleashing its rhetorical ghosts and goblins to scare the American people with claims of an imminent nuclear threat in Iran, as they did with Iraq. But while few people doubt the desire of some in the Iranian regime to attain a nuclear bomb, there is little evidence that Iran is close to acquiring such a weapon. Fear, panic, and chest-pounding do not work well in the conduct of foreign policy. This is a time to put diplomacy to work. There is ample opportunity to coordinate with our allies to constrain Iran's ambitions. But instead of working with our partners, the Bush administration has unveiled new unilateral sanctions against Iran. Instead of direct diplomatic negotiations with Iran, the Bush administration continues to issue ultimatums and threats.

We have been down that path already. We know where it leads. Vice President CHENEY recently threatened ''serious consequences''—serious consequences—if Tehran does not acquiesce to U.S. demands—the exact phrase that he, the Vice President, used in the runup to the invasion of Iraq. The parallels are all too chilling. President Bush warned that those who wished to avoid World War III should seek to keep Iran from obtaining nuclear weapons. Secretary of Defense Gates has admitted in the press that the Pentagon has drafted plans for a military option in Iran. The President's $196 billion request for emergency war funding included a request for bunker buster bombs that have no immediate use in Iraq. Taking all of this together—the bellicose rhetoric, the needlessly confrontational unilateral sanctions, the provocative stationing of U.S. warships in the region, the operational war planning, and the request for munitions that seem designed for use in Iran—these are all reasons for deep concern that this administration is once again rushing headlong into another disastrous war in the Middle East.

The Bush administration apparently believes it has the authority to wage preemptive war. It believes it can do so without prior Congressional approval. That is why the resolution of Senator RICHARD DURBIN of Illinois is so critical—namely, the White House must be reminded of the constitutional powers entrusted to the people's branch—that is us, the House of Representatives and the Senate. I urge my colleagues to join Senator DURBIN and me on this important resolution and halt—halt—this rush to another war. Let us not make the same disastrous mistake as we did with Iraq.

Madam President, I yield the floor.

Mr. WHITEHOUSE. Madam President, may I speak for 12 minutes as in morning business?

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

ON THE NOMINATION OF MICHAEL MUKASEY

Mr. WHITEHOUSE. Madam President, the Senate is now called upon to consider President Bush's nominee to succeed Alberto Gonzales as Attorney General of this Nation the person we must rely on to repair what has been left broken to uphold the rule of law where political loyalties once ruled and to lead the Department of Justice forward at a time of upheaval; and of urgency.

In many ways, President Bush has made a fine appointment in Judge Michael Mukasey; far better than we have come to expect in this administration. He is not a political hack. He is not a partisan ideologue. He is not an incompetent crony. We have had our share of those. No, he is a brilliant lawyer, a distinguished jurist, and by all accounts a good man.

And no one feels more keenly than do I the need for repair and recovery of the Department of Justice. In a small way, I served this Department, as a U.S. Attorney, and I feel how important this great institution is to our country; and how important an Attorney General—such as Judge Mukasey could be—is to this great institution.

I wish it were so easy. But there are times in history that rear up, and become a swivel point on which our direction as a Nation can turn.

The discussion of torture in recent days has made this such a point. Suddenly, even unexpectedly, this time has come.

It calls us to think—What is it that makes this country great? Whence cometh our strength?

First, of course, is a strong economy, to pay for military and foreign aid activities; to attract the best and the brightest from around the world to our land, and to reward hard work and invention, boldness and innovation.

Now is not the time to discuss how we have traded away our heartland jobs, how our education system is failing in international competition, how a broken health care system drags us down, how an unfunded trillion dollar war and the borrowing to pay for it compromise our strength. For now, let me just recognize that a strong economy is necessary to our strength.

But a strong economy is only necessary, not sufficient. Ultimately, America is an ideal. America for centuries has been called a ''shining city on a hill.'' We are a lamp to other nations. A great Senator on this floor said ''America is not a land, it's a promise.''

Torture breaks that promise; extinguishes that lamp; darkens that city.

When Judge Mukasey came before the Judiciary Committee, he was asked about torture and about one particular practice which has its roots in the Spanish Inquisition. Waterboarding involves strapping somebody in a reclining position, heels above head, putting a cloth over their face and pouring water over the cloth to create the feeling of drowning. As Senator JOHN MCCAIN, who spent years in a prison camp in North Vietnam, has said, ''It is not a complicated procedure. It is torture.''

The Judge Advocates General of the United States Army, Navy, Air Force and Marines have agreed that the use of simulated drowning would violate U.S. law and the laws of war. Several Judge Advocates General told Congress that waterboarding would specifically constitute torture under the Federal Anti-Torture Statute, making it a felony offense.

Judge Mukasey himself acknowledged that ''these techniques seem over the line or, on a personal basis, repugnant to me.'' He noted that waterboarding would be in violation of the Army Field Manual.

But in our hearing last week, asked specifically whether the practice of waterboarding is constitutional, he would say no more than: ''if it amounts to torture, it is not constitutional,'' and since then he has failed to recognize that waterboarding is clearly a form of torture, is unconstitutional, and is unconditionally wrong.

There are practical faults when America tortures. It breaks the Golden Rule—do unto others as you would have them do unto you, enshrined in the Army Field Manual with the question, if it were done to your men, would you consider it abuse?

There are practical concerns over whether torture actually works, whether it is sound, professional interrogation practice. I am not an expert, but experts seem to say it is not.

But the more important question is the one I asked earlier—whence cometh our strength as a nation? Our strength comes from the fact that we stand for something. Our strength comes from the aspirations of millions around the globe who want to be like us, who want their country to be like ours. Our strength comes when we embody the hopes and dreams of mankind.

September 11 was a terrible catastrophe that rocked our Nation to its core. But tens of thousands of Americans, nearly 30,000 men, died in the Argonne Forest, and we did not lose our character as a nation. Are we not as strong now as then?

September 11 was a terrible catastrophe that challenged our economy, our politics, and our way of life. But Japan withstood two nuclear explosions, and it is today an economically and culturally vibrant country. Are we not made of stuff as strong as they?

September 11 was a terrible catastrophe, and it lives on as a test for our Nation. But the real catastrophe would be if we sell our birthright for a mess of pottage, if we sell our destiny as a lamp to other nations and a beacon to a suffering world, for bits of coerced intelligence.

I don't think anyone intended this nomination to turn on this issue. So many of us saw with relief an end to the ordeal of the Department of Justice, and wished this nomination to succeed.

But for whatever reason, this moment has appeared, unbidden, as a moment of decision on who we are and what we are as a nation. What path will we follow? Will we continue America's constant steady path toward the light?

Will we trust in our ideals? Will we recognize the strength that comes when men and women rise in villages and hamlets and barrios around the world and say, that is what I want my country to be like; that is the world I choose, and turn their faces toward our light?

Or, to borrow from Churchill, will we head down ''the stairway which leads to a dark gulf. It is a fine broad stairway at the beginning, but after a bit the carpet ends. A little farther on there are only flagstones, and a little farther on still these break beneath your feet''? Will we join that gloomy historical line leading from the Inquisition, through the prisons of tyrant regimes, through gulags and dark cells, and through Saddam Hussein's torture chambers? Will that be the path we choose?

I hope not.

I am torn—deeply torn between this man and this moment. This is a good man, I believe. But this moment can help turn us back toward the light, and away from that dark and descending stairway. If this moment can awaken us to the strength of our ideals and principles, then, with whatever strength I have, I feel it is my duty to put my shoulder to this moment, and with whatever strength God has given me, to push toward the light.

One might argue that this makes Mr. Mukasey an innocent victim in a clash between Congress and the President—that no nominee for Attorney General will be able to satisfy Congress or the American people on the question of torture, because the President or perhaps the Vice President will not allow any nominee to draw that bright line at what we all know in our hearts and minds to be abhorrent to our Constitution and our values.

That is exactly the point. If we allow the President of the United States to prevent, to forbid, a would-be Attorney General of the United States—the most highly visible representative of our rule of law—from recognizing that bright line, we will have turned down that dark stairway. I cannot stand for that. I will oppose this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, it is my understanding that we are in the 30 hours of postcloture on the motion to proceed on SCHIP. Am I correct?

The PRESIDING OFFICER. That is correct.

Mr. ENZI. I thought it might be a good idea for somebody to actually talk about that. To quote from Shakespeare:

A rose by any other name would smell as sweet.

But the so-called new SCHIP plan is essentially the same as the old one, and it still stinks.

I rise today to speak about the State Children's Health Insurance Program, or what people on Capitol Hill are calling SCHIP.

SCHIP was created by a Republican Congress in 1997 to help low-income kids get health insurance. The goal of the program is to help kids who do not qualify for Medicaid but also cannot afford to get health insurance on their own, receive the care they need. This program was temporarily extended until November 16, 2007, which is coming up shortly. I am here today to speak about how important it is for Congress to work with the President to reauthorize this critical program in a way that gets every single low-income child who needs insurance insured.

If it were not for politics, this would have been solved last week. It would have been solved last month.

We have been working on this issue in the Senate for a few months now. And the longer we work on it, the more political it becomes. I worried that some Members in this Chamber have lost sight of the goal: making sure all the low-income children in this country have health care.

The press has been reporting that Members of the body have claimed that all the concerns were addressed in the last version of the bill the House voted on last week. That is not correct. The concerns were not addressed. This so-called new bill still fails to put low-income children first by gutting the administration's requirement to enroll at

least 95 percent of the kids below 200 percent of poverty before expanding the program to cover the higher income population.

This so-called new bill still expands the Children's Health Insurance Program to higher income families by using income disregards, which is clarifying certain expenses so they do not count toward income. How much are we going to let people exclude and still consider them poor?

When the House debated this bill last week, Representative DINGELL, the chairman of the Energy and Commerce Committee, participated in the colloquy with Representative BURGESS and explained how the income disregard loophole works.

What this means in plain English is, the majority party knows there is a provision in the bill that could lead to children from families earning over $100,000 going into Government health care. This is exactly what I mean when I say we have lost focus when it comes to this bill. This program is intended to help low-income kids, not kids in families earning as much as $100,000 a year.

The so-called new bill still allows the enrollment of adults, though the bill does transition childless adults off the SCHIP into Medicaid. Parents still receive SCHIP coverage.

The so-called new bill still removes 2 million individuals from private coverage and puts them on Government-run health care at the taxpayer's expense.

Congress needs to ensure this program is paying for health insurance for kids who do not currently have health insurance, not switching kids from private insurance to Government-run health insurance.

We need to help all Americans get health insurance, but there are better, more efficient ways than spoiling a good children's plan. I have introduced a first-class, 10-step plan that would help us achieve the goal of comprehensive health care reform for every American. Any one of those steps would improve the situation for almost all Americans. All 10 steps would improve it for every American.

But to get back to what is wrong with this new bill, the so-called new bill still expands SCHIP to illegal immigrants by weakening citizenship verification requirements. Let me repeat that. This so-called new bill still expands the SCHIP program to illegal immigrants by weakening citizenship verification requirements.

Now, the so-called new bill still is not paid for. It is relying on a budget trick to get around the budget rule. I am the only accountant in the Senate. I am sure there are others who can count. There are documents that show this information, but this so-called new bill still includes a tobacco tax increase, and the proposed tax hike is highly regressive, with much of the tax burden being shouldered by low-income taxpayers.

Now, I am not a fan of tobacco. I have spoken on this floor many times about why I am so adamantly against tobacco usage. But using a tobacco tax to pay for children's health insurance does not make sense because you have to keep the program funding level stable in the future, and that would require 22 million more smokers.

We are going to help children's health by talking 22 million more people into smoking and keeping the ones who are smoking now from quitting? It does not sound like a health care plan to me.

The so-called new bill still contains district-specific earmarks. Again, we know we have lost focus on children's health insurance when the bill contains earmarks for certain districts. Clearly, the so-called new bill has not changed that much from the previous bill. We have to put low-income kids first, and this bill does not do that.

I have cosponsored the Kids First Act, S. 2152. The bill would provide Federal funding for children in need and require the money actually be spent on children from families with lower incomes.

This bill is a good step in the direction of the compromise, and I hope the majority will see that and start working with the minority to pass something the President can sign rather than putting the kids in jeopardy by continuing to play politics.

I would be remiss if I did not mention what a great job my home State of Wyoming is doing in the way that they are administering SCHIP. Wyoming first implemented its SCHIP program, called Kid Care CHIP, in Wyoming in 1999. In 2003, Wyoming formed a public-private partnership with Blue Cross/Blue Shield of Wyoming and Delta Dental of Wyoming to provide health, vision, and dental benefits to nearly 6,000 kids in Wyoming. That is a pretty significant part of our population. Wyoming is the least populated State in the Nation.

These partnerships have made Kid Care CHIP a very successful program in Wyoming. All children enrolled in the program receive a wide range of benefits, including inpatient and outpatient hospital services, lab and x ray services, prescription drugs, mental health and substance abuse services, not to mention dental and vision services.

Families share in the cost of the children's health care by paying copayments for a portion of the care provided. These copays are capped at $200 a year per family—not per child, per family.

Wyoming is also engaged in an outreach campaign targeted to find and enroll the additional 6,000 kids who are eligible for the Kid Care CHIP but are not enrolled. I am proud of the great job Wyoming is doing in implementing its program.

I am proud to say that even if the program were not reauthorized, Wyoming has enough money to run its program for another year because folks there know how to budget and plan. I sure hope it does not come to that. We need to get it extended. We need to get it extended right now.

I hope Congress will be able to set the politics aside and put the kids first. We have a job to do for all the kids in the States that are not as fiscally responsible as Wyoming. They will start running out of money, so we owe it to them to work across the aisle and with the President and get a bill signed into law. I will cover this some more tomorrow when more have spoken and there are some arguments to counter.

There is a way that we can come to a compromise and arrive at a solution. In fact, some of the negotiations I was involved with last week I thought had been reached. And then when I saw the bill that was voted out by the House, I saw a little recidivism there. I thought we had done better than that. But, obviously, we had not. Obviously, we need to keep working.

I yield the floor.

The PRESIDING OFFICER (Mr. SALAZAR). The assistant majority leader is recognized.

MUKASEY NOMINATION

Mr. DURBIN. Mr. President, it is my great honor to serve in the Senate and represent my State of Illinois. It is a singular honor and responsibility.

Unlike the House of Representatives where I was honored to serve for 14 years, in the Senate we are often called on to judge people; not ideas, not bills, not expenditures, but people. I think it defines one of the fundamental differences between the House and the Senate.

So often when it comes to the President's appointments and Cabinet officials, those who serve us in public life, we have to take the measure of a person and decide whether that person is the right one for the moment, if that person has the integrity and the skill and the values to serve this great Nation.

It is a heavy burden. Sometimes I am sure I have gotten it wrong, and other times right. You are never quite sure. In this situation, as a member of the Senate Judiciary Committee, I am faced with this question about filling the vacancy after the resignation of Attorney General Alberto Gonzales.

I was not a fan of Attorney General Gonzales. I voted against his nomination. There were many reasons. I will not go through the long litany. But I did not believe he was the right person for the job. I thought his appointment to lead the Department of Justice was the appointment of a man more loyal to a President than to our Constitution and his special responsibility in our Cabinet.

But even beyond that, I was haunted, haunted by the involvement of Attorney General Gonzales in a historic decision made by the Bush administration.

America has never been the same since 9/11/2001. We can all recall exactly where we were at that moment, the

horror that came over us as we realized how many innocent Americans would lose their lives with this unprovoked terrorist attack on the United States, the grief we shared with families and friends after that loss, witnessing all of the funerals and hearing all of the sad stories.

Determined, this Congress came together in a matter of days and declared war on those responsible. Now there have been many times in my public career when I have been called on to decide whether to go to war. These are the decisions which may look easy from the outside but are never easy.

You know that when a nation goes to war, people will die. You hope it will be the enemy, but you know it will be some of our own, and innocent people as well. You find yourself tossing and turning thinking about what is the right thing to do.

When it came to the declaration of war on the Taliban and al-Qaida for what happened on 9/11, there was no tossing and turning. With resolve, the Senate unanimously voted to embark on that war, to make it clear that the United States would not tolerate what had happened on 9/11.

Of course, shortly thereafter, another challenge presented itself to the Senate when it came to the war in Iraq. I thought that was a much different issue. In fact, I thought it was an unwise policy decision to go forward. I joined 22 of my colleagues in voting against the authorization for the use of military force by President Bush.

I think history has shown that the decision to go to war in Iraq was one that was ill-fated and may go down as one of the worst decisions in the history of our Nation. But what happened in addition to those two declarations of war is also going to be written in the annals of history.

What did we do to protect America? Well, if you look back in our history, you will find that whenever we are insecure and frightened and believe we are in danger, we make a number of decisions to find security and peace of mind. Then over time we reflect on those decisions. And over time some of them do not stand the test of being consistent with our basic values.

We were debating some of those decisions even today in the Judiciary Committee. The question of warrantless wiretapping, the conflict between privacy and security. It is almost always an issue when America is at war or there is a question of our security. It is an issue today: telephone records, records of e-mail traffic, and so forth.

What right does the Government have, and under what circumstances can the Government violate the privacy of an individual in an effort to protect our Nation? That debate will continue. It is far from resolved.

But there was another debate involved after 9/11 that I did not anticipate. I did not imagine at the time, in all of my grief and all of my concern, that this administration would actually call into issue the question of how America would treat its prisoners after 9/11.

The reason it never dawned on me was the fact that for decades now the United States has been in a position of global leadership when it comes to the morally right position on the treatment of prisoners.

We have prided ourselves on our coauthorship of the Geneva Conventions, an international standard of conduct relative to the treatment of prisoners in a time of war. We have prided ourselves on our own Constitution which bars cruel and unusual punishment. We have said that a democracy, the one we revere, the one that is part of our very national being, is a civilized nation, a nation that will draw lines and live by those lines when others might not.

Other countries in the world think perhaps we get on a high horse sometimes when it comes to this. Each year the Department of State puts out a human rights scorecard on the world. We grade the world on issues such as torture, treatment of prisoners, treatment of political dissent, use of child soldiers, genocidal policies. The United States makes an announcement: These are the countries that are not living up to those standards. We stand in judgment of other nations. That is why it came as a surprise to me, as slowly the information trickled out from this White House and this administration, that the Bush administration was raising fundamental questions about whether we would change the way we treated prisoners, detainees in the so-called war on terrorism.

As we learned, some of the decisions of this administration were particularly troubling. They called the Geneva Conventions, which had guided us for almost half a century, quaint, and some referred to them as obsolete; they said that we had to do more when it came to terror. It appears at some point there was a change of heart in the administration and they backed off some of the early harsh language in the so-called Bybee memo and went on to revert to some standards closer to where our Nation had always been. The fact is, there was not only active discussion, but it appears there was active conduct involved in the treatment of prisoners far different than what we had said to the world was our standard of treatment and our standard of care.

I am old enough to recall the Vietnam war. I often say to groups I speak to in Illinois and other places that certain words bring certain images. When the words ''Vietnam war'' are brought to mind and I am asked of the first snapshots in my mind, the first one that presents itself is the black-and-white grainy photograph of the mayor of a South Vietnamese hamlet shooting pointblank at the head of a political prisoner. The second image is of a little girl stripped naked running down a road with her arms extended, burned from napalm. I will never get those images out of my mind.

I am afraid there are images of the war in Iraq that will stay with people for a long time as well. One of them, sadly, will be images from Abu Ghraib prison and the treatment of Iraqi prisoners. A prisoner on a stool with his head covered with a bag, his arms extended with electrodes connected; I am afraid that is an image that will be with us for a long time and in the minds of many will be an unfair characterization of America and what we are about.

That was one of the reasons why I could not vote for the nomination of Attorney General Gonzales. I knew he was complicit in these conversations, these policies, this change when it came to the issue of torture. I find it difficult to rationalize how a person whose job it is to uphold the rule of law could be party to that.

Now comes a vacancy, an opportunity to consider a successor—Judge Michael Mukasey, former Federal judge from New York, a person who has given his life to the law, an extraordinarily gifted, talented, able jurist, who left the bench for private practice. Some have described Judge Mukasey as aspiring to the role of caretaker because it is a year and a few months away from the President's end of office. But the person confirmed to fill that job has a much bigger responsibility than caretaker. He will bear a heavy burden of doing his part to restore honor and dignity to the Department of Justice.

I believe Michael Mukasey could do that if he not only brought the skills of a judge and the administrative skills that he might bring to the job, but also brought with him a clear break from Attorney General Gonzales's views on the issue of torture. It is the Attorney General's role to uphold the law and American values. Former Attorney General Gonzales failed in that role.

The late historian Arthur Schlesinger, Jr. said this about the Justice Department's legal defense of torture:

> No position taken has done more damage to the American reputation in the world—ever.

That is a powerful statement from a man who made his life as a historian and close adviser to President John Kennedy and close confidant of many others at the highest levels of public life, to say that no position taken has done more damage to America's reputation in the world than this administration's position on torture.

Judge Mukasey has a distinguished record. I had hoped his background as a member of the Federal judiciary would give him the independence and integrity necessary for the job of Attorney General. On the first day of his testimony I was so relieved and refreshed; he answered questions. He didn't say ''I don't know'' and duck and dodge. When confronted with hard questions, such as will you be prepared to walk away from this President if asked to do something that you feel inconsistent with the Constitution and laws of the

land, he was resolute and firm in his answers. I thought maybe this is the right person. This is a man who, because of his background and station in life, doesn't need this job but would take it for public service and be willing to stand up for principle. It was so refreshing.

Then came the second day of questions. I had a chance to ask him a question toward the end of the hearing. The room was almost empty. People had come to the conclusion on the second day that it was a foregone conclusion that Judge Mukasey would be approved as the nominee by the Judiciary Committee and submitted to the Senate. I asked him late in the questioning about the issue of torture. In fact, I was specific. I went beyond the general questions of torture because the administration said clearly: We do not have a policy of torture. We don't engage in torture.

I then went to specific forms of torture, things that have been done to prisoners in detention over the centuries which are commonly regarded as torture. I asked him about waterboarding. Judge Mukasey refused to answer the question and said:

I don't know what's involved in the technique. If waterboarding is torture, torture is not constitutional.

SHELDON WHITEHOUSE of Rhode Island is my colleague. He called this response by Judge Mukasey ''a massive hedge.'' I think Senator WHITEHOUSE was kind. For those who heard his remarks a few minutes ago, I told him it was one of the most powerful statements I had heard as a Senator in analyzing the challenge we now face on the Judiciary Committee with this nomination.

I had hoped I would have heard from Judge Mukasey words that were spoken to me and to the committee and to America by people who have given their lives to considering this difficult topic.

Retired RADM John Hutson, former Navy Judge Advocate General, testified at Judge Mukasey's confirmation hearing. He was asked about Judge Mukasey's statements and position on waterboarding. This is what he said:

Other than, perhaps the rack and thumb screws, water-boarding is the most iconic example of torture in history. It was devised, I believe, in the Spanish Inquisition. It has been repudiated for centuries. It's a little disconcerting to hear now that we are not quite sure where waterboarding fits in the scheme of things. I think we have to be very sure where it fits in the scheme of things.

Those are the words of Admiral Hutson. I was troubled by Judge Mukasey's position on waterboarding. I joined with all of my Democratic colleagues in the Judiciary Committee and sent him a letter. I wanted to give him a fair opportunity to reflect on the questions and his answers and to give us a complete statement of his views on this issue. I felt it was important and only fair to give him that chance. Last night we received his reply. To say the least, it was disappointing. We asked Judge Mukasey a simple, straightforward question. Is waterboarding illegal? His response took four pages. In it was very little.

He said waterboarding was ''on a personal basis, repugnant to me.'' But he refused to say whether waterboarding was illegal because ''hypotheticals are different from real life'' and it would depend on ''the actual facts and the circumstances.''

With all due respect, that is an evasive answer. Frankly, while Judge Mukasey has not been confirmed yet, that answer sounds too reminiscent of his predecessor. For the past 5 years, whenever we have asked the administration whether torture techniques such as waterboarding are illegal, they always have the same response: That is a hypothetical question, and it depends on the facts and circumstances.

Let's be clear. Waterboarding is not a hypothetical. Waterboarding or simulated drowning is a torture technique that has been used at least since the Spanish Inquisition and is used today by repressive regimes around the world. I have come to the floor, Senator MCCONNELL has come to the floor, and many others, to decry what is happening in Burma today where the military junta is not only killing innocent Burmese people in the streets but engaging in torture and detention of citizens who are only trying to speak their heart. The Burmese military has reportedly used waterboarding against democracy activists as they violently repressed demonstrations in recent weeks. Whether waterboarding is torture is certainly not a hypothetical question to these Burmese democracy activists. These are some techniques that are so clearly illegal that it doesn't depend on facts and circumstances. They should always be off limits. Would it depend on the facts and circumstances whether it is torture to pull out someone's fingernails? Do you want to know more? Would it depend on facts and circumstances whether rack-and-thumb screws are torture?

Judge Mukasey refused to say whether waterboarding is illegal, but many others have answered this question and they didn't need four pages to do it. Following World War II, the United States prosecuted Japanese military personnel as war criminals for waterboarding American servicemen. The Judge Advocates General, the highest ranking military lawyers in each of the U.S. military's four branches, told me unequivocally waterboarding is illegal.

To take one example, BG Kevin M. Sandkuhler, Staff Judge Advocate to the Commandant of the Marine Corps, stated:

Threatening a detainee with imminent death, to include drowning, is torture.

Senator JOHN MCCAIN, a Republican colleague from Arizona, who knows more than anyone on this floor about being a prisoner and being treated as a prisoner, spoke to this issue with credibility and clarity. This is what he said of waterboarding:

In my view, to make someone believe that you are killing him by drowning is no different than holding a pistol to his head and firing a blank. I believe that it is torture, very exquisite torture.

Earlier this week Senator MCCAIN was asked about Judge Mukasey's refusal to say whether waterboarding was torture. This is how he responded:

Anyone who says they don't know if waterboarding is torture or not has no experience in the conduct of warfare and national security.

Senator JOHN WARNER, one of the authors of the Military Commissions Act, during the floor debate on the same legislation said that waterboarding is ''in the category of grave breaches of Common Article 3 of the Geneva Conventions'' and would be ''clearly prohibited'' by the Military Commissions Act.

Our own State Department has long recognized that waterboarding is torture and cruel, inhuman and degrading treatment. The State Department has repeatedly criticized other countries for using waterboarding in its annual Country Reports on Human Rights Practices.

How can we on one hand say our Secretary of State is going to look at the conduct of the world and issue a report every year and find that if they are engaged in waterboarding and the torture of prisoners, they have violated human rights, and have a nominee for Attorney General of the United States of America uncertain until he knows a little bit more about the facts and circumstances surrounding the use of waterboarding?

It is important to note that although Judge Mukasey was equivocal and evasive on the issue of waterboarding, there were other issues he was happy to volunteer strong opinions on. For example, I asked him whether he believes the Second Amendment secures an individual right to bear arms. Unlike waterboarding, which is widely condemned, this is an unsettled legal question.

The Bush administration takes the position that the Second Amendment protects an individual right to bear firearms, but that view has been rejected by most Federal appeals courts and conflicts with the holding of the U.S. Supreme Court in United States v. Miller. Judge Mukasey did not hesitate and ask for facts and circumstances. He said:

Based on my own study, I believe that the Second Amendment protects an individual right to keep and bear arms.

On this contentious, debated, constitutional issue about the Second Amendment, he wasted no time coming to a legal conclusion. But when it comes to the issue of waterboarding he refuses.

Every reason Judge Mukasey has offered in his letter to us for his failure to take a position on waterboarding

falls short. He says he has not been briefed on the administration's interrogation programs. Isn't it ironic, because if he were briefed, he would have refused to answer the question, saying it is classified. What I am asking about are basic principles, and he refuses to answer.

Now he argues he cannot answer the question because he has not been briefed. As we made clear in our letter, we are not asking Judge Mukasey's views of the administration's interrogation program. We are asking him for his personal opinion on waterboarding.

He also argues he cannot take a position on waterboarding because it would ''provide our enemies with a window into the limits or contours of any interrogation program.''

With all due respect, what does that say about us? If you would go to the Internet now and run a search on the term ''waterboarding,'' you would find there are 18 million references to it—18 million. This is not a term shrouded in mystery. It is a term well known and well discussed across the world.

If the argument is being made by Judge Mukasey that we want to leave our enemies in doubt as to whether we engage in waterboarding, what does it say about us? If the United States does not explicitly and publicly condemn waterboarding, it is certainly more difficult to argue that enemy forces cannot use the same tactics. That has always been the gold standard. If this tactic of interrogation were applied to an American soldier, would the United States cry foul? Would we say it is torture, cruel, inhuman, and degrading?

There is no doubt in my mind we would say any American soldier subjected to waterboarding is a victim of torture. We said it after World War II, and we prosecuted those Japanese military officials responsible.

Why now in the 21st century is there any doubt in Judge Mukasey's mind? Sadly, if the Senate confirms Judge Mukasey, it will tell the world the American Attorney General has not made up his mind about a form of torture that has been repudiated for centuries.

Many of us have a vision of America after this administration. We look beyond January 20, 2009. We hope we will live in a better and safer world. We hope the next President, whoever that may be, will rebuild alliances with countries that have stood by our side through thick and thin throughout our history—countries which are now estranged by the policies of this administration.

We hope whoever the next President will be, that person will seek to restore the image of America in the world, tell people who we are, because many have such wrong and bad impressions of this great Nation. We certainly expect the next President to reestablish the values that define us: fairness and justice, clarity of purpose—a caring nation, dedicated to peace.

When the history of this war on terror and this Bush administration is written, I am afraid many of the actions of this administration will fall into a sad and regretful category—a category that includes the suspension of habeas corpus during the Civil War, the Sedition Act of World War I, the Japanese internment camps in World War II, the Army-McCarthy hearings of the Cold War, the enemies list of the Nixon administration—overreactions by a government so consumed with the idea of security that that government lost its way when it came to our basic and fundamental values.

We cannot lose our way when it comes to the choice of the next Attorney General. As good a person as he may be, his response to this question—this basic and fundamental question on policies of the interrogation of prisoners leaves me no alternative but to oppose Judge Mukasey's nomination to be Attorney General of the United States.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, back in August, I stood right here on the Senate floor and shared the story of a little girl from my home State. I did that because I wanted to illustrate why it is our moral obligation as Americans to renew and improve the Children's Health Insurance Program, or CHIP.

Shortly afterward, the Senate approved the CHIP bill by an overwhelming margin because Senators on both sides of the aisle agreed that all children should be able to see a doctor when they are sick. They supported reauthorizing CHIP because it would reduce the number of uninsured American children by a third.

Well, President Bush vetoed it.

Now it is 3 months later, and I am frustrated and angry that I have to stand here again talking about CHIP and that we are still trying to get the White House to understand.

The supporters of this bill have agreed to a compromise. We want to make this program work. We are back with another bill now that we think meets everyone's needs. So today I come back to the floor to remind President Bush and anyone else who still questions how important it is to approve this program now—about that little girl from Yakima, WA, because it is time for the President to stop blocking her health care.

The little girl I want to tell you about is Sydney. She is 9 years old. In many ways, Sydney is like any other happy child in America. She loves to sing. She loves to dance. She does well in school. She has a lot of friends. But Sydney is different in one way. She has a life-shortening genetic condition called cystic fibrosis. It requires her to take and I quote from her a ''bucketful'' of medicine every day.

She has already spent weeks of her young life in the hospital hooked up to an IV of antibiotics which help her to live another day. All of that is possible because of the health care she has received as part of the CHIP program.

Her mom, Sandi DeBord, told me about Sydney because she was very frightened that CHIP might no longer be available for her daughter. She wrote to me and said:

I know for a fact that without this bit of assistance, her life would end much sooner due to the inability to afford quality health care for her.

Her life would end because she could not afford health care. What a sad note. I am here to tell the story again because, sad to say, 3 months later I cannot assure Sydney's mom that CHIP will always be there. In fact, the news has become even more worrisome.

Just today, in the New York Times, it reported that because of the President's refusal to work with Congress on this bill, several States are now planning to start dropping children from the program in order to save money. Unless something changes, California says it is going to start dropping 64,000 kids a month in January—64,000 kids a month.

A study from the Congressional Research Service found that nine States—Alaska, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, New Jersey, and Rhode Island—are all going to run out of money by March. Twelve more States are going to run out between April and September. This is a tragedy, and it is our moral obligation to fix this. That is what we are trying to do now in the Senate.

As Sydney's story shows us, the need for the Children's Health Insurance Program is clear. It does not matter if you are a Republican child or a Democrat child or a progressive or a conservative; making sure our children get health care is the right thing to do.

When a child gets a cut that requires stitches or comes down with a fever or has an earache or any other imaginable problem, they ought to be able to get help, period. This is the United States of America. But, unfortunately, today, in this country, that is not the case. Millions of kids do not get the medicine or the care they need.

We know the ranks of our uninsured children are growing because as the cost of living rises and wages remain stagnant, more and more parents are struggling to afford any health care.

Most of us in the Senate know this. The CHIP program has had strong Republican support, and I particularly thank Senator GRASSLEY and Senator HATCH, who cosponsored the original 1997 bill, and have been working so hard with Senator BAUCUS and Senator ROCKEFELLER since.

But even with that bipartisan support in the Senate, President Bush has complained about the bill that passed. As an excuse to delay the program, he and a few Republican supporters say we have been unwilling to work with them. They say it will increase costs. I am here to say that is not the case. Despite what the President says, we listened to their concerns, and in this bill that is now before the Senate we address those concerns.

This bill we are now considering addresses the concerns we heard over and

over that children of illegal immigrants will be covered by requiring that States not only verify names and Social Security numbers, but they also check citizenship information in the Social Security Administration's database. So that issue is gone.

Secondly, it ends the coverage of childless adults by the end of 1 year. So that issue is gone.

Finally, this bill concentrates on making sure the poorest kids get covered first. So that issue is gone.

This bill also helps bridge the gap for another 3.9 million children whose parents cannot afford insurance. And this program is paid for. I want to say that again. This program is paid for.

President Bush just asked us to borrow $196 billion for the war in Iraq and Afghanistan for this year alone. But he opposes children's health insurance, even though we found a way to pay for every penny of it for the next 5 years. The $35 billion cost for CHIP's initiatives comes solely from a 61-cent excise tax increase on cigarettes and other tobacco products. No other programs are cut. Social Security is not raided. We are not increasing the deficit. Not only will this provide millions of children with health care, experts actually estimate it is going to get 1.7 million adults to quit smoking and prevent millions of kids from ever getting hooked. So this is good for our kids' health care now, and it is going to make a lot of kids healthier in the future.

Children's health should not be about politics. I have said this over and over. It is about making sure kids see a doctor when they need to. Kids are not Democrats; they are not Republicans. They are just kids who deserve health care.

Unfortunately, President Bush has let health care for our children get caught up in a desperate attempt to appeal to his dwindling number of supporters.

We know CHIP is the right thing to do. Americans know it is the right thing to do. More than 65 percent of them oppose President Bush's veto.

So to President Bush—and to any of our colleagues out there who still see this as a debate over politics and numbers—I want to remind you once more of a little girl who is 9 years old whose name is Sydney and the millions of other kids out there who depend on us to do the right thing.

Sydney is still fighting cystic fibrosis, and her mom is still wondering whether she will be able to take care of her in the future. I hope we can tell her that we will.

So on behalf of Sydney, on behalf of the 73,000 uninsured children in my State alone, and the more than 8 million children in this country, I thank all of my colleagues who worked so hard on this bill and supported it to this point. I urge the President to stop blocking this critical program for our kids.

Mr. President, I yield the floor.

MORNING BUSINESS

Mrs. MURRAY. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak therein for up to 10 minutes each.

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

PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT

Mrs. CLINTON. Mr. President, I am in support of the Passenger Rail Investment and Improvement Act of 2007.

The passage of this critical legislation is truly a great achievement. For New Yorkers, Amtrak is not just a commodity but a life source. Passenger rail is an essential element of our transportation network that provides irreplaceable capacity and mobility to New York and the Nation. For the past near 7 years, we have had to fight the administration's constant attempts to privatize and dismantle our Nation's premier passenger rail service, Amtrak. Eliminating Amtrak service would be an economic disaster and an irresponsible policy.

Today, as gas prices continue to climb and airline delays are at an all-time high, Amtrak not only provides a necessary and affordable alternative to our congested airways, it links commuters to local locations not serviced by the airline industry. The enactment of Passenger Rail Investment and Improvement Act of 2007 will end the stop-gap funding process for Amtrak and will provide the traveling public with the security of a comprehensive plan for improving our nation's passenger rail system.

No country in the world has ever developed and maintained a successful passenger railroad system without assistance from their national government. Without offering an alternative, President Bush has aimed to simply shut down passenger rail in the US.

This plan will authorize $19.2 billion in Federal funds for Amtrak by providing $3.2 billion over the next 6 years and will allow Amtrak to make critical repairs and improvements to its service. Funding under this legislation will allow Amtrak to implement a comprehensive plan that will enhance rail security, reduce train delays, and improve customer service. It will also provide sufficient funding and direction to bring the Northeast corridor up to a ''state-of-good-repair,'' including vital tunnel life safety work in the Hudson River Tunnels.

In recent years, attempts by Congress to improve and modernize Amtrak's operations were stalled by the Republican-controlled House, and earlier this year the President proposed cutting $493 million, more than 38 percent of Amtrak's operating funds. This sort of backward thinking would have severely jeopardized Amtrak's ability to serve their passenger lines in New York and throughout the Northeast.

Mr. President, in the State of New York, Amtrak operates 140 routes, employs more than 1,900 people, and has 2 of the top 10 busiest stations in their rail system. Amtrak is an integral part of our transportation infrastructure and continues to service parts of the State that need the influx of tourists, business travelers, and others. The future without Amtrak for New York would be devastating.

I am proud that the full Senate has rejected the administration's approach to Amtrak. As an original cosponsor of this legislation, I commend Senator LAUTENBERG and Senator LOTT for their leadership in steering this critically important legislation through the Senate. As an original cosponsor of this legislation, I am pleased that my Senate colleagues have voted overwhelmingly to continue to provide critical funding for Amtrak, and I look forward to this legislation being signed into law.

Mr. WHITEHOUSE. Mr. President, yesterday, the Senate made a strong and long-overdue investment in the future of public transit in Rhode Island and throughout the country. I am pleased to have cast my vote for the passage of the Passenger Rail Investment and Improvement Act of 2007 (PRIIA), which will guide the maintenance, growth, and funding of the railroad through Fiscal Year 2012.

Each year, over 12 million business and leisure travelers depend on Amtrak's Northeast Corridor service, which connects the great cities of New England and the Mid-Atlantic states. Providence is a vital link on this route, with more than half a million Amtrak passengers boarding and departing Amtrak trains in the city each year. Also on the Northeast corridor route are Kingston and Westerly, Rhode Island. Kingston is home to the University of Rhode Island, and Amtrak gives students, faculty, researchers, and visitors direct access to this thriving college town. The Westerly station provides rail service to residents of both Rhode Island and Connecticut who rely on public transportation.

Despite its importance to millions of travelers, the Northeast Corridor has fallen into a state of disrepair in recent years. The infrastructure on this route is some of the oldest in the Nation, and a revitalization plan has been necessary for some time. This new Amtrak bill includes a strategy to restore the route to good condition by September of 2012—the first capital development plan put in place since Amtrak's previous authorization expired 5 years ago—and authorizes full federal funding of necessary repairs and upgrades. The Amtrak bill also authorizes the formation of a commission to oversee the operation and maintenance of the Northeast Corridor. The commission will include Amtrak, the Federal Railroad Administration, and each state along the route. I am pleased that Rhode Island will have a voice in future planning for a resource so vital to us.