

know you cannot spend the money here for involuntary sterilization, we know if you spend the money in China we are going to take it away from the United Nations.

This amendment goes too far. I urge my colleagues, particularly those who are of a persuasion that opposes abortion and believe they should oppose it in every circumstance, give women in the poorest countries on Earth the option of voluntary family planning. Do something for these poor women who have been victimized by rape and war, and these young pregnancies that unfortunately cause so much damage to their bodies. Give them a chance to put their lives back together. Also, when it comes to genital mutilation, the United Nations should be in the forefront of promoting modern treatment of women and not leave ourselves in the distant dark past of these tribal customs. I am sure Senator WICKER does not intend for this to happen, but I am afraid that is the result of it.

I urge my colleagues to oppose the Wicker amendment.

#### ORDER OF PROCEDURE

Mr. DURBIN. Madam President, I ask unanimous consent that a vote with respect to amendment No. 607, as modified, occur at 12:10—that is the Wicker amendment; that there be 45 minutes of debate with respect to the amendment prior to the vote, equally divided and controlled between the leaders or their designees, that no amendment be in order on the amendment prior to a vote in relation thereto.

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### OMNIBUS APPROPRIATIONS ACT, 2009

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1105, which the clerk will report by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1105) making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

##### Pending:

Wicker modified amendment No. 607, to require that amounts appropriated for the United Nations Population Fund are not used by organizations which support coercive abortion or involuntary sterilization.

Thune modified amendment No. 635, to provide funding for the Emergency Fund for Indian Safety and Health, with an offset.

Murkowski amendment No. 599, to modify a provision relating to the repromulgation of final rules by the Secretary of the Interior and the Secretary of Commerce.

Cochran (for Kyl) amendment No. 634, to prohibit the expenditure of amounts made available under this Act in a contract with

any company that has a business presence in Iran's energy sector.

Cochran (for Inhofe) amendment No. 613, to provide that no funds may be made available to make any assessed contribution or voluntary payment of the United States to the United Nations if the United Nations implements or imposes any taxation on any United States persons.

Cochran (for Crapo (and others) amendment No. 638, to strike a provision relating to Federal Trade Commission authority over home mortgages.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Madam President, I ask unanimous consent I may speak for 10 minutes as in morning business.

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

Mr. SPECTER. I have sought recognition to comment about the pending bill. As I reflect on it, I am speaking on the bill and do not need to put it in morning business. It is on the bill itself.

I note the majority leader has filed a motion for cloture and it is scheduled for 9:30 tomorrow. We may vote on it today. But whenever we vote on it, there are some observations I have. I want to give my thinking on the issue. My current inclination is to vote against cloture because there has been insufficient time to offer amendments.

This omnibus bill contains most of the budget process and there are a great many amendments pending. I compliment the majority leader for moving from the position of blocking all amendments. We have had considerable discussion last year, and even before that, about a practice of majority leaders taking procedural steps known as—there is an arcane procedure, inside-the-beltway talk—filling the tree, stopping amendments being offered and then moving to cloture. I have opposed cloture and have urged that regular order be followed in allowing amendments to be offered.

The unique feature about the Senate is that any Senator can offer virtually any amendment at virtually any time on virtually any bill. That, plus unlimited debate, makes this a very extraordinary body where we can focus public attention on important matters of public policy and acquaint the public with what is going on and seek to improve our governance.

The majority leader has objected to quite a number of amendments coming up. Looking over the list, there are quite a number of amendments which I believe merit consideration. Senator GRASSLEY has tried to advance amendment No. 628. He did again this morning. There was an objection raised to it.

Senator SESSIONS has sought to offer amendment No. 604 and he has been blocked on four occasions from offering this amendment on the economic stimulus.

Senator VITTER has a number of amendments, one of which is amendment No. 636, involving drug re-importation from Canada.

Senator ENSIGN has amendment No. 615, cosponsored by Senator VOINOVICH, Senator KYL, Senator DEMINT, Senator BROWNBACK, and Senator CORNYN, which would deal with a subject where they are seeking to have a vote.

I do not necessarily agree with all of these amendments. In fact, as I review them, there are some I disagree with. But I believe Senators ought to have an opportunity to offer amendments.

Yesterday the Senate voted on an issue involving Emmett Till, and many Senators voted against that amendment, as I understand it, to avoid having an amendment agreed to on the omnibus which would require a conference with the House of Representatives. I think it is something we ought to decide on the merits, as to the amendment, without respect to having a conference.

Regular order under our legislative process is to exercise our judgment on amendments. Then, if the Senate bill is different from the House bill, if an amendment is agreed to, then you have a conference. That is the way we do business. That is regular order. To determine how you are going to vote on an amendment in order to avoid a conference seems to me to be beside the point.

If there were some emergency, some reason to avoid a conference, perhaps so. But there is time to have a Senate bill which disagrees with the House bill and to have a conference and iron it out on regular order. Whenever we depart from regular order, it seems to me, we run into potential problems. The institutions of the Senate have been crafted over centuries. The Senate is smarter than I am, certainly, and perhaps smarter than other Senators. But I think we ought to follow the regular order. That is why I am disinclined to vote for cloture.

I know the majority leader wants to move this bill, but we have time to take up these amendments. If we move on into additional sessions of the Senate later this week, later tonight, later next week, then I think that is what ought to be done and Senators ought to have an opportunity to offer these amendments.

In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. What is the parliamentary situation?

The PRESIDING OFFICER. At 11:25 the Senate will begin 45 minutes of debate on amendment No. 607, and the time will be equally divided.

Mr. LEAHY. Are we still in morning business?

The PRESIDING OFFICER. No, the Senate is on the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 607

Mr. LEAHY. Madam President, I understand that we are on the Wicker amendment. I have listened to the statements made about it. It is hard to understand what the real purpose of the amendment is, although the junior Senator from Mississippi says the purpose is as follows: To require that amounts appropriated for the United Nations Population Fund are not used by organizations which support coercive abortion or involuntary sterilization.

I do not know anybody who would disagree with that. But apparently he believes that his amendment is necessary to prevent funds from being used for coercive abortion or involuntary sterilization. Let me state what is in the bill, because it is the same as current law. It already prohibits funds for abortions of any kind, whether coercive or otherwise. No funds in this bill can be used for abortion. So the amendment is unnecessary for that purpose.

His amendment prohibits funds for involuntary sterilization. Well, none of us is going to permit the use of Federal funds for involuntary sterilization. I urge him to read the bill. We already prohibit that. So the amendment is unnecessary for that purpose.

Actually, if he is on the floor, I would urge him to declare victory and withdraw his amendment. Long before he was in the Senate, we were already prohibiting the things he wants to prohibit.

His amendment also prohibits funds for the U.N. Population Fund for a program in China. Well, again, our bill already does that. We already prohibit explicitly any funds being used in China by the U.N. Population Fund.

His amendment says we should put funds for the U.N. Population Fund in a separate account and not commingle them with other sums. We already do that. Again, there is no need for it.

His amendment prohibits funds to the U.N. Population Fund unless it does not fund abortion. Well, the bill already says that. For the RECORD, the U.N. Population Fund has always had a policy of not supporting abortion. In fact, there is not a shred of evidence that it ever did. It supports the same voluntary family planning and health programs the United States Agency for International Development does, but it does it in about 97 more countries than the United States Agency for International Development does.

The amendment by the Senator from Mississippi would deduct, dollar for

dollar, from the U.N. Population Fund for a program it spends in China. The bill already does that. So for all practical purposes, the amendment of the junior Senator from Mississippi does nothing that the bill already does not do, with one exception.

His amendment would also strike the six limited purposes that are specified in the bill for which funds are made available to the U.N. Population Fund. For example, he would strike the funds that are provided "to promote the abandonment of female genital mutilation and child marriage." Why would we want to cut programs to help encourage an end to child marriage? Is there anybody in the Senate in favor of child marriage? Is there anyone in the Senate in favor of female genital mutilation? I find it amazing I have to even come to the floor to talk about this. Yet his amendment would remove the funds we provide to try to stop child marriage and female genital mutilation. Why should we vote for something like that?

Why should we prohibit funding to reduce the incidence of child marriage in countries where girls as young as 9 years old are forced to marry men they have never met, sometimes five times their age, who then abuse them?

The bill also provides funds to prevent and treat obstetric fistula. For those who are not familiar with this, it is a terrible, debilitating condition that can destroy the life of any woman who suffers from it. But it can be treated with surgery.

I ask unanimous consent that a February 24 article in the New York Times on obstetric fistula be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. LEAHY. Why we would want to prohibit funds to save the lives of women who otherwise could die or be painfully debilitated for the rest of their lives, I cannot understand. None of us would hesitate for a moment to provide funds to help someone in our family who might be in this condition. I see the Senator from Mississippi on the floor. His amendment prohibits funds to the U.N. Population Fund for that.

The bill provides funds to reestablish maternal health care in areas where medical facilities and services have been destroyed or limited by natural disasters, armed conflict or other factors, such as in Pakistan after the earthquake that destroyed whole villages. Why would we not want to support maternal health care? Any one of us, be it our sisters and daughters, our wives, we would want them to access to these medical services. Or in Congo, where armed conflict has destroyed what limited health services existed and where thousands of women and girls have been raped, some barely old enough to walk. This bill provides funds for programs to help them. The amendment of the Senator from Mis-

issippi would prohibit funding for the U.N. Population Fund for that.

Funds are provided to promote access to clean water, sanitation, food and health care for poor women and girls. His amendment would prohibit that. I have traveled to different parts of the world. I have seen the differences in the lives of women and young girls that are made with these programs. The Senator prohibits that.

The U.S. Agency for International Development has these types of programs in 53 countries, but the U.N. Population Fund works in about 150 countries. If you live in the Republic of the Congo or the Central African Republic, two of the poorest countries in Africa, and you are a 16-year-old girl with obstetric fistula, you are out of luck because USAID does not have programs there. That is why we fund the U.N. program. If you have a 7-year-old daughter who has been raped there, we don't have a program to help her. But we give funds to the U.N. to help her. The amendment of the Senator from Mississippi would stop that.

If you live in Niger or Mauritania, where genital mutilation is common, or in Sri Lanka where child marriage is common, we don't have funds there, but we give funds to the U.N. to help.

The Senator's amendment creates a problem where there is none. It denies funding to address the basic needs of poor women and girls who are subjected to practices that would be crimes in this country.

Our law already prohibits funds for abortion of any kind, whether coercive or voluntary. We already prohibit funds for involuntary sterilization. We prohibit funds for the U.N. Population Fund's program in China. We have already done all these things. But we do provide funds to help girls who are being forced into marriages at the age of 9. We do support care for women who suffer from these debilitating conditions. We do have funds for maternal care, clean water, and voluntary family planning. But if the amendment of the junior Senator from Mississippi is agreed to, we would prohibit those funds in many parts of the world.

I yield the floor and reserve the remainder of my time.

EXHIBIT 1

[From the New York Times, Feb. 24, 2009]

AFTER A DEVASTATING BIRTH INJURY, HOPE

(By Denise Grady)

DODOMA, TANZANIA.—Lying side by side on a narrow bed, talking and giggling and poking each other with skinny elbows, they looked like any pair of teenage girls trading jokes and secrets.

But the bed was in a crowded hospital ward, and between the moments of laughter, Sarah Jonas, 18, and Mwanaidi Swalehe, 17, had an inescapable air of sadness. Pregnant at 16, both had given birth in 2007 after labor that lasted for days. Their babies had died, and the prolonged labor had inflicted a dreadful injury on the mothers: an internal wound called a fistula, which left them incontinent and soaked in urine.

Last month at the regional hospital in Dodoma, they awaited expert surgeons who

would try to repair the damage. For each, two previous, painful operations by other doctors had failed.

"It will be great if the doctors succeed," Ms. Jonas said softly in Swahili, through an interpreter.

Along with about 20 other girls and women ranging in age from teens to 50s, Ms. Jonas and Ms. Swalehe had taken long bus rides from their villages to this hot, dusty city for operations paid for by a charitable group, Amref, the African Medical and Research Foundation.

The foundation had brought in two surgeons who would operate and teach doctors and nurses from different parts of Tanzania how to repair fistulas and care for patients afterward.

"This is a vulnerable population," said one of the experts, Dr. Gileard Masenga, from the Kilimanjaro Christian Medical Center in Moshi, Tanzania. "These women are suffering."

The mission—to do 20 operations in four days—illustrates the challenges of providing medical care in one of the world's poorest countries, with a shortage of doctors and nurses, sweltering heat, limited equipment, unreliable electricity, a scant blood supply and two patients at a time in one operating room—patients with an array of injuries, from easily fixable to dauntingly complex.

The women filled most of Ward 2, a long, one-story building with a cement floor and two rows of closely spaced beds against opposite walls. All had suffered from obstructed labor, meaning that their babies were too big or in the wrong position to pass through the birth canal. If prolonged, obstructed labor often kills the baby, which may then soften enough to fit through the pelvis, so that the mother delivers a corpse.

Obstructed labor can kill the mother, too, or crush her bladder, uterus and vagina between her pelvic bones and the baby's skull. The injured tissue dies, leaving a fistula: a hole that lets urine stream out constantly through the vagina. In some cases, the rectum is damaged and stool leaks out. Some women also have nerve damage in the legs.

One of the most striking things about the women in Ward 2 was how small they were. Many stood barely five feet tall, with slight frames and narrow hips, which may have contributed to their problems. Girls not fully grown, or women stunted by *malnutrition*, often have small pelvises that make them prone to obstructed labor.

The women wore kangas, bolts of cloth wrapped into skirts, in bright prints that stood out against the ward's drab, chipping paint. Under the skirts, some had kangas bunched between their legs to absorb urine.

Not even a curtain separated the beds. An occasional hot breeze blew in through the screened windows. Flies buzzed, and a cat with one kitten loitered in the doorway. Outside, kangas that had been washed by patients or their families were draped over bushes and clotheslines and patches of grass, drying in the sun.

Speaking to doctors and nurses in a classroom at the hospital, Dr. Jeffrey P. Wilkinson, an expert on fistula repair from Duke University, noted that women with fistulas frequently became outcasts because of the odor. Since July, Dr. Wilkinson has been working at the Kilimanjaro Christian Medical Center, which is collaborating with Duke on a women's health project.

"I've met countless fistula patients who have been thrown off the bus," he said. "Or their family tells them to leave, or builds a separate hut."

For the women in Ward 2, the visiting doctors held out the best hope of regaining a normal life.

Fistulas are a scourge of the poor, affecting two million women and girls, mostly in

sub-Saharan Africa and Asia—those who cannot get a *Caesarean section* or other medical help in time. Long neglected, fistulas have gained increasing attention in recent years, and nonprofit groups, *hospitals* and governments have created programs, like the one in Dodoma, to provide the surgery.

Cure rates of 90 percent or more are widely cited, but, Dr. Wilkinson said, "That's not a realistic number."

It may be true that the holes are closed in 90 percent of patients, but even so, women with extensive damage and scarring do not always regain the nerve and muscle control needed to stay dry, Dr. Wilkinson said.

Ideally, fistulas should be prevented, but prevention—which requires education, more hospitals, doctors and *midwives*, and better transportation—lags far behind treatment. Worldwide, there are still 100,000 new cases a year, and most experts think it will take decades to eliminate fistulas in Africa, even though they were wiped out in developed countries a century ago. Their continuing presence is a sign that medical care for pregnant women is desperately inadequate.

"Fistula is the thing to follow," Dr. Wilkinson said. "If you find patients with fistula, you'll also find that mothers and babies are dying right and left."

The day before her surgery, Ms. Jonas sat on her bed, anxiously eyeing the other women as they were wheeled back from the operating room. Some vomited from the anesthesia, and she found it a distressing sight.

Ms. Jonas said that when she was 16, she became intimate with a 19-year-old boyfriend, without realizing that sex could make her pregnant. It quickly did. Her labor went on for three days. By the time a *Caesarean* was performed, it was too late. Her son survived for only an hour, and she developed a fistula, as well as nerve damage in one leg that left her with an awkward gait.

Her boyfriend denied paternity and married someone else, and some friends abandoned her because she was wet and smelled. She was living in a rural village in a two-room mud hut with her parents, two sisters and a brother. She had one year of education and could not read or write, but said that she hoped to go to school again someday.

The operating room in Dodoma had just enough room for two operating tables, separated by a green cloth screen. Two at a time, the patients, wearing bedsheets they had draped as gracefully as their kangas, walked in. Some were so short that they needed a set of portable steps to climb up onto the table.

The women had an anesthetic injected into their spines to numb them below the waist, and then their legs were lifted into stirrups. Awake, they lay in silence while the doctors worked, Dr. Masenga at one table and Dr. Wilkinson at the other, each surrounded by other doctors who had come to learn.

An air-conditioner put out more noise than air. Flies circled, sometimes lighting on the patients. A mouse scurried alongside the wall. There were none of the beeping monitors that dominate operating rooms in the United States. Periodically, a nurse would take a blood pressure reading.

Midway through the first operation the power failed, and the lights went out. Dr. Wilkinson put on a battery-powered headlamp and kept working, but Dr. Masenga had to depend on daylight. Their scrubs and gowns grew dark with sweat.

Most fistula surgery is performed through the vagina, and can take anywhere from 30 minutes to several hours. It involves more than simply sewing a hole shut: delicate dissection is needed to loosen nearby tissue so that there will not be too much tension on the stitches, and sometimes flaps of tissue must be cut and sculpted to patch or replace

a missing or damaged area. It can take several weeks to tell how well the operation worked.

At the end of the week in Dodoma, the surgeons said that of the 20 operations, some were straightforward and easy, and a few seemed likely to fail. Three patients needed such complicated repairs that they were referred to the Kilimanjaro medical center.

At first, it seemed as if Ms. Jonas's operation had worked, while Ms. Swalehe's outlook was uncertain. Shortly after their surgeries, the two young women were violently ill. Ms. Swalehe wept from pain when the surgeons came in to check on her. But both women were smiling the next day, hoping for the best. (Ultimately, Ms. Jonas's surgery failed, and Ms. Swalehe's succeeded.)

One day after the last operation, the fistula surgeons moved on, already thinking about the countless new cases that awaited them.

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be charged equally to both sides.

The Senator from Mississippi.

Mr. WICKER. Madam President, if I could understand the order, do I understand that the time is equally divided between the proponents and opponents of the amendment and that we are to vote at approximately 10 after noon; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WICKER. If I may, let me begin the debate. I understand Senator BROWBACK and others may be coming also. I had, frankly, understood the debate would begin later so I rushed over from a hearing.

The Senator from Vermont has questioned the necessity of this amendment. Actually, I will point out to my colleagues that what the Wicker amendment does is restore the Kemp-Kasten provision that has been a part of the foreign policy of this Nation for almost a quarter century. It has worked well under Republican and Democratic administrations. I submit it would be wrong to change that policy at this point.

What does Kemp-Kasten say? Kemp-Kasten says Federal funds, American taxpayer dollars, should not go to fund coercive abortion practices or involuntary sterilization practices. It prohibits the appropriation of American dollars to organizations involved in such activities. But it has always made provision that the President of the United States has the right to investigate and certify whether these organizations have been engaged in practices involving coercive family planning activities.

Should my amendment pass, President Obama would have the same authority President Reagan, President Bush 1, President Bush 2, and President Clinton had to make this certification. In other words, the Wicker amendment keeps the Federal policy as it has been, and the underlying bill would amount to a dramatic shift in foreign policy.

Why do we need the amendment to begin with? I quote from a letter, dated June 26, 2008, from John D. Negroponte,

the Deputy Secretary of State, to Representative LEANA ROS-LEHTINEN on this question, wherein he writes:

As reflected in the law and as a matter of longstanding policy, the United States opposes coercive abortion and involuntary sterilization.

Let me interject at this point. Certainly, that should still be the policy of the United States. That should always be the policy of this Federal Government, that we oppose coercive abortion and involuntary sterilization.

The letter goes on:

I have determined that by providing financial and technical resources through its sixth cycle China Country Program to the National Population and Family Planning Commission and related entities, UNFPA provides support for and participates in management of the Chinese government's program of coercive abortion and involuntary sterilization. If that is true, this Senate, this Congress has no business taking hard-earned tax dollars from taxpayers and sending them to UNFPA, if it, indeed, is true that they participate in the management of this coercive Chinese program.

If it is not true, the President will be able to make a determination. But if he investigates the question and finds that such coercion is still being practiced in China and if American dollars, through UNFPA, are being used to assist the program, then I would hope he would truthfully make the determination and, once again, it would not be a matter of the U.S. taxpayer funding such awful practices.

Now, let me read, then, from the Analysis of Determination that Kemp-Kasten Amendment Precludes Funding to UNFPA, which was attached to Secretary Negroponte's letter.

The analysis says:

China's birth limitation program retains harshly coercive elements in law and practice, including coercive abortion and involuntary sterilization.

That is what this debate is about. Do we want tax dollars of American workers to go for coercive abortion and involuntary sterilization?

The analysis goes on to say:

These measures include the implementation of birth limitation regulations, the provision of obligatory contraception services, and the use of incentives and penalties to induce compliance.

Further quoting:

[I]t is the provinces that establish detailed birth limitation policies by regulation, enforce their compliance and punish non-compliance.

Quoting from the second page of this analysis:

China's birth limitation program relies on harshly coercive measures, such as so-called "social maintenance" fees . . . the threat of job loss or demotion, loss of access to education—

If Chinese citizens do not comply with these harsh measures—extreme social pressure, and economic incentives.

In families that already have two children, one parent is often pressured to undergo sterilization.

On the third page:

Since fiscal year 2002, the Administration has reviewed annually UNFPA's program in China and determined that the U.S. cannot fund UNFPA in light of its support or participation in the management of China's program of coercive abortion or involuntary sterilization.

Let's be careful. I would say to my colleagues, let's be careful with American tax dollars. Let's keep the provision that allows the President of the United States to make this determination. If there is evidence to prove that American tax dollars would be used by the United Nations to fund these coercive practices, then, for God's sake, let's not allow the U.S. taxpayers to be a party to these abhorrent and coercive practices.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I rise to speak in favor of the Wicker amendment. I am very appreciative Senator WICKER has brought up this amendment. This is an issue we have debated for some time, the Kemp-Kasten language, although it has been in there since 1985. Our colleagues have put it in there. One of the prime authors of that language, then-Congressman Kemp, is struggling with illnesses himself right now, and I certainly wish him and his family well. They have been in my prayers.

I want to put a personal feel and touch on this issue. This is a story about a young couple in China.

Yang Zhongchen was a small-town businessman, and he wined and dined three Government officials for permission to become a father. It is a story for which I am paraphrasing some pieces and others I am taking directly out of an AP story that was filed in 2007, to give you a texture of what we are talking about.

Here is a young, small-town businessman. He goes to Government officials, and he says: Look, I want to be a dad. I want to be a father. He wines and dines the local officials. "But," as the AP writer writes, "the Peking duck and liquor weren't enough. One night, a couple of weeks before [his wife's] date for giving birth, Yang's wife was dragged from her bed in a north China town and taken to a clinic, where, she says, her baby was killed by injection while still inside her."

Quoting from her:

"Several people held me down, they ripped my clothes aside and the doctor pushed a large syringe into my stomach," says Jin Yani, a shy, petite woman with a long ponytail. "It was very painful. . . . It was all very rough."

Some 30 years after China decreed a general limit of one child per family, resentment still brews over the state's regular and sometimes brutal intrusion into intimate family matters. Not only are many second pregnancies aborted, but even to have one's first child requires a license.

Seven years after the dead baby was pulled from her body with forceps, Jin remains traumatized and, the couple and a doctor say, unable to bear children. Yang and Jin have made the rounds of government offices pleading for restitution—[all] to no avail.

This is a 2007 Associated Press story which I ask unanimous consent be printed at the end of my statement.

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

(See exhibit 1.)

Mr. BROWNBACK. Madam President, there is no reason to change this Kemp-Kasten language we have had since 1985. There is every reason to keep it, to provide this Presidential discretion. I have held hearings in the Senate where we have had people come in who have gone undercover in investigating forced abortions and sterilizations in China who have come back with traumatic and dramatic stories about this continuing to take place. It should not continue to take place, and it certainly should not happen with any sort of support—tacit, implicit, or actual, or financial—from the U.S. Government.

Clearly, the U.S. citizenry would be completely opposed to doing anything like this, and in tough budgetary times, this certainly does not help our economy grow. It is a policy people broadly oppose of any sort of support for forced abortions or sterilizations. It is something for which there would probably be 90 percent agreement in this country that we should not fund or support forced sterilizations or abortions anywhere—probably 95 percent. Maybe it is 98 percent.

So this policy that has stood since 1985 has broad bipartisan support. Why would we change it at this point in time, with the financial difficulties we have, the broad bipartisan support that it is not the right way to go, and the continued evidence that this continues to be the case today in places such as China and other countries around the world?

I do not see the reason why we would want to go a different way. It does not make any sense to me we would want to go a different way. I think this is not a good foreign policy for the United States to be engaged in. I do not think it is a policy the American taxpayers support.

I think if we would actually do some thorough digging throughout China—where many of these decisions are made and the actions are actually happening at the provincial level—we would find a lot more of this going on than we would care to know about because a number of these quota numbers are given to local officials who do not have much oversight on a national basis, and so they act on their own accord, and then a lot of bad things happen. We would not want to be anywhere near any of that. The American people do not want us anywhere near any of that.

For those reasons, I would urge my colleagues to look at this. This is a time-honored policy that has served us well. Support Senator WICKER's language that reinstates Kemp-Kasten, language that has stood us well in the test of time, and let's not go down a

different road that is going to be harmful to a lot of people and is disagreed to by the American public.

I yield the floor.

EXHIBIT 1

[From the Associated Press, Aug. 30, 2007]

CHINESE VICTIMS OF FORCED LATE-TERM  
ABORTION FIGHT BACK

(By Alexa Olesen)

QIAN'AN, CHINA.—Yang Zhongchen, a small-town businessman, wine and dined three government officials for permission to become a father.

But the Peking duck and liquor weren't enough. One night, a couple of weeks before her date for giving birth, Yang's wife was dragged from her bed in a north China town and taken to a clinic, where, she says, her baby was killed by injection while still inside her.

"Several people held me down, they ripped my clothes aside and the doctor pushed a large syringe into my stomach," says Jin Yani, a shy, petite woman with a long ponytail. "It was very painful. . . . It was all very rough."

Some 30 years after China decreed a general limit of one child per family, resentment still brews over the state's regular and sometimes brutal intrusion into intimate family matters. Not only are many second pregnancies aborted, but even to have one's first child requires a license.

Seven years after the dead baby was pulled from her body with forceps, Jin remains traumatized and, the couple and a doctor say, unable to bear children. Yang and Jin have made the rounds of government offices pleading for restitution—to no avail.

This year, they took the unusual step of suing the family planning agency. The judges ruled against them, saying Yang and Jin conceived out of wedlock. Local family planning officials said Jin consented to the abortion. The couple's appeal to a higher court is pending.

The one-child policy applies to most families in this nation of 1.3 billion people, and communist officials, often under pressure to meet birth quotas set by the government, can be coldly intolerant of violators.

But in the new China, economically powerful and more open to outside influences, ordinary citizens such as Yang and Jin increasingly are speaking out. Aiding them are social campaigners and lawyers who have documented cases of forced abortions in the seventh, eighth or ninth month.

Chen Guangcheng, a self-taught lawyer, prepared a lawsuit cataloguing 20 cases of forced abortions and sterilizations in rural parts of Shandong province in 2005, allegedly carried out because local officials had failed to reach population control targets.

Chen, who is blind, is serving a prison sentence of three years and four months which his supporters say was meted out in retaliation for his activism.

Many countries ban abortion after 12 or sometimes 24 weeks of pregnancy unless the mother's life is at risk. While China outlaws forced abortions, its laws do not expressly prohibit or even define late-term termination.

A FAMILY UNPLANNED

Jin, an 18-year-old high school dropout from a broken home, met 30-year-old Yang, a building materials supplier, in September 1998. They moved in together. A year and a half later, in January or February 2000, they discovered Jin was pregnant but couldn't get married right away because she had not reached 20, the marriage age.

After her birthday in April, Jin bought porcelain cups for the wedding and posed for studio photos. On May 5, they were married.

Now all that was missing was the piece of paper allowing them to have a child. So about a month before Jin's due date, her husband Yang set out to curry favor with Di Wenjun, head of the neighborhood family planning office in Anshan, the couple's home town about 190 miles east of Beijing.

He faced a fine of \$660 to \$1,330 for not having gotten a family planning permit in advance, so he treated Di to the Peking duck lunch on Aug. 15, 2000, hoping to escape with a lower fine since this was his first child.

The next day he paid for another meal with Di and the village's Communist Party secretary and accountant.

He said the mood was cordial and that the officials toasted him for finding a young wife and starting a family.

"They told me 'We'll talk to our superiors. We'll do our best. Wait for our news.' So I was put at ease," Yang said.

But three weeks later, on Sept. 7, when Yang was away opening a new building supplies store, Jin was taken from her mother-in-law's home and forced into having the abortion.

Why had the officials failed to make good on their assurances? One of Yang's two lawyers, Wang Chen, says he believes it was because no bribe was paid.

"Dinner is not enough," Wang said. "Nothing gets done without a bribe. This is the situation in China. Yang was too naive."

Di, who has since been promoted to head of family planning for all of Anshan township, could not be reached. Officials who answered his office phone refused to take a message and gave a cell phone number for him that was out of service.

LATE-TERM PROCEDURES DECLINE

Zhai Zhenwu, a sociology professor at the People's University Institute of Demographic Studies in Beijing, said that while forced, late-term abortions do still occur sporadically, they have fallen sharply.

In the late '80s and early '90s, he said, some family planning officials "were really radical and would do very inappropriate things like take your house, levy huge fines, force you into procedures."

Things have improved since a propaganda campaign in 1993 to make enforcement more humane and the enactment of the family planning law in 2001, he said. Controls have been relaxed, allowing couples in many rural areas to have two children under certain conditions.

Still, Radio Free Asia reported this year that dozens of women in Baise, a small city in the southern province of Guangxi, were forced to have abortions because local officials failed to meet their population targets.

In the province's Bobai county, thousands of farmers rioted in May after family planners levied huge fines against people with too many children. Those who didn't pay were told their homes would be demolished and their belongings seized.

Yang and Jin are suing the Family Planning Bureau in their county of Changli for \$38,000 in medical expenses and \$130,000 for psychological distress.

But it's not about the money, said Yang, a fast-talking chain-smoker. No longer able to afford to run his business, he now works as a day laborer in Qian'an, an iron mining town east of Beijing.

"What I want is my child and I want the court to acknowledge our suffering," he said.

A family planning official in Changli justified Jin's abortion on the grounds she lacked a birth permit. The woman, who would only give her surname, Fu, said no one in the clinic was punished for performing the procedure.

CONTRADICTORY EVIDENCE

The National Population and Family Planning Commission, the agency overseeing the

one-child policy, says it is looking into Jin and Yang's case. Meanwhile, the evidence appears contradictory.

Jin's medical records include a doctor's certificate from 2001, the year after the abortion, confirming she could not have children. Doctors in Changli county say they examined her in 2001 and 2002 and found nothing wrong with her.

The court ruling says Jin agreed to have the operation. Jin says the signature on the consent form is not hers but that of Di, the official her husband courted.

Sun Maohang, another of the Yangs' lawyers, doubts the court will rule for the couple lest it encourage further lawsuits. But he hopes the case will stir debate and lead to clearer guidelines on abortion.

As she waits for the next round in court, Jin says she is too weak to work and has been celibate for years because sex is too painful.

Her husband prods her to tell her story, but during an interview she sits silent for a long time and finally says she doesn't want to talk about the past because it's too sad.

Then she quietly insists the lawsuit is something she has to do for Yang Ying, the baby girl she carried but never got to see or hold.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. WICKER. Madam President, may I inquire of the Chair as to how the remainder of time will be divided?

The PRESIDING OFFICER. The Senator from Mississippi has 2½ minutes, and the Senator from Vermont has 10 minutes.

Mr. WICKER. I thank the Chair.

I would inquire of the Senator from Vermont if he has further speakers?

Mr. LEAHY. Madam President, responding on the time of the Senator from Mississippi, I believe there may be some, and we are trying to ascertain that right now. I know I am going to speak some more.

Mr. WICKER. Reclaiming my time, I await their remarks, and I yield the floor at this time.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Madam President, how much time is left on both sides?

The PRESIDING OFFICER. There remains 1 minute 45 seconds for the Senator from Mississippi, and 10 minutes for the Senator from Vermont.

Mr. LEAHY. Madam President, it is hard to respond to all the things that have been misstated about the amendment before us.

For one thing, the bill before us does not change the Kemp-Kasten amendment. You can find it on page 763 of the bill. It is in the bill. In fact, let me read what it says:

Provided further, That none of the funds made available in this Act nor any unobligated balances from prior appropriations Acts may be made available to any organization or program which, as determined by the

President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.

So there is no need to pass the amendment of the Senator from Mississippi to put that language in—I suppose we could just print it twice—it is already in there.

Mr. WICKER. Madam President, I wonder if the Senator from Vermont will yield on that point?

Mr. LEAHY. Madam President, I will yield on the time of the Senator from Mississippi.

Mr. WICKER. Well, I do not ask for that, Madam President. Now, I asked if the Senator will yield on his time. I yielded to him on my time just a moment ago.

The PRESIDING OFFICER. The Senator from Vermont has the floor.

Mr. LEAHY. Madam President, I have heard it said several times that we should not spend U.S. taxpayer dollars on coercive abortion. I agree with the Senator from Mississippi. We should not. I have taken that position. I have been chairman or ranking member of the Foreign Operations Subcommittee several times. I have always taken that position. We should not, we don't, we never have. It is prohibited in the bill—Republicans and Democrats have always agreed about that. I don't know how many times we have to say it.

I am reminded of Senator Mark Hatfield, a revered member of the Republican Party and a former chairman of the Appropriations Committee. I know of no stronger pro-life opponent of abortion, but there is also no stronger pro-life proponent of family planning. He knows that if there are voluntary family planning services, you are most apt to avoid unwanted pregnancies and thus avoid abortion.

Now, we have heard Senators say: Well, we don't want to use taxpayer money for coerced abortions. You can't. There is no money in here with which it can be done. We specifically prohibit that.

But let me repeat for my colleagues what this amendment does do. The Wicker amendment removes funds we have in here for UNFPA to promote the abandonment of female genital mutilation and child marriage. The funds can be used in countries where we don't have USAID programs, to help prevent child marriage. The Senator from Mississippi would remove those funds. I have listened to some of the harrowing stories: 7, 8 or 9 year-old girls forced into marriage. We ought to all unite to try to stop that, but the Senator from Mississippi takes out the funds that can be used to try to stop that.

Obstetric fistula—anybody who is familiar with that knows how terrible it is, a debilitating condition that can destroy the life of any woman who suffers from it, but it can be cured by surgery. If any member of our family was faced with that, of course they would have the surgery to fix it. The funds are not

there, not available in many countries. But there are funds in the bill so UNFPA can help women with that terrible condition. The amendment of the Senator from Mississippi takes that money out. I can't support something like that.

We have funds in the bill to reestablish maternal health care in areas where medical facilities and services have been destroyed or limited by natural disasters. We put in funds to rebuild those health services, but the amendment of the Senator from Mississippi takes that money out.

We are talking about countries where the average person doesn't earn even \$100 a year. We ought to think about it, as the wealthiest, most powerful Nation on Earth, where there is a certain God-given moral duty to help people less privileged, but the amendment of the Senator from Mississippi takes that money out.

Are we concerned with coercion and forced abortion in China, as the Senator from Mississippi and the Senator from Kansas said? Of course. I have no doubt that they find that morally repugnant. I totally agree with the Senator from Mississippi. I totally agree with him that forced abortions are wrong. I totally agree with the Senator from Kansas about that. That is why, when Senator GREGG and I brought this bill to the Appropriations Committee, we prohibited any funds going to China. We prohibit any funds for abortion. We prohibit those things. It is not correct to suggest otherwise.

I don't know what kind of political points are made by bringing up this kind of an amendment, but explain those political points to the mother of a 5-year-old who has been raped in the Congo. Explain those political points to a mother, herself a child, who is giving birth and now has the problem of obstetric fistula, and we can't do anything to help her. Explain it to those families in war-ravaged countries where the U.S. does not have programs. Explain to them when they ask: Why can't you help us—a wealthy nation like America—why can't you help us? And the answer is because we are making a political point.

I don't accept that. I oppose this amendment with every fiber of my body.

How much time is remaining?

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Vermont has 1 minute remaining.

Mr. LEAHY. How much time on the other side?

The PRESIDING OFFICER. There is 1 minute 45 seconds remaining.

The Senator from Mississippi is recognized.

Mr. WICKER. Madam President, I am prepared to close, and I assume the Senator from Vermont will do so also.

The Senator from Vermont says the money in this bill will go to sanitization, to protect against child marriage, to protect against female genital mutilation, to promote maternal health

care. No one objects to that. If the President of the United States, under the Wicker amendment and under the 25-year-old Kemp-Kasten provision, can certify that such organizations do not promote coercion in the name of family planning, then the money will go to these worthy causes. The question is, Why does the Senator from Vermont and the people who agree with him on this issue not trust the President of their own political party to make a determination?

Now, the Senator says that the Kemp-Kasten language is still in the bill. I would submit that, in fact, is not true. The bill purports to retain Kemp-Kasten, but it goes on to say that funds will be directed to the United Nations Population Fund "notwithstanding any other provision of law." I say to my friend from Vermont, that is the change in the law that guts Kemp-Kasten, that changes 23 years to 25 years of Federal policy and allows U.S. taxpayer dollars to be spent for coercive sterilization, for forced abortion, and that is the issue. Yes, Kemp-Kasten is purported to be in the bill, and then it is gutted in the next paragraph.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Madam President, I believe women around the world should have access to safe health care that will help them plan their families and stay free of diseases.

These are basic rights. That is why I rise in opposition to the amendment being offered by Senator WICKER to block funding to the United Nations Population Fund.

In the developing world, "complications from pregnancy" is still one of the leading causes of death for women.

More than half a million women die each year—one every minute—from preventable complications of pregnancy and childbirth.

Madam President, 201 million women can not get access to safe, modern contraception even when they want it, and 6,800 new cases of HIV occur every day.

With its mission "to ensure that every pregnancy is wanted, every birth is safe, every young person is free of HIV/AIDS, and every girl and woman is treated with dignity and respect," the United Nations Population Fund is working every day to make things better.

For nearly 40 years, UNFPA has provided more than \$6 billion in aid to about 150 countries for voluntary family planning and maternal and child health care.

They are helping more women survive childbirth.

They are providing contraceptives to help women plan their families and stay free of HIV/AIDS.

They are promoting access to basic services, including clean water, sanitation facilities, food, and health care for poor women and girls.

Yet Senator WICKER and other supporters of this amendment would deny

women around the world this basic care because they believe misinformation that has been spread by antichoice lobbyists who say this fund would pay for coerced abortions.

The reality is that our government already prohibits any money from being used to fund coerced abortions. And, no U.S. money goes to China.

This bill actually continues that policy.

So all Senator WICKER's amendment would do is prevent women around the world from getting access to basic health care services—services that we take for granted here in the United States.

All of us would agree that we want to see fewer abortions in the world. I certainly do not condone funding coercive abortion practices in China or anywhere else.

And I cannot accept that we would deny women life-saving care because of a dishonest lobbying campaign.

Not only is contributing to UNFPA the right thing to do—it is in our best interest.

By helping to lift families out of poverty, and slow the spread of disease, we can reduce conflicts and bring stability and hope to some of the most troubled regions in the world.

I am proud that President Obama is pledging to refund UNFPA after the previous administration consistently canceled funding for the agency.

I urge my colleagues to vote down the Wicker amendment.

So let me simply say that I believe that women around the world should have access to safe health care that will help them plan their families and stay free of diseases. These are basic rights, and that is why I oppose the amendment that is being offered by Senator WICKER to block funding to the United Nations Population Fund.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNIS) and the Senator from Alabama (Mr. SESSIONS).

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

The result was announced—yeas 39, nays 55, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—39

Alexander	Bayh	Bond
Barrasso	Bennett	Brownback

Bunning	Enzi	McCain
Burr	Graham	McConnell
Casey	Grassley	Murkowski
Chambliss	Gregg	Nelson (NE)
Coburn	Hatch	Risch
Cochran	Hutchison	Roberts
Corker	Inhofe	Shelby
Cornyn	Isakson	Thune
Crapo	Kyl	Vitter
DeMint	Lugar	Voinovich
Ensign	Martinez	Wicker

NAYS—55

Akaka	Hagan	Pryor
Baucus	Harkin	Reed
Begich	Inouye	Reid
Bennet	Johnson	Rockefeller
Bingaman	Kaufman	Sanders
Boxer	Kerry	Schumer
Brown	Klobuchar	Shaheen
Burr	Kohl	Snowe
Byrd	Lautenberg	Specter
Cantwell	Leahy	Stabenow
Cardin	Levin	Tester
Carper	Lieberman	Udall (CO)
Collins	Lincoln	Udall (NM)
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feingold	Mikulski	Wyden
Feinstein	Murray	
Gillibrand	Nelson (FL)	

NOT VOTING—5

Conrad	Kennedy	Sessions
Johannis	Landrieu	

The amendment (No. 607), as modified, was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, at 1 o'clock today, Democrats and Republicans have been invited to the White House to work on health care. That is going to take 4 hours. There are Senators here who are going to be working. We have a number of Senators on our side who wish to speak on the five remaining amendments that have been offered. So we will continue to work on those.

What we are trying to work out with the minority staff is to have a series of votes starting at 5:30 this afternoon and then continue working through these amendments. I had a conversation with the Republican leader today, who suggested Senators SESSIONS and GRASSLEY had amendments. I have spoken with Senator GRASSLEY. Senator SESSIONS was not available. Senator GRASSLEY is trying to make a determination if he wants to offer the amendment. I had a conversation with him. So that is where we are.

The PRESIDING OFFICER. The minority leader.

Mr. MCCONNELL. Madam President, if I might add, if we could vote on all amendments that are now pending at 5:30 p.m., I think that would give us a better chance to figure out the way forward.

Mr. REID. Madam President, I say to my friend, if I didn't say that, that is what I wanted to say. I have had a number of people on my side—for example, I just spoke with Chairman KERRY. He is going to come and speak on the Kyl amendment. He will finish

lunch and do that. Anyone who has speeches they want to give on these five amendments must come before 5:30 p.m. because we are going to enter into that agreement as soon as we can, which will be very quickly. We will have all those votes at 5:30 p.m. and decide anything else we have to do. We understand that. A number of people contacted me about amendments on my side and on the Republican side.

Mr. MCCONNELL. Madam President, let me add, I think at that point, we will be able to determine what additional amendments Members on my side wish to offer and figure out where we go from there.

The PRESIDING OFFICER. The Senator from Illinois.

(The remarks of Mr. BURRIS are printed in today's RECORD under "Morning Business.")

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

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BEGICH). Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I return to the floor to talk about this bill before us which includes 9,000 earmarks and a 1,844-page statement of managers that accompanies this 1,122 page bill. When the Congress establishes its funding priorities, it should do so decisively without cause for subjective interpretation or reference to material outside the bill passed by Congress and signed by the President. These funding priorities should have the binding force of law, subject only to the President's veto power.

Yet here we are with a statement of managers that totals 1,844 pages, including 775 pages identifying over 9,000 Members' earmark requests that are expected to be funded, although most of them are not contained in the bill text. Because they are conveniently not listed in the bill text, Members who question the merits of specific earmarks are unable to offer an amendment to specifically strike them.

They are wasteful. They should not be funded. I ask unanimous consent that the list be printed in the RECORD.

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

\$1.7 million for pig odor research in Iowa; \$2 million for the promotion of astronomy in Hawaii; \$6.6 million for termite research in New Orleans; \$2.1 million for the Center for Grape Genetics in New York; \$650,000 for beaver management in North Carolina and Mississippi; \$1 million for mormon cricket control in Utah; \$332,000 for the design and construction of a school sidewalk in Franklin, Texas; \$870,000 for wolf breeding facilities in North Carolina and Washington; \$300,000 for the Montana World Trade Center; \$1.7M "for a honey bee factory" in Weslaco, TX; \$951,500 for Sustainable Las Vegas; \$143,000 for Nevada Humanities to develop and expand an

online encyclopedia; \$475,000 to build a parking garage in Provo City, Utah; \$200,000 for a tattoo removal violence outreach program in the LA area; \$238,000 for the Polynesian Voyaging Society in Honolulu, Hawaii; \$100,000 for the regional robotics training center in Union, SC; \$1,427,250 for genetic improvements of switchgrass; \$167,000 for the Autry National Center for the American West in Los Angeles, CA; \$143,000 to teach art energy; \$100,000 for the Central Nebraska World Trade Center; \$951,500 for the Oregon Solar Highway; \$819,000 for catfish genetics research in Alabama; \$190,000 for the Buffalo Bill Historical Center in Cody, WY; \$209,000 to improve blueberry production and efficiency in GA; and \$400,000 for copper wire theft prevention efforts.

\$250,000 to enhance research on Ice Seal populations; \$238,000 for the Alaska PTA; \$150,000 for a rodeo museum in South Dakota; \$47,500 to remodel and expand a playground in Ottawa, IL; \$285,000 for the Discovery Center of Idaho in Boise, ID; \$632,000 for the Hungry Horse Project; \$380,000 for a recreation and fairground area in Kotzebue, AK; \$118,750 for a building to house an aircraft display in Rantoul, IL; \$380,000 to revitalize downtown Aliceville, AL; \$380,000 for lighthouses in Maine; \$190,000 to build a Living Science Museum in New Orleans, LA; \$7,100,000 for the conservation and recovery of endangered Hawaiian sea turtle populations; \$900,000 for fish management; \$150,000 for lobster research; \$381,000 for Jazz at Lincoln Center, New York; \$1.9 million for the Pleasure Beach Water Taxi Service Project, CT; \$238,000 for Pittsburgh Symphony Orchestra for curriculum development; \$95,000 for Hawaii Public Radio; \$95,000 for the state of New Mexico to find a dental school location; \$143,000 for the Dayton Society of Natural History in Dayton, OH; \$190,000 for the Guam Public Library; \$143,000 for the Historic Jazz Foundation in Kansas City, MO; \$3,806,000 for a Sun Grant Initiative in SD; and \$950,000 for a Convention Center in Myrtle Beach, SC.

The Army Corps of Engineers has the distinction of having the largest number of individual earmarks imposed among all of the federal agencies funding in this legislation, with an amazing 1,849 individually identified earmarked projects as identified by the Appropriations Committee. Examples include:

\$670,000 for Abandoned Mine Restoration in California; \$59,000 for Dismal Swamp and Dismal Swamp Canal in Virginia; \$2 million for Chesapeake Bay Oyster Recovery in Maryland and Virginia; \$3 million for Joseph G. Minish Waterfront in New Jersey; \$18 million for Middle Rio Grande Restoration in New Mexico; \$10 million for North Dakota Environmental Infrastructure; \$5.56 million for Northern Wisconsin Environmental Assistance; \$546,000 for Surfside-Sunset-Newport Beach in California; \$3.8 million for Mississippi River Levees; and \$41.180 million for Yazoo Basin in Mississippi (this is a total for all of the Yazoo Basin projects listed under MRT—Construction).

We're giving billions of dollars to 1,849 projects—some which are authorized—but with no clear understanding of what our nation's water infrastructure priorities actually are or should be. We witnessed how lives literally depend on these projects and yet we're just throwing money at them without the benefit of any realistic or transparent set of criteria. It is long overdue for Congress to take a hard look at how our Army Corps dollars are being spent and whether or not they're actually going to the most necessary projects.

While the Corps gets the distinction for the largest number of earmarks, every agency is chock full of earmarks:

*Division A—Agriculture, Rural Development, Food and Drug Administration, and Related Agencies (52 pages of earmarks)*

Total: 506 earmarks.  
Agriculture Research Service, 94 earmarks.  
Animal and Plant Health Inspection Service, 46 earmarks.  
Cooperative State Research and Extension Service, 265 earmarks.  
FDA, 8 earmarks.

Earmarks in General Provisions, 6 earmarks.  
Natural Resource Conservation Service, 86 earmarks.

Rural Business Cooperative Service, 1 earmark.

*Division C—Energy and Water Development and Related Agencies Appropriations (164 pages of earmarks)*

Total: 2,402 earmarks.  
Corps of Engineers, 1,849 earmarks.  
Bureau of Reclamation, 186 earmarks.  
Dept of Energy, 367 earmarks.

*Division D—Financial Services and General Government (16 pages of earmarks)*

Total: 277 earmarks.  
Small Business Administration, 245 earmarks.

District of Columbia, 13 earmarks.  
General Services Administration, 14 earmarks.

National Archives Records Administration, 3 earmarks.

Office of National Drug Control Policy, 2 earmarks.

*Division E—Department of Interior, Environment, and Related Agencies (47 pages of earmarks)*

Total: 531 earmarks.  
Bureau of Land Management, 13 earmarks.  
Fish and Wildlife Service, 40 earmarks.  
National Park Service, 111 earmarks.  
USGS, 12 earmarks.  
Minerals Management Service, 1 earmark.  
Bureau of Indian Affairs, 6 earmarks.  
Environmental Protection Agency, 288 earmarks.  
US Forest Service, 60 earmarks.

*Division F—Departments of Labor, Health and Human Services, and Education, and Related Agencies (211 pages of earmarks)*

Total: 2125 earmarks.  
Department of Education:  
Elementary and Secondary Education Act, 357 earmarks.

Higher Education, 331 earmarks.  
Rehabilitation Services and Disability Research, 12 earmarks.

Total: 700 earmarks.  
Department of Health and Human Services:

Administration for Children and Families, 95 earmarks.

Administration on Aging, 26 earmarks.  
Centers for Disease Control and Prevention, 83 earmarks.

Mine Safety and Health Administration, 1 earmark.

Centers for Medicare and Medicaid Services, 18 earmarks.

Health Resources and Services Administration, 924 earmarks.

HHS Office of the Secretary, 10 earmarks.  
Substance Abuse and Mental Health Services Admin, 66 earmarks.

Total: 1223 earmarks.  
Department of Labor:

Employment and Training Administration, 141 earmarks.

General provisions:  
Museums & Libraries, 61 earmarks.

*Division G—Legislative Branch Appropriations—1 page of earmarks (division G)*

Total: 3 earmarks.  
Architect of the Capitol, 1 earmark.

Library of Congress, 2 earmarks.

*Division I—Transportation, Housing and Urban Development, and Related Agencies—114 pages of earmarks*

Total: 1,858 earmarks.

Transportation:

Total: 1,321 earmarks.

Airport Improvement Program, 78 earmarks.

Alternatives Analysis, 26 earmarks.

Appalachian Highway Development System, 1 earmark (\$9.5 million).

Bus and Bus Facilities, 302 earmarks.

Capital Investment Grants, 64 earmarks.

Delta Regional Transportation Development Program, 9 earmarks.

Denali Commission, 1 earmark (\$5.7 million).

FAA Facilities and Equipment, 9 earmarks.

Federal Lands Highways, 68 earmarks.

Ferry Boats and Terminal Facilities, 30 earmarks.

Grade Crossings on Designated High Speed Rail Corridors, 8 earmarks.

Interstate Maintenance Discretionary, 93 earmarks.

Maritime Administration, 1 earmark.

FAA Operations, 2 earmarks.

NHTSA Operations and Research, 1 earmark.

Rail Line Relocations and Improvement Program, 23 earmarks.

FTA Research, 7 earmarks.

FRA Research and Development, 4 earmarks.

FAA Research Engineering and Development, 3 earmarks.

Surface Transportation Priorities, 194 earmarks.

Terminal Air Traffic Facilities, 18 earmarks.

Transportation, Community, and System Preservation, 343 earmarks.

FTA Priority Consideration, 20 earmarks.

Technical Corrections, 16 earmarks.

Housing and Urban Development:

Total: 537 earmarks.

Mr. MCCAIN. Mr. President, examples of earmarks on this list include

\$870,000 for wolf-breeding facilities in North Carolina and Washington—not

anyplace else but North Carolina and Washington State; \$1,427,250 for genetic

improvements of switchgrass; \$100,000 for the central Nebraska World Trade

Center; \$819,000 for catfish genetics research in Alabama; \$250,000 to enhance

research on ice seal populations; \$47,500 to remodel and expand a playground in

Ottawa, IL; \$285,000 for the Discovery Center of Idaho in Boise; \$632,000 for a

recreation and fairground area in Alaska; \$190,000 to build a living science

museum in New Orleans, LA; \$7,100,000 for the conservation and recovery of

endangered Hawaiian sea turtle populations; \$900,000 for fish management;

\$381,000 for jazz at Lincoln Center, New York; \$238,000 for the Pittsburgh Sym-

phony Orchestra for curriculum develop-

ment; \$95,000 for Hawaii Public Radio; \$143,000 for the Dayton Society of

Natural History in Dayton, OH;

\$193,000 for the Guam Public Library;

\$143,000 for the Historic Jazz Founda-

tion in Kansas City, MO; and \$950,000 for a convention center in Myrtle

Beach, SC.

The list goes on and on.

The fact is, this has been stated by

members of the administration, includ-

ing, incredibly, the President's Budget

Director as “last year’s business.” This is this year’s business. This is funding that will be provided this year. This is 1,122 pages of a bill accompanied by 1,844 pages of porkbarrel earmark projects. It is not last year’s business; it is this year’s business. If it is last year’s business, then if it is passed by the Senate and the House, send it down to Crawford, TX, and have it signed by last year’s President. It won’t be. It will be signed by this year’s President, when it should be vetoed by this year’s President.

I wish to remind my colleagues, again, that over the course of the last campaign I talked about earmarks. I have been fighting against them for years, and I was severely critical of Republicans who were in charge and frittered away our responsibilities as fiscal conservatives and paid a very heavy price for it. The then candidate and now President of the United States also stated repeatedly his opposition to earmarks, and he had stopped asking for earmarks, even though his first 2 years he had many millions of dollars in earmarks.

The President should veto this bill and send it back to Congress and tell them to clean it up.

Last week, President Obama commented on the fiscal 2010 budget blueprint after the Democratic-controlled Congress passed a \$1.2 trillion stimulus bill. He said he had inherited a \$1 trillion budget deficit from the prior administration. Again, I say, the Republican Party lost its way in recent years because we gave in to higher Government spending and porkbarrel spending and it bred corruption. We have former Members of Congress residing in Federal prison. As a result, the Republican Party paid a price for it at the polls.

That said, I think we have to be honest about the bill that is before us. It is a massive bill, here for our consideration because the House Democratic leadership—specifically, the Speaker and House Appropriations Committee chairman—made a calculated decision last year. They were faced with a threat from President Bush to veto each of these combined appropriations bills that exceeded his budget request. As a result, they decided to put the Federal Government under a continuing resolution and wait for the outcome of the election in hopes that a new administration would be more willing to go along with the pork-laden projects that have been inserted into every aspect of this swollen, wasteful, egregious example of out-of-control spending. Their wish came true. Elections have consequences and this bill is one of them.

As I said earlier, a mere 6 months ago, Candidate Obama vowed he would not support earmarking business as usual when he said during the debate in Oxford, MS: “We need earmark reform and when I am President, I will go line by line to make sure that we are not spending money unwisely.”

Let’s start going line by line on this 1,122 pages. Let’s start going line by

line with this 1,844 pages. It is loaded with billions of dollars of unnecessary and wasteful spending. Sadly, based on recent comments by some of his top advisers, including the Chief of Staff and the Director of OMB, it doesn’t sound as if he is willing to put his veto pen to use to back up his vow.

The majority party has presented us and the new President with an outrageous example of a massive spending bill of more than \$410 billion that, I repeat, includes over 9,000 wasteful earmarks. This bill is one of the first examples, among what will be many, of whether this Congress and this new President are serious about fiscal responsibility. I am not encouraged by this bill, to say the least.

If we can’t reform earmarking, the best thing to do is to provide the President with a line-item veto authority. Yesterday, Senator FEINGOLD and I, along with Congressman PAUL RYAN, introduced legislation to grant the President specific authority to rescind or cancel congressional earmarks, including earmark spending, tax breaks, and tariff benefits. Granting the President the authority to propose rescissions which then must be approved by the Congress could go a long way toward restoring credibility to a system ravaged by congressional waste and special interest pork.

Yesterday, there were comments made by some of the leaders of Congress who basically said that if the President tries to eliminate wasteful and porkbarrel spending, that they can’t do it. We hear the majority leader of the Senate who said:

Since we have been a country we have had the obligation as a Congress to direct spending . . .

Defending a new spending bill that is bursting with congressional earmarks.

We cannot let spending be done by a bunch of nameless, faceless bureaucrats buried in this town someplace.

I am asking that we authorize these programs the way this Congress did business for many, many, many years—many years. We authorized programs. Then we appropriated. That is why we have the authorization committees we have today. Unfortunately, bills such as this completely bypass the authorizing committees and are put in quite often without any consideration, without any authorization, and are directly related to the influence of the Member of Congress. Somebody pays for all this. Somebody pays for all of it, and it is our kids and our grandkids. That is what is going on. The President of the United States should veto it.

I agree with the Senator from Indiana, EVAN BAYH, who had an op-ed piece in the Wall Street Journal saying:

The Senate should reject this bill. If we do not, President Obama should veto it.

I understand that Senator EVAN BAYH’s op-ed in the Wall Street Journal of March 4 was printed in the RECORD yesterday.

So what has happened here? What has happened here, as I have watched over

the years, is the system got more and more out of control. Yes, we have made a little progress. Now it is easier to identify who put the earmark in and who the lobbying group was, but if there is any testimonial to the fact that we have made no progress in the effort to reform, it was the vote yesterday on an amendment offered by Senator TOM COBURN that said we would eliminate 13 earmarks, worth about \$9 million, which were put in by a lobbying organization that is now shut down and under FBI investigation. Remarkable. Remarkable. We couldn’t even take out porkbarrel projects that were inserted through the influence of a lobbying organization that has been raided and shut down by the Federal Bureau of Investigation. Remarkable. Remarkable.

So it is a fight worth having, my friends. I would imagine the Senate will vote and probably this legislation will pass, but it is a very bad signal to send to the American people, and it is a very bad precedent for this administration to begin its first 100 days with the President of the United States signing a bill that has 1,844 pages of pork on the one hand and 1,122 pages of pork on the other.

One of my colleagues from the other side of the aisle came to the floor yesterday and said Republicans were guilty as well as Democrats. I agree. I agree. I have always said there are three kinds of Members of Congress: The Democratic members, Republican members, and appropriators.

A number of my colleagues on this side of the aisle have voted consistently against eliminating these porkbarrel earmarks. So my prediction is, the American people will not stand for this much longer. The American people are beginning to figure out we are mortgaging their children’s and their grandchildren’s future. The American people are fed up with this kind of a system that breeds corruption. The American people, I don’t think, will stand for it, and I think sooner rather than later, you are going to see a rejection of this kind of practice, which does such damage to our credibility, to our ability to serve, and the ability of us to take care of future generations of Americans, as well as this one.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

The Senator from New Mexico.

(The remarks of Mr. UDALL of New Mexico are printed in today’s RECORD under “Morning Business.”)

Mr. UDALL of New Mexico. 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. THUNE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. UDALL of New Mexico.) Without objection, it is so ordered.

AMENDMENT NO. 635, AS MODIFIED

Mr. THUNE. Mr. President, I have made no secret of the fact that the appropriations bill we have in front of us today is one that I think is way too large relative to what we should be doing in light of the fact that 2 weeks ago we passed a \$1 trillion stimulus bill which will fund many of the same programs that are funded under this appropriations bill.

This appropriations bill creates an increase of 8.3 percent in funding over last year's appropriated level, which is the largest increased appropriation, year over year, that we have seen since the Carter administration. In fact, an 8.3-percent increase represents more than twice the rate of inflation.

Most Americans and families today are trying to survive and live at a time when they are dealing with diminishing revenue coming into their households and certainly are not getting an increase that is the same as the rate of inflation. We have an appropriations bill in front of us today that is more than twice the rate of inflation. So I would daresay the Federal Government is certainly not leading by example when it comes to tightening our belts. I think when American families are struggling to make ends meet and tightening their belts, it is important that we also do the same thing, and this appropriations bill is anything but that. The 8.3-percent increase, as I said, is more than twice the rate of inflation and represents the largest year-over-year increase in appropriations since the Carter administration.

Having said that, I expect at the end of the day it is probably going to pass in the Senate. What we have tried to do as we have debated it is make improvements in it and address different priorities all of us bring to this debate.

I have one in particular that I think needs to be adopted, an amendment that needs to be adopted. It is filed, it is pending at the desk, and hopefully we will have a vote on it later today. What it does is reduce discretionary spending throughout the bill by \$400 million, which equals the fiscal year 2009 authorized amount from PEPFAR.

Now, PEPFAR was an emergency—well, the PEPFAR itself was the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Reauthorization Act, which passed last year. But the Emergency Fund for Indian Safety and Health was established as part of that legislation. It was an

authorization. And of the \$50 billion that was authorized in the so-called PEPFAR bill, \$2 billion of that was set aside to address what are very urgent needs on America's Indian reservations, the argument being that there are needs that are great abroad, other places around the world, but we have some very urgent and pressing needs right here at home. So the \$2 billion authorization was a 5-year authorization, which would represent \$400 million each year, and what my amendment would do is simply fund at \$400 million that first-year level of authorization that was created by the PEPFAR legislation we passed last fall.

In order to do that, because there wasn't any funding for the emergency fund for Indian safety and health in the underlying bill, we have to find the money somewhere else. What my amendment does, very simply, is reduce by one-tenth of 1 percent each program funded in the bill. So bear in mind, you have an 8.3-percent increase over last year's appropriated level in the base bill. With my amendment, what you would do is reduce the 8.3-percent increase each of these programs would receive in this bill to 8.2 percent and take that one-tenth of 1 percent and distribute it into this emergency fund for Indian safety and health, which was created as part of the PEPFAR legislation that we passed last fall. It is done in a very straightforward way. It distributes money where it is needed most.

Keep in mind it doesn't do anything to the significant funding that was included for many of these same programs that received a portion of the stimulus bill funding we passed a couple of weeks ago.

Why is this important to people in Indian Country? There are a number of reasons because what that authorization did is, it allowed money, money that would come through appropriated funds later after it was authorized, to be used for three purposes: One is law enforcement, public safety; one is Indian Health Service and health care on reservations; the third one was water development. We separated those out in the bill and allocated a certain amount of funding to each of those particular categories.

The reason that is so important is because in many places, particularly on Indian reservations, these very basic needs many of us take for granted are not being met. Nationwide, 1 percent of the U.S. population doesn't have access to safe and adequate drinking water and sanitation needs. On Indian reservations, if you can believe this—I said 1 percent is the average across America. On the Nation's Indian reservations that number climbs to 11 percent, and in some parts of Indian Country, the worst parts in terms of not having access to some of these necessities that most people expect—water and sanitation services—that number climbs to 35 percent. Lack of reliable

safe drinking water leads to high incidences of disease and infection. The Indian Health Service estimates for each \$1 it spends on safe drinking water and sewage systems, it receives a twentyfold return in the form of health benefits.

The Indian Health Service estimates in order to provide all Native Americans with safe drinking water and sewage systems, they would need—this is the backlog—over \$2.3 billion. What we are talking about represents a small amount of what the need is that exists out there, but that being said, we could go a long way, by enacting this amendment, toward meeting that need.

With respect to health care, nationally Native Americans are three times as likely to die from diabetes as compared to the rest of the population. An individual who is served by the Indian Health Service is 50 percent more likely to commit suicide than the general population. An individual who is served by the Indian Health Service is 6.5 times more likely to suffer an alcohol-related death than the general population.

On the Oglala Sioux Reservation in my State of South Dakota, the average life expectancy for males is 56 years old. I want you to compare that with some other countries around the world. In Iraq, the average life expectancy for a male is 58. In Haiti, it is 59 years. In Ghana, the average life expectancy for a male is 60 years old—all higher than right here in America. On the Oglala Sioux Reservation in my home State of South Dakota, the average life expectancy for males is 56.

In South Dakota, between 2000 and 2005, Native American infants were more than twice as likely to die as nonnative infants. In South Dakota, a recent survey found that 13 percent of Native Americans suffer from diabetes. This is twice the rate of the general population, where only about 6 percent suffer from the same disease.

With respect to public safety, one out of every three Native American women will be raped in their lifetimes. According to a recent Department of Interior report, tribal jails are so grossly insufficient when it comes to cell space that only half of the offenders who should be incarcerated are being put in jail. That same report found that constructing or rehabilitating only those detention centers that are the most in need would cost \$8.4 billion. Again, it is way more than what we are talking about here. But, certainly, what we could do today, in the form of this amendment, would be to put a downpayment on and begin to address what is a very serious need of adequate space for people who have committed crimes.

The South Dakota attorney general released a study at the end of last year on tribal criminal justice statistics. That study found that homicide rates on South Dakota reservations are almost 10 times higher than those found in the rest of South Dakota. Forcible rapes on South Dakota reservations

are seven times higher than those found in the rest of South Dakota. These are all things that statistically point to the very serious public safety needs that exist on America's Indian reservations today and point to the importance of us adopting the amendment I will put before the Senate and have a vote on later today.

These critical, unmet needs have consequences in the day-to-day operations for tribal courts and law enforcement. I talked about public safety, how that translates. You see all the statistics and data. That is stunning enough. But then you talk about how that actually impacts a lot of our reservations. I will give a couple examples.

At the Rosebud Sioux Tribal Court, a tribe that is a supporter of the amendment, on June 19, 2008, the tribal prosecutor scheduled to attend court proceedings that day did not appear at court. Alarmed, the tribal judge sent a court employee to the police department to ensure the prosecutor was not hurt in an accident. Once it was clear the prosecutor was not injured but instead did not show, all cases scheduled that day had to be dismissed because no replacement prosecutor was available. Cases that were dismissed that day included sexual assault, domestic violence, child abuse, and DUIs.

At Standing Rock Reservation, another example, another reservation that borders or crosses the line in South Dakota and North Dakota—in early 2008, the Standing Rock Sioux Reservation had six police officers to patrol a reservation that is geographically the size of Connecticut.

This meant during any given shift there was only one officer on duty to cover that entire area. One day the only dispatcher on the reservation was out sick. This left only one police officer to act both as a first responder and also as the dispatcher. Not only did this directly impact the officer's ability to patrol and respond to emergencies, it also prevented him from appearing in tribal court to testify at a criminal trial.

Later in the year I was able to work with my Senate colleagues in the Bureau of Indian Affairs to bring additional police officers to the Standing Rock Sioux Reservation through Operation Dakota Peacekeeper. That operation, which was a success, was only possible because of the Bureau of Indian Affairs being able to dramatically increase the number of law enforcement officials on the reservation during what we referred to as the surge. This dramatic increase in officers was only possible because the Bureau had been given additional public safety and justice funds in 2008, something I would like to continue with my amendment.

The way these dollars would be used, if my amendment is accepted, also is spelled out in the amendment. It is actually spelled out in the statute, the authorization bill. But the \$400 million would be distributed as follows: \$200 million will go to congressionally ap-

proved water settlements; \$150 million will go to public safety and justice; \$74 million for detention facility construction, rehabilitation, and placement through the Department of Justice; \$62 million for the Bureau of Indian Affairs public safety and justice account which funds tribal police and tribal courts; \$6 million for investigations and prosecution of crimes in Indian Country by the FBI and the U.S. attorneys; \$6 million would go to the Department of Justice Office of Justice Program for Indian and Alaska Native Programs; \$2 million for cross-deputization or other cooperative agreements between State, local, and tribal governments; \$50 million to health care which would be divided as the Director of Indian Health Services determines between contract health services, construction and rehabilitation of Indian health facilities, and domestic and community sanitation facilities serving Indian tribes.

Passage of the original amendment to PEPFAR, which occurred last year, showed a commitment by the Senate on a bipartisan basis to address these domestic priorities that are faced by Native Americans in Indian Country. That was a bill that had, and the amendment I offered to that bill had, bipartisan cosponsorship. There were a number of people on both sides of the aisle who supported it. Vice President BIDEN was a supporter. Secretary of State Clinton was a cosponsor of the amendment. A number of colleagues have supported the effort we made to demonstrate a commitment to addressing these very serious needs, which I have alluded to that exist today in Indian Country.

What my amendment to the Omnibus appropriations bill before us does is ensures the underlying bill, the bill that we authorized, actually gets funded, and the dollars we committed are actually appropriated for the purpose of addressing these very serious needs.

I ask that when this comes to a vote, amendment No. 635, my colleagues support it in the same sort of bipartisan way we were able to support the underlying authorization that was approved last year. There is no greater need. The statistics in Indian Country, both in South Dakota and other reservations in other States, are dire. We, as the Senate, have a responsibility to address those needs, particularly at a time when we are already funding or going to pass a bill which increases spending in this appropriations bill by as much as it does.

One-tenth of 1 percent is all we are saying would be necessary to provide the \$400 million that is necessary to fund this amendment and the important priorities it would serve.

I hope my colleagues will be able to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, I understand Senator THUNE has modified his amendment to correct an earlier drafting error.

The original amendment proposed a \$400 million across-the-board cut against the programs funded in the interior division of the bill, as an offset to increase funding for various Indian health and safety programs in the interior division by \$400 million.

As it stands, the modified amendment proposes that the \$400 million across-the-board cut now applies to the entire omnibus appropriations bill, not just the interior subcommittee's division.

Nevertheless, I still oppose the Senator's amendment.

This amendment now makes cuts to all programs in the omnibus.

This means there will be cuts in job training, law enforcement, cancer research, highway funding, food inspection, energy research, and on, and on, and on.

I know that no single cut will be that great, but if we are going to go down this road, where will it end?

Who brings the next amendment, claiming that it only cuts 0.1 percent?

How many more of these will we have to accept before we say we have cut enough out of law enforcement or enough out of health care?

Mr. President, just to make the record clear, the interior division of this bill contains \$2.376 billion for the Bureau of Indian Affairs and \$3.581 billion for the Indian health service.

Many of the programs run by those agencies and by the tribes themselves deal directly with health and safety issues.

We cannot start chipping away in this fashion and have any hope of ever finishing this bill.

Furthermore, the amendment, as modified, causes the interior bill to exceed its 302(b) allocation for budget authority. This makes it very troublesome.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, if I might respond to the remarks of the distinguished chairman, and I understand what I am doing here may create some technicality with regard to the budget rules, but we do this all the time, and we routinely waive the budget. The only reason it does is because it does take that one-tenth of 1 percent from across the entire nine appropriations bills as opposed to taking it out of one particular appropriations bill. What that does is attempts to distribute that reduction across the board so no one area is hurt in a significant way relative to the others.

But, again, I would simply point out—and I appreciate what the chairman said about these other areas in the budget, these programs being cut—bear in mind, this is an 8.3-percent increase, year over year, over last year's appropriated level in all these accounts. There is not any account in this appropriations bill that is receiving a cut. They are all receiving an increase.

The question is, Will it be an 8.3-percent increase or an 8.2-percent increase? What I am simply saying is,

you make it an 8.2-percent increase and use that one-tenth of 1 percent to fund a program this Congress, this Senate voted to authorize last year, specifically, for Indian health care, for water development, and for public safety on our reservations. Of course, there is funding in the underlying bill for some of these things, but none of which is adequate to address the need, which is precisely why so many of the reservations in my State have the high incidents of crime, the data they have in terms of the many areas I mentioned. When it comes to prosecutions, when it comes to detention facilities, when it comes to law enforcement personnel and officers, we are deficient in the responsibility we have.

So, again, it is not a question of whether all the programs that are funded in the bill are going to get an increase. They are all going to get an increase, a substantial increase. Under my amendment, it is simply an 8.2-percent increase as opposed to an 8.3-percent increase.

It seems to me, at least, the least we can do to honor the commitment we made by passing the emergency fund for Indian safety and health we passed last year is to provide funding for it.

So I appreciate the chairman's observations. I would simply ask my colleagues to look beyond whatever technicality may be raised with regard to where the one-tenth of 1 percent is coming from. It is coming from all nine appropriations bills across the board as opposed to from one particular area or account. But that, to me, seems to be the fair way in which to do this in a way that distributes that one-tenth of 1 percent reduction evenly. So I hope my colleagues will support the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 635, AS MODIFIED

Mrs. FEINSTEIN. Mr. President, I come to the floor to, first of all, oppose the Thune amendment, and then to speak in opposition to the Murkowski amendment.

I rise as chairman of the Interior Appropriations Subcommittee. In its current form, the Interior portion of the omnibus is funded at \$27 billion. This section includes a substantial increase for the Bureau of Indian Affairs and the Indian Health Service. For fiscal year 2009, the bill provides \$5.957 billion. This is an increase of \$320 million over the fiscal year 2008 bill. It is a 5.7-percent increase. That is a great deal of money.

The Thune measure—well, let me make one other point first. In addition, the Recovery Act, which we enacted last month, contained \$1 billion for these two agencies. So taken together, the omnibus bill and the recovery act will provide \$6.957 billion. That is an increase over the 2008 level of \$1.320 billion, or 23 percent. Now, that is what the underlying bill and the recovery act, the stimulus bill, does—a 23-per-

cent increase. That is a great deal of money.

Senator THUNE has proposed an across-the-board cut of 0.1 percent to the entire omnibus to pay for an increase of \$400 million for these two agencies in addition. That means every account in the entire omnibus bill must take a cut.

Now, if the Thune amendment were successful, it would increase my bill, the Interior bill, by \$372 million, which would put us over our allocation, which would make germane a point of order against our bill. I think that is wrong. I think when we do a substantial increase, I do not understand the need for this. I do not understand why a 23-percent increase, to the tune of \$6.957 billion—that is a huge increase, probably one of the greatest increases in any part of this omnibus, and that is the underlying omnibus bill.

So I am concerned. I would urge a “no” vote on the Thune amendment.

Mr. President, I would like to raise a point of order against the amendment under section 302 of the Congressional Budget Act. The pending amendment would increase spending in the Interior Subcommittee by \$400 million, primarily by cutting spending in the jurisdiction of the eight other subcommittees funded in this act. The amendment, therefore, would result in spending exceeding the budget allocation of the Interior Subcommittee.

I make a point of order under section 302(f) of the Congressional Budget Act that the amendment provides spending in excess of the Interior Subcommittee's 302(b) allocation under the fiscal year 2009 concurrent resolution on the budget.

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

Mr. THUNE. Mr. President, I move to waive the point of order the Senator raised under the Budget Act.

The PRESIDING OFFICER. The motion to waive has been entered.

Mr. THUNE. Mr. President, I ask unanimous consent that when the Senator concludes her remarks on the other amendment, I have a couple minutes to respond.

The PRESIDING OFFICER. Is there objection to recognizing the Senator from South Dakota after the Senator from California yields?

Without objection, it is so ordered.

The Senator from California is recognized.

Mrs. FEINSTEIN. Thank you very much.

AMENDMENT NO. 599

Mr. President, I would now like to speak against amendment No. 599, offered by Senator MURKOWSKI, which would limit the Endangered Species Act protections for the polar bear and other fragile species.

The Interior portion of the omnibus bill as currently written allows the Obama administration to quickly undo two last-minute rules imposed by the Bush administration.

The first Bush administration rule, issued in December 2008, denies the pro-

tections of the Endangered Species Act to the polar bear, despite its threatened status. The omnibus bill language would allow the Obama administration to immediately lift this ruling. This is an important first step toward fully protecting the polar bear under the Endangered Species Act.

As I said, the amendment would undo the Obama administration's ability to quickly move to change two last-minute rules imposed by the Bush administration.

The first Bush administration rule, issued in December 2008, denies the protections of the Endangered Species Act to the polar bear, despite its threatened status.

The omnibus bill language would allow the Obama administration to immediately lift this ruling. This is an important first step toward fully protecting the polar bear under the Endangered Species Act.

The second Bush regulation, also issued in December of 2008, excludes independent wildlife experts from the decisionmaking process of the Endangered Species Act. This is major. I think it is wrongheaded because it would leave the decisionmaking up to the Department that handled whatever the project was without any input from scientists or biologists on the subject. So whichever Federal agency has proposed a project is given the full jurisdiction to determine whether there is an impact to an endangered or threatened species, and independent scientists are excluded from the consultation process.

The omnibus bill, as currently written, allows the Obama administration to quickly undo the Bush rule and return independent wildlife experts to this consultation process.

The amendment offered by Senator MURKOWSKI would further prolong these two Bush administration rules and require a public comment period of 60 days before the Bush rules can be lifted. I cannot support that.

In my view, right now the polar bear is not sufficiently protected. Here is why. Under the rule issued by the Bush administration, the polar bear is only protected under the Marine Mammal Protection Act. This Federal statute only protects polar bears from direct harm. It does not address the problem of the arctic habitat of the bears, which is literally melting away.

I read books. I have watched PBS nature shows, which have shadowed polar bears, which have shown the deteriorating ice pack.

Let me quote something Secretary Dirk Kempthorne, the former Secretary of the Interior, said in May of last year. Here is what he said. This is a Republican Secretary of the Interior:

Because polar bears are vulnerable to this loss of [sea ice] habitat, they are, in my judgment, likely to become endangered in the foreseeable future.

So we know the polar bear is being jeopardized by the deterioration of ice. Now, some people, perhaps, do not believe the ice is really deteriorating.

But if you look here, this is the Arctic Sea ice loss. This whole thing, as shown on this chart—both the ochre color, the yellowish color, and the white—is the way it was in 2005. In 2005, this was the Arctic. In 2007, the Arctic ice mask is 39 percent below the long-term average from 1979 to 2000, and you can clearly see its deterioration in a 2-year period.

So what is happening in the Arctic is actually very dramatic. It is actually destroying polar bear habitat, and absent that habitat, the polar bear cannot feed himself or herself. The polar bear starves. The nature show on PBS actually tracked a female polar bear. It showed her starving. It showed her having two cubs. It showed one of the cubs dying of starvation. It showed her struggling to find food floating out on individual pieces of ice.

In my view, there is no question that Secretary Kempthorne was correct, that the polar bear will very shortly meet the criteria of the Endangered Species Act and, therefore, I strongly believe if that is, in fact, the case, we should have the proper opportunity to assess it and move in that direction.

So I am fully supportive of what President Obama has done to move rapidly to set up the situation for that kind of consideration. The statute that is in the underlying bill would ensure that melting habitat of the Arctic is taken into consideration. So the omnibus bill will give the Obama administration strengthened authority to quickly undo the Bush rule on polar bears and open the door to the process of applying the Endangered Species Act to the threatened polar bear.

Anyone who looks at the beauty of these animals recognizes their significance not only to nature but to man and woman as well. This is an extraordinary animal. It deserves to be protected. So I am very proud we have language in the bill that is supportive of what the President of the United States is attempting to do. So I thank the Chair, and I yield the floor.

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

Mr. THUNE. Mr. President, if I might briefly respond to the Senator from California regarding my amendment that deals with Indian health, public safety, and water development.

I think it is important to remind everybody, first of all, that this bill we have in front of us and the appropriations bills that have been passed so far—three of them passed last year—nine of them are bundled into this bill—this bill was written behind closed doors. There wasn't any participation by Members, at least that I know of, on our side when it came to putting this together and offering amendments at the committee level. The only opportunity we have to offer amendments is when a bill comes to the floor of the Senate.

Now, it shouldn't come as any surprise to anybody here in the Chamber or anybody who is tuning in to what is

going on here that that is what we do. We offer amendments. We determine priorities. We move money around within appropriations bills. To suggest for a minute that we shouldn't be offering amendments to move money from one part of this bill to another part of the bill, the fact is that nine appropriations bills have been bundled together and we are being asked to vote on \$410 billion in spending at one time, and then we are being told we can't come down here and offer amendments. That is what we do. We have 100 Senators. All of them come to this Chamber with different priorities. I came down here and said I wanted to offer an amendment that took a one-tenth of 1 percent haircut across all nine appropriations bills, evenly distributed, to take \$400 million and put it into a program that Congress authorized last fall but has not funded that would address the needs of Indian health care, public safety, and water development—critical needs on Indian reservations.

I urge any of my colleagues who haven't visited a reservation to come to South Dakota and see what I am talking about. I mentioned it earlier. The average life expectancy for males on the Oglala Sioux Reservation in my home State of South Dakota is 56 years. It is 58 in Iraq, 59 in Haiti, and 60 in Ghana, all higher than right here in America. Between 2000 and 2005, Native American infants were more than twice as likely to die as non-native infants. I already mentioned the public safety statistics and the crime data that exist on our reservations because we don't have adequate law enforcement personnel, we don't have cops, we don't have prosecutors, we don't have jails, we don't have all the things that are necessary to keep our people safe on our reservations in South Dakota.

Here may be a budget technicality, a point of order that can be raised against my amendment which will require that we have to have 60 votes for my amendment, but all that means is instead of getting 51, we need 60. I can't imagine that we would not have an opportunity—nine appropriations bills being bundled together, brought to the floor of the Senate, \$410 billion in spending—to come down here and offer amendments that move money around. That is what Senators do. That is what we do in the Senate.

I hope my colleagues will look past the point of order that is going to be raised and say: One-tenth of 1 percent in a bill that is being increased by 8.3 percent year over year; go for this important priority on Indian reservations across our country.

I hope my colleagues will vote for this amendment or vote to waive the point of order.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I would like the opportunity to simply say to the Senator from South Dakota that it is not correct there was no Re-

publican input into this bill. This bill was put together last year. Senator Allard was the ranking member. Senator Allard and his staff participated in the committee deliberation of this bill. There is no question about it. I think we have to remember this is not a 2010 appropriations bill; it is a 2009 appropriations bill.

I wish to state that the reason we have a 23-percent increase in the bill for Indian services and Indian health care is that we recognize there is a need. This is a substantial addition. So my objection to the amendment should not be construed that I do not want to support Indian health services or Indian health care. The amendment causes a point of order against the bill. We exceed our allocation. It forces every one of the nine bills to take a cut and then adds to my bill an additional \$372 million which forces us up over the limit.

This is a bill that has been discussed. It has been discussed with the Republican side. We had agreement on it last year. I believe the commitment should be kept and the bill should be passed. I believe there is an ample increase both for Indian health care and Indian services. So I wanted the opportunity to respond to the Senator from South Dakota in that regard.

Thank you. I yield the floor.

The PRESIDING OFFICER (Ms. KLOBUCHAR). The Senator from Nevada is recognized.

Mr. ENSIGN. Madam President, in a moment I am going to ask unanimous consent that the pending amendment be set aside so I can offer an amendment dealing with the DC scholarship program for low-income children. I wish to talk about it first and give the other side fair warning, because I understand that the other side is going to object, which is very unfortunate.

We have had a wonderful program that recognized DC public schools are failing children of the District of Columbia. Most of those children are low income, minority children. A few years ago, under a Republican Congress and President Bush, we put together a program that initiated a little experiment. In DC schools, the dropout rates are high, kids aren't learning to read at the appropriate levels, they aren't learning math at the appropriate levels; across the board the crime levels are too high in the schools. Since the vast majority of the schools in the District of Columbia are failing the kids, Congress decided to experiment here and see if something works. So we selected 1,700 kids and we gave their parents a \$7,500 scholarship to be able to go to the school of their choosing in the area. The response by the parents was overwhelming. A lot more people wanted to sign up for this program than there were scholarships available, but we at least allowed 1,700 children to participate for the last five years, this being the sixth year now.

In this underlying bill, there is language that effectively kills this program, because it says that unless the

bill is reauthorized and the DC City Council approves the program, no funding shall be allowed to go toward this DC scholarship fund.

Now, we know Head Start and the Higher Education Act both continued, even though they weren't reauthorized, for many years until we were able to come together to reauthorize. That is not uncommon in this building because it is difficult to get legislation reauthorized. So we continued funding Head Start. We continued funding Higher Education. But the No. 1 issue for the National Education Association is to kill the DC scholarship program for poor children. I ask: What are they afraid of? Well, as was stated today in the Chicago Tribune, they are not afraid of this program because it is failing; they are afraid of this program because it is actually working. Let's ask a commonsense question: If this program weren't working, would the children who have received this scholarship continue in this program? The obvious answer is of course they wouldn't. They would go back into their other schools.

We had a press conference earlier today with some of the parents and teachers who are involved in this program. Three wonderful young men came together with us today. We had Fransoir, Richard, and Ronald. Two of them had written statements, and then there was little Richard who got up and spoke off the cuff. All three of them were incredibly articulate. They were talking about how important this scholarship program was to them and how they didn't want to go back to the other schools because in the schools they are in today, they are actually learning.

So do we put the interests of the National Education Association first, or do we put the interests of our children first? It isn't just these 1,700 kids whose future is at stake. We are trying to look for programs in education, reforms that actually work, because the No. 1 priority for our children should be about their education into the future. If they are going to compete in the 21st century, they have to have a good education. It is the new civil right of our day. It is not a civil right to stick them in failing schools that are unsafe, that are gang ridden, that are drug ridden, that have teachers who are not teaching our children in a constructive manner. It is not a civil right to say to them: I know other people have more money than you. They can go to a good school and can learn, but we are going to trap you in this poor performing school simply because you don't have enough money. Civil rights is supposed to be about giving people opportunities, not based on income, not based on race, not based on religion, but simply because they are Americans who can actually have a chance.

So this program is going to show, I believe, as the studies come out on it, that these kids did better because they

had an opportunity. I think this is what the National Education Association is afraid of. They are afraid this program is going to work and it will then be tried in other areas. What are we afraid of? Are we afraid we are actually going to improve education in the United States through an innovative program?

Even yesterday, the Secretary of Education under President Obama made this comment about the DC scholarship program. He said:

I don't think it makes sense to take kids out of a school where they're happy and safe and satisfied and learning. I think those kids need to stay in their school.

He was talking about those 1,700 kids who are in the DC schools under this scholarship program today. Two of those children actually go to school with President Obama's children. Unfortunately, the majority party in Congress has written into this bill that we are going to take those kids out of these schools. We are going to effectively eliminate the scholarship that allows them to stay in their schools. One young man, Ronald, who was here today is a junior in high school. Ronald is also the Deputy Youth Mayor for Washington DC and has made education his number one priority. Next year Ronald will be a senior. They are going to take him out of a school he has attended the last 5 or 6 years and make him go to a different high school for his senior year. At this other high school, it's likely over half the kids aren't learning at the grade level they should be learning at and where about half of them drop out of that school. Instead, Ronald should remain at the school that gave him a future, hope, and opportunity. I wish all Americans could have heard him speaking today, and then I would like to see the other side of the aisle vote against this amendment and vote against allowing this amendment to even come to a vote.

It is very unfortunate that the other side is not allowing us to do but just a few amendments, amendments that they deem worthy to be voted on. That is not the way the Senate has worked the last several weeks. It has actually been working. As the minority, we realize we have fewer votes on this side. We understand that. We understand we are going to lose most of these votes. Occasionally, as last week, we did win one, but most of the time we are losing these votes. That is the way this body is at least supposed to work, you debate amendments and you have votes on the amendments.

Unfortunately, with regards to the bill before us, that is not the case. Normally, we vote on appropriations bills one at a time and somewhere around 15 amendments per bill are offered and voted on. We have eight or nine bills combined together and, so far, I think we have had six or seven amendments voted on. We will have a few more voted on tonight. That seems to be the total that the majority wants us to

vote on. By the way, the Democrats have come to an agreement that they are going to defeat them, whether they are meritorious or not, because they set a false deadline of tomorrow to finish the bill. They said tomorrow the funding runs out for our Government. In reality, all you have to do is pass a continuing resolution that will fund the Government for another week. We could do it on a voice vote, and then the House can do it on a voice vote. Then we can come back next week and debate amendments and have votes on them.

This is one of the amendments that needs to be voted on. If you want to throw 1,700 kids out of good schools and put them into nonperforming schools, I want you recorded on this vote. Some have said this isn't just going to poor children. The limit is 185 percent of poverty and below. That is the limit of the income to qualify for this scholarship program. The average income for families qualifying for this scholarship is \$23,000 a year.

The National Education Association said this is a threat to public education. Oh, really? First of all, \$7,500 is what we give as a scholarship. The average spent per student in Washington, DC, public schools is around \$15,000. So we are spending half that. We didn't give them the full \$15,000, just half that. This was in addition to the Washington, DC, School District money. But the benefit is, every child you take out of Washington, DC schools, allows money to be spent on other students.

I have a couple stories to tell you about. Sherine Robinson, the parent of an opportunity scholarship recipient, believes parents should not have to worry about violence in their schools. That is one of the reasons some of the parents are taking their children out. It is not just the educational opportunities, it is the violence they may have to experience while they are in school. She believes the parents should not have to fight for their kids to learn. She believes all parents should have a choice and "the DC Opportunity Scholarship Program gives us a chance to find the best school possible." Those are the words of a parent. She now feels her child is in a safe school and is doing well. Why do we want to deprive her of that opportunity?

Obviously, I believe strongly in this scholarship program. I believe this program is working. I believe we can prove it is working statically and spread this program across the country. Let's put our children first; let's not put special interests before our children and their education. That is what this argument comes down to.

Let's use common sense and put compassion back into this bill. Let's allow amendments so we can take care of our kids and educate them in the way they deserve to be educated.

I ask unanimous consent that the pending amendment be set aside and that I be allowed to call up the Ensign amendment No. 615, which provides an

opportunity scholarship for 1,700 poor children in the District of Columbia.

The PRESIDING OFFICER. Is there objection?

Mr. INOUE. Madam President, on behalf of the leadership, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ENSIGN. Madam President, this is most unfortunate. It is what I thought would happen. There was a rumor going around today that this would happen. I plead with the other side to give these 1,700 children a chance to learn, a chance to continue in the program that is working for them. I would love to expand the program, but I know that is not doable in this Congress. But let's at least keep these 1,700 schoolchildren in school with the ability to learn, in safe schools that are actually giving them hope and opportunity for the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

AMENDMENT NO. 599

Ms. MURKOWSKI. Madam President, I rise to speak this afternoon in favor of an amendment I laid down yesterday, No. 599. I wish to respond to some comments that have been made on the floor by several colleagues.

The amendment I have introduced would modify section 429 of the Omnibus appropriations bill that allows the Secretary of the Interior and the Secretary of Commerce to withdraw the final rule relating to the "Interagency Cooperation under the Endangered Species Act," and the final rule that relates to the "Endangered and Threatened Wildlife and Plants: Special Rule for the Polar Bear." This is a special rule for the polar bear.

These provisions allow the Secretaries of Commerce and Interior, or both, to withdraw the two Endangered Species Act rules inserted under section 7 of the ESA within 60 days of adoption of the omnibus bill and then reissue the ESA rule without having to go through any notice or any public comment period, and without being subject to any judicial review as to whether their actions were responsible.

Neither of the ESA rules that are part of this amendment were promulgated in the dark of night. Nothing happened in the back room. The existing rules were the result of a public process that fully complied with all applicable laws. In fact, one of the rules is under judicial review now, as the Administrative Procedures Act allowed.

The polar bear 4(d) interim final rule was certainly not a "midnight rule." Look at the process it went through. It was announced and made available as a final special rule on May 15 of 2008, concurrent with the announcement of the decision to list the polar bear as threatened under the ESA. That announcement then triggered or opened a 60-day public comment period to all interested parties to submit comments that might contribute to the development of a final rule. Then those com-

ments come in throughout that period. After the comments are received, the U.S. Fish and Wildlife Service made several appropriate revisions to the final rule.

Nothing in this special rule changed the recovery planning provisions and the consultation requirements that exist under section 7 of the ESA. The 4(d) rules that are contained are not exclusions, and they are not exemptions. Under the ESA itself, section 4(d) says that for threatened species, the Secretary may promulgate such regulations as he deems necessary or advisable. So what happened was Secretary Kempthorne used this very strict authority to develop a rule that states if an activity is permissible under the stricter standards of the Marine Mammal Protection Act, it is also permissible under the Endangered Species Act with respect to the polar bear.

I wish to repeat a comment the Senator from California made yesterday. It is one I absolutely agreed with. I agree we must follow the process; we must follow the law. The problem is, the House rider circumvents the public process because it completely eliminates the law. Section 429 doesn't require public notice and doesn't allow public comment or judicial review, as is required by the law.

What my amendment does is maintain the public process. It not only requires that any withdrawal or repromulgation of either of these two rules follows the Administrative Procedures Act, with at least a 60-day comment period to allow for that adequate public comment. This is the same amount of time the public had to comment on the polar bear 4(d) interim final rule last year.

Without this amendment, this provision allows the Secretaries to make dramatic changes in rules and regulations, without having to comply with multiple, longstanding Federal laws that require public notice and comment by the American public and knowledgeable scientists. These challenges have the potential for far-reaching and truly unintended consequences in our country.

The House rider we are dealing with in this omnibus bill shortchanges the public process. It is certainly not my amendment that shortchanges anything or tries to go outside the process. What we are providing in this amendment is ensuring we follow that public process.

I ask Members of this body to vote in favor of my amendment to maintain this public process. That is what this amendment does. We owe it to ourselves to keep the integrity of the process intact. It is a dangerous precedent for this body to set. I ask Members to look very carefully at this amendment and truly attempt to understand the full implications if we are not successful in removing this rider from the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Madam President, I ask unanimous consent that at 5:30 p.m. the Senate proceed to vote in relation to the following amendments in the order listed; that prior to each vote, except as noted below, there be 2 minutes of debate equally divided and controlled in the usual form; that no amendments be in order to any of the amendments in this agreement; that after the first vote in the sequence, the remaining votes be limited to 10 minutes each; that prior to the vote in relation to the Kyl amendment No. 634, there be 10 minutes of debate, with 5 minutes each for Senators KYL and LAUTENBERG; Murkowski, No. 599; Inhofe, No. 613; Thune, No. 635, as modified; Kyl, No. 634; and Crapo, No. 638.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I will speak briefly about one of the amendments pending, but first I wish to express my support for the fiscal year 2009 Omnibus Appropriations Act. With all the debate here, we sometimes lose sight of the fact that this is a product of months of bipartisan negotiation and hard work. I serve on the Appropriations Committee and I watch the various subcommittees come together and meet. We had both the Republican leader and the Democratic leader of the committees join together and pass most of the bills that make up the omnibus. It is bipartisan. They passed almost unanimously.

Now, we find we are getting into debate on amendments and it is somewhat troubling.

We completed a budget process begun more than a year ago to fund the Federal Government and also to fund hundreds of critical programs in the Federal Government.

It is unfortunate we are now halfway through the fiscal year. I wish it could have been completed through regular order. But enacting this legislation means funding increases for programs that serve as a lifeline to many Americans.

I appreciate what Chairman INOUE has done, what President pro tempore BYRD has done, and what ranking member THAD COCHRAN has done. These are people with whom I have served for decades on the Appropriations Committee. They put together a piece of legislation that is going to take our country forward by investing in health care, law enforcement, the environment, and public schools.

Some have argued that because we passed the American Recovery and Reinvestment Act that this legislation is not needed. That is not correct. The economic recovery plan was crafted specifically to create and save millions of jobs through investments, infrastructure, education funding, and so forth. But the recovery plan was not intended to replace the regular order of

the Federal budget. This is a comprehensive bill, not a targeted piece of legislation.

I have listened to the debate on this legislation throughout the week and heard the arguments that this bill is too expensive, it is unnecessary and we would save money by level funding the government for the rest of the year. Those making these arguments seem to ignore the fact that flat funding the government would mean no additional assistance through child nutrition programs for hungry children whose families struggle to put food on their tables. It would mean less funding is available to help rebuild our crumbling bridges and roads, fewer funds for ensuring Americans have clean and safe water to drink and reductions in critical health prevention programs. In short, not passing this bill would mean turning a blind eye to the millions of Americans who need their Government to extend a helping hand to pull them up off the ground.

Some members of this body have argued that because we passed the American Recovery and Reinvestment Act this legislation is not needed. That could not be further from the truth. The economic recovery plan was crafted specifically to create or save millions of jobs through significant investments in infrastructure, education funding, and public safety net programs. I voted for this plan and have confidence that it is a necessary step to protect and strengthen our economy and invest in America's future. But the recovery plan was not intended to replace the regular order for the Federal Budget.

While the recovery plan includes numerous important priorities, it was structured to be timely and targeted, not a comprehensive bill to fund the entire Government. Using the rationale of some on the other side of the aisle and passing a yearlong continuing resolution would mean we are less able to ensure our security both at home and abroad. Not passing this legislation means the FBI will not be able to hire new agents, intelligence analysts, and others who protect us from crime and terrorism. It would mean the FDA will not be able to protect us from unsafe food and medicine. Finally, it would mean fewer funds for critical activities such as nuclear nonproliferation, military assistance and peacekeeping operations and security operations for our embassies abroad.

Again, I thank my colleagues on the Appropriations Committee for their hard work in crafting this bill. It is not an easy job to weigh the thousands of competing priorities of our country and produce a comprehensive bill that addresses these needs. I applaud Chairman INOUE for his work and offer my strong support for this legislation.

Madam President, the fiscal year 2009 Omnibus appropriations bill contains \$36.6 billion in discretionary budget authority for the Department of State and Foreign Operations, which is the

same amount approved by the Appropriations Committee in July 2008.

This represents a \$1.6 billion decrease from former President Bush's budget request of \$38.2 billion. I repeat—this bill is \$1.6 billion below what former President Bush recommended in his budget.

It is a \$3.8 billion increase from the Fiscal Year 2008 enacted level, not counting supplemental funds, and \$968 million above the Fiscal Year 2008 level including Fiscal Year 2008 supplemental and Fiscal Year 2009 bridge funds.

The State and Foreign Operations portion of this omnibus bill does not contain any congressional earmarks. It does, as is customary and appropriate, specify funding levels for authorized programs, certain countries, and international organizations such as the United Nations and the World Bank.

I thank Chairman INOUE, President pro tempore BYRD, and Ranking Member COCHRAN for their support throughout this protracted process. And I thank Senator GREGG, who, as ranking member of the State and Foreign Operations Subcommittee, worked with me to produce this bipartisan legislation that was reported by the Appropriations Committee with only one dissenting vote.

It is imperative that we enact this bill. The alternative of a full year continuing resolution would be devastating to the operations of the State Department and our embassies, consulates, and missions around the world, and to programs that support a myriad of United States foreign policy interests and that protect the security of the American people. Many Senators on both sides of the aisle were encouraged that Senator Clinton was nominated for and confirmed to be Secretary of State. If we want her to succeed we must provide the tools to do so. This bill supports her highest priority of rebuilding the civilian capabilities of our Government.

The bill provides \$7.8 billion for Department of State operations, a decrease of \$274 million below former President's Bush's request and \$1.2 billion above the Fiscal Year 2008 enacted level, not including supplemental funds. Counting emergency funds provided in Fiscal Year 2008 for personnel, operations and security costs in Iraq and Afghanistan, the bill provides a 5.6 percent increase.

These increases are attributed to a major investment in personnel, primarily to replace worldwide positions that were redirected to Iraq and invest particularly in countries of growing importance in South Asia. The bill supports the request of 500 additional positions, much of which will help posts left depleted, some by 25 percent, due to positions shifting to Iraq during the last 5 years. In addition, the bill recommends \$75 million for a new initiative to train and deploy personnel in post-conflict stabilization. These critical investments would be lost if we do not pass this bill.

The bill provides \$1.7 billion for construction of new secure embassies and to provide security upgrades to existing facilities, which is \$178 million below former President Bush's request. He had proposed a 41-percent increase which we did not have the funds to support. But an increase of \$99.5 million, or 13 percent, above the Fiscal Year 2008 enacted level is provided considering the significant threats our embassies faced last year alone, from Yemen to Belgrade. Even this lesser increase for embassy construction and security upgrades would be lost under a year-long continuing resolution.

Specifically, the bill provides \$4.24 billion for Diplomatic and Consular Programs, which funds State Department personnel. This is an increase of \$464 million, or 12 percent, above the Fiscal Year 2008 enacted level and \$42 million above the President's request. This funds a major investment in personnel to increase language training and expand the number of personnel in regions of growing importance. Senators on both sides of the aisle have strongly endorsed this investment, but it would not be funded under a continuing resolution.

In fact, under a continuing resolution, the State Department would not have the resources to fund the staff currently serving at 267 posts overseas, due to exchange rate losses and the increased cost of security overseas. That means the United States would have even less representation than we do now, which none of us here would find acceptable.

The bill provides \$1.1 billion for Worldwide Security Protection for non-capital security upgrades, an increase of \$355 million above the Fiscal Year 2008 enacted level and \$46 million below the request. This account funds all the Diplomatic Security agents at every post worldwide, armored vehicles, and training—all investments which, again, have bipartisan support. The increases would fund additional personnel for protection at high-threat embassies and oversight of security contractors in Iraq, Afghanistan and Israel-West Bank. This would not be possible under a continuing resolution.

Senators of both parties have expressed strong support for expanding international exchange programs, particularly in predominantly Muslim countries. The bill provides \$538 million for education and cultural exchanges, which is \$15.5 million above the President's request and an increase of \$36.6 million above the Fiscal Year 2008 enacted level. Those additional funds would be lost under a continuing resolution at the moment when the United States has the greatest opportunity to reintroduce our country, our people, and our values to the rest of the world.

The same is true of public diplomacy. The bill provides \$394.8 million for the State Department's public diplomacy activities, including outreach, media, and programs in embassies to develop

relationships with people in host countries. This is \$33.9 million above the fiscal year 2008 level, which would not be available under a continuing resolution.

The bill provides \$1.7 billion for construction of new secure embassies and maintenance of existing facilities, a \$280 million increase above the fiscal year 2008 enacted level and \$83 million below the President's request. Of this amount, \$801 million is for embassy maintenance, \$40 million less than the request and \$46 million above the fiscal year 2008 enacted level.

The bill provides \$770 million for planning, design, and construction of new embassies and office buildings worldwide, \$178 million below the request and \$99 million above the fiscal year 2008 enacted level. Any Senator who has traveled abroad has seen the need to replace insecure and old embassies. There is already a long waiting list, and it would be even longer under a continuing resolution.

Former President Bush's budget underfunded the U.S. assessed contribution to UN peacekeeping in fiscal year 2009 by assuming a reduction in every mission except Sudan. That was pie in the sky. The cost of most of these missions is increasing, not decreasing. The bill provides \$1.5 billion for UN peacekeeping, an increase of \$295 million above the fiscal year 2008 enacted level and \$20 million above the President's request. However, compared to the total amount enacted in fiscal year 2008, the bill is \$173 million below the operating level in fiscal year 2008 including supplemental funds. These are costs we are obligated to pay by treaty. They support the troops of other nations in Darfur, the Congo, Lebanon, Haiti, and a dozen other countries.

The bill provides \$1.5 billion for contributions to international organizations, the same as the President's request and \$186 million above the fiscal year 2008 enacted level. The account funds the U.S. assessed dues to 47 international organizations, including NATO, IAEA, OECD, the UN, and others for which, as a member of the organization, the United States is obligated by treaty to contribute. We either pay now or we pay later.

The bill provides \$709.5 million for the Broadcasting Board of Governors, an increase of \$39.5 million above the fiscal year 2008 enacted level and \$10 million above former President Bush's budget request. This includes funding for languages which the former administration proposed to eliminate in fiscal year 2009, such as Russian, Georgian, Kazak, Uzbek, Tibetan and the Balkans, where freedom of speech remains restricted and broadcasting programs are still necessary to provide unbiased news.

For USAID, the bill provides \$808.6 million for operating expenses, \$41.4 million above former President Bush's request and \$179 million above the fiscal year 2008 enacted level. This continues efforts begun last year to ad-

dress the serious staff shortage at USAID, but under a continuing resolution USAID's staff problems would continue to worsen. It would not be able to hire additional staff for Afghanistan and Pakistan, or for other posts where there is not sufficient oversight of contracting and procurement. It is a crisis situation that I and Senator GREGG are determined to fix.

For bilateral economic assistance, the bill provides a total of \$17.1 billion, \$1.3 billion below former President Bush's request and \$623.3 million above the fiscal year 2008 level. We received requests from most Senators—Democrats and Republicans—for funding from within this account, totaling far more than we could afford. A continuing resolution would make it impossible to fund many, if not most, of those requests.

A good example is global health. The bill provides \$7.1 billion for global health and child survival, an increase of \$757 million above the request and \$737 million above the fiscal year 2008 enacted level. A continuing resolution would be devastating for these life-saving programs.

A total of \$495 million is provided for child survival and maternal health, an increase of \$125 million above former President Bush's request and \$49 million above the fiscal year 2008 enacted level. These funds are for programs that directly decrease child and maternal mortality from preventable diseases, such as malaria, polio and pneumonia. Under a continuing resolution, USAID would not be able to expand its malaria control programs to other countries in Africa with a high incidence of malaria, which kills a million people, mostly African children, every year.

The bill provides \$300 million for safe water programs, including increasing access to safe drinking water and sanitation, which is a key factor in improving public health.

Former President Bush proposed a steep cut in funding for family planning and reproductive health programs, even though they are the most effective means of reducing unwanted pregnancies and abortions. The bill, instead, provides a total of \$545 million from all accounts for family planning and reproductive health including \$50 million for the UN Population Fund, which is \$82 million above the fiscal year 2008 level. A continuing resolution would eliminate those additional funds, and the number of unintended pregnancies and abortions would increase.

The bill provides a total of \$5.5 billion for programs to combat HIV/AIDS, \$388 million above former President Bush's request and \$459 million above the fiscal year 2008 level. Of this amount, \$600 million is provided for the Global Fund to Fight HIV/AIDS, which is \$400 million above the request. Additionally within the total, \$350 million is provided for USAID programs to combat HIV/AIDS, which is \$8 million above the request.

These additional funds, which pay for life-sustaining antiretroviral drugs, prevention and care programs, would be lost under a continuing resolution, to the detriment of 1 million people who would receive lifesaving treatment this year. With this funding 2 million additional HIV infections would be prevented this year. Instead of 10 million lives we are saving today, we have the opportunity to save 12 million people. We have the opportunity with this bill to save 1 million more orphans or vulnerable children who are either infected with HIV or have been orphaned because a parent died from HIV/AIDS. Why would we not make this investment this year?

The development assistance account funds energy and environment programs, microcredit programs, private enterprise, rule of law, trade capacity, and many other activities that Senators on both sides of the aisle support. The bill provides \$1.8 billion for development assistance which is \$161 million above former President Bush's request and \$176 million above the fiscal year 2008 enacted level.

The bill provides \$350 million for international disaster assistance, \$52 million above the request and \$30 million above the fiscal year 2008 enacted level, excluding supplemental funds. These funds enable the United States to put its best face forward when disaster strikes, as it did with the tsunami, the earthquake in Pakistan, floods in Central America, and famine in Africa.

The bill provides \$875 million for the Millennium Challenge Corporation. This is \$1.3 billion below the request and \$669 million below the fiscal year 2008 enacted level. This reflects the view of the House and Senate that the Congress supports the MCC but wants to see a slowdown in new compacts, while \$7 billion in previously appropriated funds are disbursed, and while the new administration decides how it wants to fund the MCC in the future. The agreement provides sufficient funds to continue current operations and to commence two new compacts of \$350 million each.

For the Peace Corps, the bill provides \$340 million, which is \$9 million above the fiscal year 2008 level. Those additional funds would be lost under a continuing resolution.

The bill provides \$875 million for international narcotics control and law enforcement, which is \$327 million below the request and \$321 million above the fiscal year 2008 enacted level. Those additional funds for programs in Latin America, Pakistan, Afghanistan, and many other countries would be lost under a continuing resolution.

There is a total of \$405 million for continued support of the Merida Initiative, including \$300 million for Mexico and \$105 million for the countries of Central America. The fiscal year 2008 supplemental included \$400 million and \$65 million, respectively. We are all increasingly alarmed by the spread of

drug-related violence and criminal gangs in Mexico, but under a continuing resolution there would be nothing for the Merida Initiative.

Migration and refugee assistance is funded at \$931 million, which is \$167 million above former President Bush's request and \$108 million above the fiscal year 2008 enacted level. That \$108 million would be lost under a continuing resolution. This amount is already \$557 million below what was provided in fiscal year 2008 including supplemental and fiscal year 2009 bridge funds. These funds are used for basic care and protection of refugees and internally displaced persons, whose numbers are not expected to decrease this year.

The bill provides \$4.9 billion for military assistance and peacekeeping operations, \$173 million below former President Bush's request but \$212.6 million above the fiscal year 2008 enacted level. The bill assumes \$170 million provided in the fiscal year 2008 supplemental as fiscal year 2009 bridge funds for military assistance to Israel, making the total amount for Israel equal to the President's request, \$2.55 billion. The additional \$212.6 million for other important bilateral relationships would be lost under a continuing resolution.

For contributions to the multilateral development institutions, which we owe by treaty, the bill provides \$1.8 billion. That is \$503 million below the former President's request and \$251 million above the fiscal year 2008 enacted level. A continuing resolution would put us another \$251 million in arrears, in addition to the arrears we already owe.

The bill provides the amounts requested by the former president for the Export-Import Bank, an increase of \$26.5 million above fiscal year 2008. By not passing this bill, these additional resources would not be available to make U.S. businesses competitive in the global marketplace. At this time of economic downturn at home we should be doing everything we can to support U.S. trade.

These are the highlights of the fiscal year 2009 State and Foreign Operations portion of the omnibus bill before us. It contains funding to meet critical operational costs and programmatic needs which support U.S. interests and protect U.S. security around the world.

A handful of our friends in the minority have criticized this omnibus because it contains earmarks. Apparently they would prefer that unnamed, unelected bureaucrats make all the decisions about the use of taxpayer dollars. In fact, the total amount of this bill that Members of Congress—Democrats and Republicans—have earmarked for schools, fire and police departments, roads, bridges, hospitals, scientific research, universities and other organizations and programs in their states and districts which would not otherwise receive funding is less than 1 percent. That is what the aggrieved speeches are about. A whopping 1 percent.

Some here complain that this omnibus—all but a small fraction of which would fund the budget requests of former President Bush—is more than we can afford. Those are the same Senators who, year after year, rubberstamped billions and billions of borrowed dollars to fund an unnecessary war and reconstruction programs in Iraq that were fraught with waste and abuse.

Some say that the intervention of the Economic Recovery and Reinvestment Act is the reason they oppose this omnibus bill. Regarding the Department of State and foreign operations, 99.6 percent of the omnibus has no correlation whatsoever to what was funded by the Recovery Act. This portion of the omnibus funds all of the United States' activities overseas. All of the key new investments I have described will not occur if this bill is not passed.

The funding for State and foreign operations in this omnibus bill amounts to about 1 percent of the total budget of this country. However one views the Economic Recovery Act, it would be the height of irresponsibility to oppose this bill. The damage that a continuing resolution would cause to the functions of our embassies, consulates and missions, and to the foreign service officers who serve the American people around the world, would be devastating. The damage to programs would be measured in lives.

We have seen the image of our country battered beyond recognition. The values our country was founded on were ignored, ridiculed, and diminished. Democrats and Republicans alike recognize that the United States needs to reinvigorate its engagement in the world, particularly through rebuilding alliances and using diplomacy more effectively. This bill puts our money where our mouths are. The alternative is to retract and to invite others to fill the vacuum. That might save money in the short term, but it will cost us dearly in the future.

#### AMENDMENT NO. 613

Madam President, I will speak briefly in opposition to an amendment offered by Senator INHOFE. Before I do, I might note that I have served here for 35 years. Seeing the distinguished Presiding Officer, when I first came to the Senate, there were two Senators from Minnesota—Senator Hubert Humphrey, Senator Walter Mondale. Senator Humphrey had been Vice President of the United States; Senator Mondale was to become Vice President of the United States. I was helped immeasurably by the mentoring and the friendship of those two Senators.

The distinguished Presiding Officer and I had the opportunity to be present when the distinguished former Senator from Minnesota, Mr. Mondale, or Ambassador Mondale or Vice President Mondale—he had all those titles—was given one of the highest awards that the Japanese Government could give.

I mention this only because I still serve with the whole delegation from

Minnesota, which is now presiding over the Senate.

The PRESIDING OFFICER. That would be correct.

Mr. LEAHY. Madam President, to go back to the subject at hand, I do wish to speak briefly in opposition to an amendment offered by Senator INHOFE. It is amendment No. 613. According to the unanimous consent agreement entered into by my dear friend, the senior Senator from Mississippi, we are going to vote on that amendment later today.

His amendment prohibits any United States funding to the United Nations if the United Nations imposes a tax on any United States person. It's like: My gosh, how did we ever overlook this situation? But this amendment is a textbook case of legislating when there is absolutely no rhyme or reason and shooting ourselves in the foot at the same time.

It is not a response to anything that has happened in the entire history of the United Nations. It is something that apparently the author of the amendment imagines maybe, some time, somehow, somewhere this could happen.

The United Nations has never levied a tax on anyone. It is not a taxing organization. This provision was originally put in many years ago when anti-United Nations sentiment was high. It was a feel-good, chest-thumping response to a totally imagined, non-existent problem.

I call it the Godzilla amendment. Let's pass a law that says if Godzilla comes tromping down the National Mall, he is prohibited from coming within 100 yards of the Nation's Capitol Building.

The fact is, of course, there is no Godzilla and there never will be. The U.N. has no taxing authority. It does not impose taxes. There has never been a U.N. tax on Americans. There is no realistic possibility that there ever will be.

This would be like saying if the United Nations ever passes a law to rename the United States of America, we will cut off funding. It is not going to happen.

Every year each appropriations subcommittee receives requests from Senators for what they want included in the bill. Both the ranking Republican member and the Democratic chairman look at all these requests. No Senator requested the language proposed by the Senator from Oklahoma. The Bush administration never requested this language. Both I and Senator GREGG saw absolutely no reason to continue to include it. It has no practical effect.

The Senator from Oklahoma has had since last July, over half a year, to ask for its inclusion if he wanted. He never did. President Bush, Vice President Cheney, Secretary of State Rice—none of them saw any reason for it.

This sort of falls into the "we need to prohibit black helicopters from coming in the middle of the night from the

United Nations." It is fantasy. But if we did adopt it, what an embarrassment for this country, the only country in the world to adopt such an amendment.

At a time when we are trying to reestablish the reputation and leadership of the United States, why would we put Congress on record threatening the United Nations not to do something that it is never going to do? We are not some two-bit country that wants to stand up and wave a flag and show how tough it is. We are not the mouse that roared. We are the United States of America. And doing something like this, the rest of the world is going to look at us and say: Why are you doing such silly things?

The Senator's amendment would cut off funding for U.N. peacekeeping, for the operations of the U.N. Security Council, for UNICEF, for all the things we are asking the United Nations to do in Iraq, Afghanistan, Darfur, the Middle East, and around the world. That is what the amendment says. It is an anachronism. It has no basis in fact.

Does anyone think that even if they wanted to the other members of the U.N. Security Council could do that over a United States veto? It's impossible.

We already pay our assessed dues to the United Nations. Is that a tax? We have to pay it. It comes out of the Federal budget, and the Federal budget is taxpayer money. Should we stop paying that?

Let's stop treating the United Nations as the enemy. Let's start showing maturity and leadership. The amendment was an unnecessary piece of legislation years ago when it was first offered by Senator Jesse Helms, and it is no less so today.

No President, even if the U.N. had the ability to, which it does not—even if it tried, whoever was President would simply instruct our Representative to the United Nations: Veto it.

It is a solution looking for a problem. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

AMENDMENT NO. 635

Mr. DORGAN. Madam President, I rise briefly to oppose the amendment offered by my colleague, Senator THUNE from South Dakota. I supported and worked with Senator THUNE and Senator KYL on Indian law enforcement issues and health care issues with respect to a very sizable authorization bill that was passed last year. It was actually an amendment to another bill. It was enacted into law. We now have an authorization for an Emergency Fund for Indian Safety and Health that is very important, and it needs to get funded.

I had not been aware of this amendment proposed by Senator THUNE. I don't know with whom Senator THUNE talked about it. He did not visit with me.

In any event, his amendment would provide funding for a range of Indian

issues, which I think are very important issues, with an across-the-board reduction in other areas. His original amendment was drafted in a way that would have cut \$90 million out of current Indian programs to pay for this Emergency Fund. He has since modified that amendment so that it is now an across-the-board cut on a much broader array of programs.

He makes the point that it is not a significant cut. I do not disagree with that. It is, however, a cut in Indian health care programs, a cut in Indian housing programs, a cut in programs that are so desperately in need of funding. I would be anxious to work with my colleague. I think those of us who have worked so hard together, including Senator THUNE and others, need to collaborate on these issues and determine how we can come up with some additional funding for the authorization we worked together to complete last Congress.

As I indicated, I was surprised by this amendment, as I am sure the Senator from California, Mrs. FEINSTEIN, was as well. We have so many problems. For example, contract health care on Indian reservations. You know the word on reservations: Don't get sick after June because they are out of contract health care funds and you are not going to get admitted to a hospital.

We have people with bone-on-bone health conditions, and bad knees so painful they cannot walk. But, it is not considered life or limb, which means they will not get funding for it.

In the past, I held up on the floor of the Senate a photograph of a woman who showed up lying on a gurney at a hospital having a heart attack with an 8-by-10 piece of paper Scotch taped to her leg that said to the hospital: If you admit this person, understand you may not be paid for it because we are out of contract health care funds.

We are so desperately short of funds in these areas, I don't think we ought to be cutting an account like that, even for something of great merit such as adding law enforcement funding to this Emergency Fund.

I support law enforcement funding initiatives. We need to find funding for them. We have reservations where the level of violence is 5 times, 10 times, 12 times the rate of violent crimes in the rest of the country. I have held hearings on it in Washington and on an Indian reservation. I fully believe we need to fund these initiatives. But should we do that by taking funding out of contract health care funds? I don't think so. Contract health care where people cannot show up at the hospital door after June, when they have run out of funds, in very serious trouble with something taped to their leg that says: By the way, you ought not admit this person because you are not going to get paid.

Full scale health care rationing is going on. Forty percent of the health care needs of American Indians are not getting met. Little kids are dying and

elders are dying. We are desperately short of money in these accounts. To cut any of these health care accounts in any amount, in my judgment, is wrong.

I am sorry I am not able to support that amendment. It is the wrong amendment. I am anxious to work with my colleague from South Dakota. My colleague has a record of working with us on the Indian Affairs Committee, and he has a record of working on Indian reservations on important issues. I am anxious to work with him and my other colleagues, including Senator BARRASSO from Wyoming, who take a big interest in this issue.

I hope as we move forward that we will be able to provide the funding for the crisis that exists in health care, housing, and education on Indian reservations in this country. At the same time, we need to provide the funding for adequate law enforcement, which we have signed treaties to do and which we have a trust responsibility to do, but which we have systematically over a long period of time failed to do.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

AMENDMENT NO. 634

Mr. KERRY. Madam President, I wish to talk about the amendment of the Senator from Arizona, Senator KYL, amendment No. 634, which is a well-intentioned amendment fundamentally but I think a misdirected amendment. The purpose of the amendment is to prohibit the expenditure of amounts of money made available under this act in a contract with any company that has a business presence in Iran's energy sector.

Effectively, what Senator KYL is seeking to do on this appropriations bill—on the fly, without hearings within the appropriate committees of jurisdiction, and without any appropriate input by the administration—a new administration, 1 month into office, and an administration that already has announced it has a new policy with respect to Iran—is to walk in here and apply a unilateral sanction by the United States.

Now, all of us share a very deep and real concern about the course Iran is on. We have just concluded 3 days of hearings in the Foreign Relations Committee on this very subject in order to get a better understanding of exactly what is happening in Iran, exactly what the possibilities may be, how we might avoid making the mistakes that were made in the last administration by rushing to judgment, and how we can proceed in a deliberative, thoughtful way. To simply attach to this appropriations bill this amendment in this way would be to contradict every single one of those legitimate interests of trying to approach a policy with regard to Iran in a thoughtful way.

First, let us make it very clear. We all know the effect of adopting this amendment, because of the procedural situation we are in, is very simple. It

keeps us from enacting this bill before the current continuing resolution expires. And given what we have heard from the House of Representatives, that means a vote for this amendment is effectively a vote against the Omnibus appropriations bill and it is a vote for a year-long continuing resolution at last year's funding levels. Given the state of our economy, given all of the initiatives contained in bills we should have passed last year and that we are only now getting to, it would be irresponsible in the context of the current economic situation of this country to deny some of these funds to flow and to put people back to work and to help create the future jobs for this country that we need.

On another level—and this is important—this amendment, if it passed, would actually have a very negative impact on the very office the Treasury Department—the Office of Terrorism and Financial Intelligence—would require to enforce the amendment. Why is that? Because in this omnibus bill that we want to pass is over \$5 million, or about 10 percent over last year's budget, to help them be able to do the very job this amendment seeks to have them do. So the result of passing the amendment would be to take away the needed resources from the very people at the Treasury Department who right now are trying to track down and root out the Iranian banking and financial transactions that contribute directly to Iran's nuclear missile programs.

I think for the first reason alone you should not vote for this amendment, but the second reason not to vote for it is that it doesn't make sense to take money away from the people who are already doing the job we want them to do. That doesn't make sense. But more broadly—and I hope colleagues will think about this—this is not the time for this kind of an amendment.

We had a secret briefing yesterday afternoon with all of the DNI and CIA and other folks who are doing a lot of hard work with respect to Iran, and we spent a number of hours analyzing this. We are trying to come up with a multilateral approach that reaches out to the Europeans, to the Russians, to the Chinese and others, and we are trying to put together an Iran policy that makes sense. Developing a more effective Iran strategy is one of President Obama's top priorities, and getting it right is challenging. That is why the administration is undertaking the comprehensive review of its policy options even as it works to get its team in place. It doesn't make sense to come careening in here in the course of an afternoon, without hearings, without melding it into that larger strategy, to think about putting in place something that not only works against your interests but actually may wind up making it more difficult for our allies to be able to work with us, and without understanding how it fits into a broader strategy.

The President is right to open the door to direct engagement with Iran.

And a lot of us are hoping—all of us hope, I think—that a more productive relationship is going to emerge, whereby we can explore areas of mutual interest. Believe it or not—a lot of people don't realize it at first blush—when you begin to look at the region and understand the dynamics of what is happening in Afghanistan and Pakistan and even Iraq, the fact is that Iran has the potential to be a constructive partner with respect to a number of different mutual interests. They do not like the Taliban, they have an interest in not having drugs come from Afghanistan across the border, they have other interests with respect to the stability of Afghanistan and other parts of that world.

The fact is they helped us—a lot of people don't realize this—recently, in 2001 and 2002, when the Senate made almost a unanimous decision that we needed to respond to the 9/11 attacks by dealing with Afghanistan and a safe haven. Iran was enormously helpful to us in that effort. And in fact much of what we were able to accomplish with the northern alliance, with the placement of our personnel on the ground, and other things through other components of that relationship wound up being very constructive in helping us to achieve what we did. So there are possibilities of a different relationship.

Nobody is believing that mere talking is going to produce them, but you don't know until you talk what the possibilities are. And you certainly, if you ultimately are going to wind up going down a much tougher road, want to build your bona fides with other countries to show that you have made every effort to be able to find out whether there are alternatives. So I have long advocated that we take a different approach with respect to Iran, and I think this kind of measure gets flat bang immediately plunked down right in the way of being able to take those kinds of additional new initiatives.

The challenge for the Obama administration now is going to be to choose a series of red lines with respect to Iran's potential nuclear program. And to do that, everybody has learned we need to build coalitions with the Europeans, the Russians, the Chinese, and nations within the Middle East in order to be able to pull the full weight of the international community against Iran, should they defy common sense and the requirements of the nonproliferation treaty and the United Nations and the IAEA. So I think for diplomacy to proceed, we don't want to engage in unthought out, ad hoc efforts such as this particular amendment, which can get in the way of our ability to put together a strong multilateral coalition.

Here is another reality. This amendment would wind up actually making it more difficult to achieve that coalition, because it would indirectly sanction companies in some of the very countries we hope to enlist. That is going to be made more difficult if this

amendment were to pass. So again, it is unwise to target unilateral sanctions at allies and other influential countries we need in order to help appropriately build a coalition to deal with Iran.

I mentioned earlier that the Foreign Relations Committee has been doing 3 days of hearings on this very topic. Today, we heard from two of the most distinguished and thoughtful individuals in America with respect to national security issues. They have both served as national security advisers to Presidents of the United States—Democratic and Republican. I am talking about Dr. Zbigniew Brzezinski and GEN Brent Scowcroft. Both of them made perfectly clear that this kind of approach—the kind of approach in this amendment—is counterproductive to our overall strategy of bringing tough pressure to bear on Iran in order to change its direction.

So I say to my colleagues, going it alone on Iran may make you feel good, but it ain't smart, it is not playing to our strengths, and it is not permitting the current President of the United States, as Commander in Chief and as the initiator of our foreign policy, to be able to take the initiatives he wants. What is more, it is not even clear how the Treasury Department's Office of Foreign Asset Control would even be able to implement this amendment, and we haven't had any hearings to determine how they would implement this amendment.

This amendment would bar any funds provided by the bill for any new Federal contract with any company that has a "business practice" in Iran's energy sector. Well, nobody here even knows fully what the definition of a business practice is. Does that mean CIA? What does that mean in terms of anybody's understanding of what in fact is going to be banned? Moreover, the Office of Foreign Asset Control doesn't even catalogue those kinds of companies right now. So all of a sudden you pass the money and you are going to ask them to start tracking, no matter how small that company. It is going to distract them, frankly, from the serious work they are doing now to root out and shut down Iran's nuclear missile-related procurement transactions around the world. That is more important than diverting to this sub-effort.

The bottom line is our challenges with Iran are plain too serious to be making foreign policy on the fly in an amendment to an appropriations bill without hearing and without even adequately understanding fully the terms within it. The committees of jurisdiction have not debated this approach. They haven't had any votes on this approach. There may well be a time and place for this kind of a provision. Maybe this provision will fit into a series of escalating sanctions which we have already been talking about within the Foreign Relations Committee. But we ought to do that not in this ad hoc way but in a thoughtful and disciplined

way, and I think we will have a much stronger policy if we do that.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

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

The PRESIDING OFFICER (Mr. CASEY). Without objection, it is so ordered.

Mr. MENENDEZ. Mr. President, what brings me to the floor is the Kyl amendment that is presently before us. I have listened to some of my colleagues say how this is the wrong amendment at the wrong time. I would simply say that, in fact, this is. I happen to agree. I happen to agree that it is at the wrong time.

I might very well agree with Senator KYL on the underpinnings of the amendment. I think we need to do what we must in order to ensure that Iran does not achieve the possibility of a nuclear weapon, and whatever we need to do in pursuing a two-track parallel as we engage them, at the same time have them understand that if engagement is not going to achieve them stopping obtaining a nuclear weapon, that there are consequences. But this is the wrong way to do foreign policy—in an omnibus bill—just as it is the wrong way to do foreign policy on the Cuba provisions in this bill.

I am compelled to come to the floor because I will oppose the Kyl amendment particularly because I think it is wrong to include it in an omnibus bill without going through the process—the Senate Foreign Relations Committee and others—to consider in fact whether this is the best policy, to have an open and free debate about it, to be able to vote on it either way after such rigorous debate. But we are being asked to vote for an omnibus bill that has provisions that change a significant foreign policy as it relates to the United States and Cuba. So there is a duality.

Finally, I have been reading a lot from our friends in the blogosphere and others, who talk about this issue on Cuba, and the press. What is incredible to me is that they still cannot cite one human rights activist in Cuba, one democracy activist in Cuba, they do not have the name of one prisoner of conscience inside of Cuba. They lose track. They talk about policy, but if it were any other part of the world—if we were talking about Burma, if we were talking about what happens in the Sudan—if we were talking about any other part of the world, we would see the same attention being given to the human rights activists, the democracy activists, the political prisoners inside of Cuba who languish each and every day, and their crime is simply to try to cre-

ate a civil society with the benefits of the freedoms we enjoy here in the United States—to be able to come to a body like this and be able to debate; to be able to choose our elected representatives; to worship at the altar at which we choose to worship; to be able to enjoy the benefits of the sweat of our labor, whether by brawn or by brain. But there is silence.

I am a little tired that we keep reading about those who will spend hours listening to Castro's soliloquies but not spend 1 minute with human rights activists, with political dissidents, with independent journalists. There was a time when we used to help human rights activists and democracy activists in the world; when we put an international spotlight on people such as Lech Walesa in Poland; when we did it with Vaclav Havel in the Czech Republic; when we did it with Aleksandr Solzhenitsyn in the former Soviet Union. By creating that spotlight on those individuals, we gave them the opportunity not to be harassed on a daily basis, as Cuba's democracy activists are, in jail and in prison and sentenced, sometimes for a quarter of a century for some minor act that, in fact, we would enjoy here as one of our fundamental freedoms, such as wearing a simple white bracelet that says "cambio"—change. Change in the last election in the United States would get you elected President.

Say "change" in Cuba, it sends you to jail. Yet there is silence. There is silence. It is deafening. It is deafening. So I will vote against the Kyl amendment because I think it is the wrong process in an omnibus bill. But, by the same token, you cannot have it one way and say it is wrong to have major foreign policy changes in an omnibus bill and then be silent about the other.

It is wrong to say our policies should be changed but not have one word about democracy, human rights, political prisoners. It is amazing to me that people do not know who Oscar Elias Biscetis is, an Afro-Cuban doctor who ultimately was sent to jail for 25 years simply because he refused to perform the abortions the regime called upon him to do. He protested it and he was sent to jail for 25 years; or Marta Beatrice Roque, who, in fact, languishes with health issues, and every time she goes out, most recently to visit a U.S. diplomat, gets beaten along the way; or Antunes, who is on a hunger strike trying to create limited openings in a civil society and protesting the beating and incarceration of another human rights activist.

I hope people will get to know their names, such as they did Vaclav Havel and Lech Walesa and Aleksandr Solzhenitsyn and others in the world whose voices we hear from our colleagues who come here and talk about them. I am proud of them for doing that. They need to start speaking out about the voices of those who languish in Castro's jails and stop losing the romanticism of the regime and start

talking about those human rights activists, democracy activists, those who are suffering simply to create an opening in civil society within their country. Then there will be some balance. Then there would be some equity. Then we would have an opportunity to move on broader in the context of policy.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### AMENDMENT NO. 599

Mrs. BOXER. Mr. President, we have a series of votes. I believe the first one will be the Murkowski amendment. I rise to speak against it. I think if you vote for the Murkowski amendment, what you are endorsing is a process that is something that should not be encouraged, which is a President in the waning hours doing a midnight regulation to overturn a law.

Let me repeat that. What Senator MURKOWSKI is doing is she is removing language in this bill that reversed two midnight regulations the Bush administration put into place, without proper hearing, without going through the comment period the way they should, ignoring the public, ignoring the science, and, in essence, doing a backdoor repeal of the Endangered Species Act.

Now, that is not right. It happens to be that one of these dealt with the polar bear, which, as you probably know, was listed as a threatened species by the Bush administration. But then people looked at the Endangered Species Act and said: My goodness, we do not know what can happen if we now declare that the polar bear is not only threatened but endangered. We better take away the protection of the Endangered Species Act from the polar bear.

Whether you care about the survival of the polar bear, as do I, or whether you do not, it seems to me what the Murkowski amendment does is to say that we approve of the President of any party, acting in a capricious way, overturning a law that was passed by Republicans and Democrats.

She not only deals with the polar bear, but she also deals with another very important rule that says, before there is a major development, Federal agencies have to check with the Fish and Wildlife Service to make sure we are not destroying God's creation.

I do not understand the thinking behind it. We have laws in place to protect endangered species. If we do not like the Endangered Species Act, if we have decided we do not care about polar bears or we do not care about bald eagles or we do not care about any of this, we want to do away with it, let LISA MURKOWSKI and any of my colleagues come and move to overturn and

overrule and abolish the Endangered Species Act.

But let's not send a signal tonight that Presidents of either party can, at the waning hours of their Presidency—and I do not care if it is a Democrat or Republican—can willy-nilly, with the stroke of a pen, decide to do away with the protections of an act that was a landmark environmental law.

If you do not like the law, come here, tell me why, let's talk. Maybe we can fix parts of it, maybe we cannot. Maybe we can rework parts of it, maybe we cannot. But let's not allow Presidents to simply do away with these laws when they may prove to be inconvenient.

I hope we will vote against the Murkowski amendment, whether we want to protect the polar bear or we do not, whether we care about the bald eagle or we do not. That is up to us to decide. But let's not say tonight in this vote that we approve of an Executive doing away with the protections of Federal law with the stroke of a pen without a hearing, without the comments, without the scientists, without working with Members of Congress on both sides of the aisle.

I hope we will have a strong vote against the Murkowski amendment.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. BOXER. I am sorry to take back the time so quickly, but I want to place in the RECORD a number of editorials from around the country that have come out against the Murkowski amendment. One is from the Miami Herald entitled "Who needs those pesky scientists?" Another is entitled "Endangered Process, Proposed rule changes to the Endangered Species Act could do lasting harm in the natural world." "Unnecessary ESA Rewrite," that is from the Bangor Daily News. "Gutting the law" is from St. Louis Today. "Endangered law: Bush rule change ignores science—again." That is from the Salt Lake Tribune. Here is one from the Seattle Post-Intelligencer: "Endangered species: A 9-second rewrite." "A complete sham, Public comments given curt review in rush to dilute the Endangered Species Act." That is from the Las Vegas Sun. "Shredder is overheating in Bush's final months." That is from the Virginian Pilot. These editorials were written when George Bush issued the executive orders.

Senator MURKOWSKI's amendment would say: Fine, let it stand. The underlying bill reverses these midnight regulations and goes back to the status quo ante and back to the regular order.

I ask unanimous consent the editorials be printed in the RECORD.

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

[From the Miami Herald, Aug. 13, 2008]

#### WHO NEEDS THOSE PESKY SCIENTISTS?

The Bush administration continued its assault on the Endangered Species Act this week with a last-minute proposal that would speed up approval of construction projects that could cause harm to endangered plants and animals. Maybe it comes out of desperation, but whatever the motivation for the change, the administration misses the mark and should reconsider. If it doesn't and the change is approved, whoever is in the White House next year should immediately rescind the new rule.

#### COMPLETE PROJECTS FIRST

Interior Secretary Dirk Kempthorne said the change is necessary to keep the Act from being used as a "back door" means of regulating greenhouse gases that are believed to cause global warming. The change would allow federal agencies that are responsible for building highways, bridges, dams and other projects to decide if their projects create a risk to endangered species. This would drastically limit the requirement for mandatory, independent reviews by the Fish and Wildlife Service and other agencies that employ scientists and experts to conduct the studies. It would be like letting the proverbial fox guard the henhouse. Those agencies' first priority is to get projects completed, not protect at-risk species.

If the problem truly were about the time involved in the review process, the solution would be to streamline the process—not change the reviewer. But the administration has used this gambit before. In 2003, it adopted rules to let agencies approve new pesticides without hearing from government scientists about the impact on endangered species. The rule was overturned in court.

The administration's antipathy to the idea that human activities contribute to global warming has been well documented. In announcing the proposed change, Secretary Kempthorne said, "It is not possible to draw a link between greenhouse gas emissions and distant observations of the impacts on species."

#### PUBLIC'S INPUT

If approved, the administration would accomplish with a change in the rules what it has not been able to achieve in Congress. The House passed a bill in 2005 that would have made similar changes to the Endangered Species Act, but the measure failed in the Senate. The proposed change is subject to a 30-day public comment period after which it can be finalized by the Interior Department.

Thus, it is possible that the change could take effect before the next president is sworn into office, and could be in place for months before a decision on rescinding is made. The Bush administration showed its animus toward scientific data by rejecting stem-cell research that could help people with chronic diseases. Now it eschews research that protects the bald eagle, grizzly bear and Florida panther.

[From the Washington Post, Aug. 19, 2008]

#### ENDANGERED PROCESS

In May, the Bush administration reluctantly listed the polar bear as "threatened" under the Endangered Species Act. The facts left it with little choice: the bear's Arctic Sea ice habitat is melting because of global warming. But the administration wasn't happy, because the Endangered Species Act was never intended to be an instrument for coping with climate change. Our sympathy was limited, since President Bush spent his

entire time in office resisting the adoption of laws that would have been better suited to combating greenhouse gas emissions. But we agreed that the Endangered Species Act was the wrong tool for the problem.

Now, however, in what is ostensibly an attempt to deal with this polar bear mismatch, Interior Secretary Dirk Kempthorne has proposed a rules change that would undermine the law's fundamental work. Mr. Kempthorne suggests far-reaching changes to the consultation process between the Fish and Wildlife Service or the National Marine Fisheries Service and other agencies. The changes would render the process meaningless and put all protected species at risk. Currently, an agency building a highway has to consult with the Fish and Wildlife Service to determine whether the project is "likely to adversely affect" a listed species. If a determination is made that such harm is likely, the service conducts a more rigorous review of the project and issues a detailed opinion on its effects. It is in this give-and-take between the various agencies and services that modifications are made that allow projects to go forward while minimizing the harm to animals and to trees and other plants.

Under Mr. Kempthorne's plan, agencies would be able to decide for themselves whether a project is likely to harm a species, and not just polar bears. If an agency decided to consult on the possible impact, the Fish and Wildlife Service would have 60 days (with the possibility of a 60-day extension) to issue an opinion. If it didn't meet that deadline, the other agency could end the consultation and proceed. The Fish and Wildlife Service already can't meet the deadlines established in the Endangered Species Act and is practically being run by judges and lawyers because of litigation stemming from blown deadlines. So we don't hold out much hope that Mr. Kempthorne's new deadlines would be met, either. The impact could be devastating.

The department contends that other government agencies have had years of experience with the law and know as much as the Fish and Wildlife Service and the National Marine Fisheries Service about how to protect listed species. This is doubtful. The services are there for a reason—to safeguard threatened and endangered species and to act as a check against the ambitions of agencies that want to complete projects. The rigor that the current consultation process fosters would be lost.

A 30-day comment period on the new rules has begun. So, here's our comment: Reissue the proposed regulations with a specific, targeted policy on how greenhouse gas emissions should be taken into account on federal projects under the Endangered Species Act. Gutting the consultation process, with all the unintended consequences of such an action, could be avoided.

[From the Bangor Daily News, Aug. 21, 2008]

#### UNNECESSARY ESA REWRITE

The Endangered Species Act has rightly been criticized for being slow and cumbersome. Eliminating a key provision of the act—which requires agencies that promote development, such as the Department of Transportation and the Bureau of Reclamation, to consult with agencies charged with protecting wildlife is not the solution.

The Bush administration, through the Departments of Commerce and Interior, proposed such a change last week under the guises of "narrow" updates to the act. Far from narrow, this is a fundamental shift of responsibility. "The fox guarding the henhouse," was the favorite clichéd description from environmental groups. Cliche or not, they are right.

The Office of Surface Mining has more interest in allowing ore to be mined than in protecting animals. The Army Corps of Engineers is more concerned with seeing dredging projects completed than ensuring fish habitat isn't destroyed. That's why consultation with the U.S. Fish and Wildlife Service, for projects on land, and the National Marine Fisheries Service, for marine projects, has long been required for work on federal land, paid for with federal funds or requiring federal permits.

Proposed new rules, published last Monday, would eliminate all formal consultation, instead allowing the federal agencies to decide whether proposed projects pose a threat to species protected by the ESA. Informal consultations would still be allowed if the federal agencies overseeing the projects wanted advice or review by the wildlife or fisheries service.

A major shortcoming of this proposal is that it aims to correct a problem that is more perception than reality.

Between 1987 and 1996, the U.S. Fish and Wildlife Service reviewed approximately 186,000 projects for possible impact on listed species. In only 5046 cases—less than 3 percent—were the projects deemed to adversely affect those species, requiring formal consultation. Of these, 607 concluded that a listed species would be jeopardized, but most could go forward if modified. During this time, only 100—0.0005 percent of the total reviewed by the service—were blocked due to endangered species concerns.

In Maine, between 1990 and 2005, the service reviewed more than 1,100 projects. In only eight was a formal consultation warranted. In each of these cases, the service found that the work could be done without harming the species in question, most often bald eagles, and the projects were allowed to proceed.

In another major overreach, the proposed rules eliminate climate change as a consideration when reviewing projects and their potential to harm threatened and endangered species. This follows last year's Supreme Court ruling that the Environmental Protection Agency had the authority to regulate the emission of carbon dioxide and other greenhouse gases from cars. The agency had argued that carbon dioxide was not a pollutant so the federal government could not regulate it.

Just as the EPA has refused to follow the court's ruling, now the wildlife and fisheries services are saying greenhouse gas emissions are beyond their reach. The proposed rule basically says that because the consequences of global warming are difficult to quantify and pinpoint, they shouldn't be considered at all. By this rationale, no agency in the U.S. is responsible for reducing America's contribution to a growing global problem.

These changes will likely go into effect unless Congress stops them, or a court does later. Congress must step in now.

[From St. Louis Today, Aug. 19, 2008]

#### GUTTING THE LAW

Let's face it, the Endangered Species Act can create quite a burden. If your goal is to build dams or open federal land to mining, logging and oil drilling, all those threatened animals and plants just get in the way.

Congress gets in the way, too, stubbornly insisting that the Endangered Species Act be obeyed. In part, that means that independent experts have to review any project proposed for federal lands for its impact on endangered species.

So now comes the Bush administration with a parting gift to its many friends in the timber, development and extraction industries: An end-run around Congress.

In what Interior Secretary Dirk Kempthorne described last week as a "narrow reg-

ulatory change," the administration has proposed changing that picky requirement that independent botanists and biologists get involved in reviewing new projects.

Instead, the projects will be reviewed by the very people proposing them: Federal agencies like the U.S. Army Corps of Engineers or the Office of Surface Mining, whose expertise lies elsewhere.

In May, White House Chief of Staff Joshua Bolten wrote a memo to federal agencies outlining what he called a "principled approach to regulation as we sprint to the finish" of Mr. Bush's final term. Except under "extraordinary circumstances," any new regulations had to be proposed—issued in draft form by publication in the Federal Register—by June 1.

Apparently, new rules gutting an important protection in the Endangered Species Act qualify as an "extraordinary circumstance." But Mr. Kempthorne said the new rules he proposed last week are very limited in scope.

His new rules will "provide clarity and certainty" to the Endangered Species Act. In fact, the law's purpose and process already are clear. The administration's changes would weaken it significantly.

This is hardly the first time the administration, having failed to convince Congress to change environmental laws it dislikes, has tried to recast the law by issuing new regulations.

It took that route in 2005 to weaken parts of the Clean Air Act. With a chilling Orwellian flourish, the administration dubbed its new plan the "Clear Skies Initiative." In 2006, federal courts struck down a similar effort that would have given the Environmental Protection Agency authority to approve pesticides without input from Fish and Wildlife Service scientists.

The Endangered Species Act has helped rescue the bald eagle, other animals and plants from the brink of extinction over the past three decades. This latest assault is certain to face the same legal challenges that derailed the pesticide regulations. It should suffer the same fate, too.

Regulations written in haste by an administration headed for the exits—no matter which administration makes them—make lovely parting gifts for special interests. But they make for terrible government.

[From the Salt Lake Tribune, Aug. 12, 2008]

#### ENDANGERED LAW: BUSH RULE CHANGE IGNORES SCIENCE—AGAIN

It should come as no surprise.

The Bush administration has single-mindedly worked for years to undo this country's landmark environmental conservation measures. So a rule change to emasculate the 35-year-old Endangered Species Act probably was to be expected. After all, efforts by conservative members of Congress have been thwarted for years by thoughtful senators and representatives with more concern for the environment than for developers, private contractors and the oil industry.

As his presidency grinds to a close, Bush and his appointees are working overtime on roadblocks to prevent the United States from taking any steps to reduce the use of fossil fuels that might shrink Big Oil's bottom line. The changes they're proposing would block regulation of the greenhouse-gas emissions that are endangering plant and animal species by eliminating science as a consideration.

Under the new rules, for example, the Bureau of Reclamation could decide for itself whether a new dam posed a threat to fish, and the Transportation Department alone could determine whether a major highway

threatened wildlife habitat. No longer would those agencies have to consult with scientists at the Fish and Wildlife Service or the National Marine Fisheries Service who have expertise in this complex area of biology.

Bush has never let science get in the way of cronyism. On the critical issues of global warming, in particular, Bush's cohorts have soft-pedaled, ignored or simply edited out scientists' conclusions.

When the polar bear became the first species threatened by the effects of human-caused climate change, Interior Secretary Dirk Kempthorne took the unprecedented step of declaring the bear threatened, but also forbidding any requirements to reduce greenhouse-gas emissions, the primary cause of climate change, in order to protect the animal.

Besides eliminating all basic scientific recommendations, the rule change would extend the polar bear ruling to all species, barring federal agencies from even considering how CO<sub>2</sub> emissions and their contribution to global warming impact species and habitat.

These execrable rule changes threaten the ESA, but they don't have to make it extinct. If the changes are approved by the agencies before Bush leaves office, a new president and Congress should act immediately to reverse them.

[From the Seattle Post-Intelligencer]

#### ENDANGERED SPECIES: A 9-SECOND REWRITE

It's a time of maximum danger for the environment. The clock is winding down on the Bush administration, leaving little time to fulfill its long-cherished dreams of weakening endangered species protections.

Not known for worrying about manipulating the rules, facts or common sense, the administration appears ready to go to absurd lengths to rush through damaging changes. Consider how the Department of the Interior is hurrying to cement into federal policy the administration's highhanded disdain for scientific advice, with a proposed rule that would exclude greenhouse gases and the advice of federal biologists from decisions about whether dams, power plants and other federal projects could harm endangered species. According to an Associated Press report, agency officials will review—so to speak—the 200,000 comments on the policy at a pace of one every nine seconds.

Somewhat similarly, the National Marine Fisheries Service is working on a rule to expedite all environmental reviews of fisheries decisions. After scheduling only three public hearings around the country, the agency then cut short a July hearing in Seattle, the only West Coast opportunity to comment. U.S. Rep. Jim McDermott last month requested an extension of the comment period.

The National Resources Defense Council questions whether Interior's policy will even meet legal requirements. It's particularly disappointing to see blatant politicization in Interior, where we have admired Secretary Dirk Kempthorne and thought of him as someone who could serve well in a McCain administration.

Kempthorne's aim apparently is to finish work early enough so the devastation of environmental protections can't be undone by the next administration without a years long formal review. There is an alternative that doesn't require waiting for a new administration. If Congress returns to work for an economic fix, it also should put an immediate stop to this nonsense.

[From the Las Vegas Sun, Oct. 23, 2008]

#### A COMPLETE SHAM

The Bush administration is making a mockery of a long-standing practice in the

federal government—to set aside substantial time for reviewing public comments about major rule changes.

Since midsummer the Interior Department has been rushing to implement a high priority of President Bush's regarding the Endangered Species Act. The White House is seeking rule changes that would significantly dilute the act's effectiveness.

The administration tried to get the rule changes through Congress in 2005, but failed. Now it wants to make the changes administratively, which it claims it has the power to do once public comments have been received and reviewed.

A 60-day comment period expired last week. Online responses and letters numbered at least 200,000 (not counting 100,000 form letters).

Normally, it would take months to review that many comments. But the Associated Press reported that a team of 15 was ordered to have the reviews completed this week. They were given 32 hours, from Tuesday through Friday.

An analysis by the House Natural Resources Committee, led by Rep. Nick Rahall, D-W.Va., concluded that each member of the team would have to review seven comments each minute. Many of the comments are long and technical, including one submitted by a University of California law professor that numbers 70 pages.

The rule changes would give federal agencies the power to decide for themselves whether any project they were planning to build, fund or authorize, including highways, dams and mines, would harm endangered species. Since the Endangered Species Act was passed in 1973, such projects have undergone independent review by government scientists.

The new rules would also prohibit federal agencies from assessing whether emissions from a project would intensify global warming, thus harming endangered species or their habitats.

Obviously, the administration is so hell-bent on getting these developer-friendly changes made that it is turning the comment review process into a total sham. If the rules indeed get changed, the next president should immediately work to reverse them—this time after giving appropriate thought to public comments.

[From the *Virginian-Pilot*, Aug. 18, 2008]

#### SHREDDER IS OVERHEATING IN BUSH'S FINAL MONTHS

Generally speaking, it is a very bad idea to enlist hungry foxes to guard the chickens, since they rarely have the birds' best interests at heart. In the waning days of this White House, doing so is called "streamlining," presumably because it gets food into the foxes faster.

The administration is hard at work in its last months gutting decades of environmental and wildlife regulation. That the moves defy both the legislative and judicial branches of the government is just a bonus.

According to the draft regulations, obtained by the Associated Press, the White House intends to allow federal agencies to skip an independent review designed to determine whether a project threatens animals or wildlife. Instead, the agencies would do the assessments themselves.

The whole reason that agencies were required to submit to such tests was because they weren't able to see beyond their own narrow interests—in building a dam, in locating a military base, in expanding a highway—to the larger public interest in protecting species.

The regulations, which don't require congressional approval, would amount to the

biggest changes in endangered species law in decades.

The new rules would also forbid the federal government from considering the greenhouse gas emissions of a project in determining the effects on threatened species. That's nothing more than a backdoor attempt to circumvent the administration's own conclusion that global warming is killing polar bears.

The Endangered Species Act isn't the only environmental regulation the administration seems determined to leave in tatters.

According to *Pilot* writer Catherine Kozak, the National Marine Fisheries Service has proposed replacing environmental impact analyses and shortening public comment periods when developing or changing rules for fisheries management. The goal is to shut citizens out, or at least to mute their voices.

"They're throwing out 40 years of case law," said Sera Harold Drevenak, South Atlantic representative with the Marine Fish Conservation Network. "I don't see how it's making anything any simpler. To start over from scratch is ridiculous."

Or sublime, depending on your perspective.

Nobody advocates unnecessary regulation that masks a political agenda. But the administration seems bent on doing away with environmental regulation simply because it doesn't like the result, or the interpretation by regulators, Congress or the courts.

For eight years now, there have been plenty of hints that the Bush administration had no qualms about entrusting foxes with keys to the White House, as when the vice president encouraged oil companies to craft the nation's energy policy, or when politicians were encouraged to use the Justice Department to settle scores.

The effect of the White House push on the environment is likely to be measured largely by the time opponents will waste fighting them.

The resulting uncertainty will also paralyze precisely the projects the revisions were designed to speed, because whoever is elected next to guard the nation's henhouse will almost certainly change the rules yet again.

Mr. LEVIN. Mr. President, Congress has a right to override a regulation, and in fact Congress should use this authority more often. Exercising the right of legislative review of regulations is a key responsibility of Congress. Should Congress deem a regulation deficient, members should exercise their legislative authority to change or override that rule. The Omnibus appropriations bill for fiscal year 2009 includes a provision in section 429 effectively doing that by giving the Secretary of the Interior the authority to withdraw or reissue two rules of the Bush administration related to the Endangered Species Act.

One rule, relating to Interagency Cooperation under the Endangered Species Act, weakens the requirement that Federal agencies consult with either the Fish and Wildlife Service or the National Marine Fisheries Service, the agencies that have expertise in matters related to endangered and threatened species. Giving Federal agencies the permission to bypass the consultation with these expert agencies harms the purpose of the Endangered Species Act.

The other rule includes a special provision that would prohibit the use of the Endangered Species Act from activities that occur outside of the cur-

rent range of the species. I agree that it is better that greenhouse gas emissions should be controlled through a national economy-wide scheme rather than through the Endangered Species Act. However, the language isn't mandatory and I also understand that even if the Secretary of the Interior rescinds this rule, an interim final rule protecting the polar bear would still be in effect and would also include the reasonable limitations provided in section 4(d) of this rule.

Finally, we are in a unique procedural situation where the passage of any amendment will push us to a year-long continuing resolution instead of appropriations. That outcome needs to be avoided.

Mrs. BOXER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COCHRAN. 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. COCHRAN. I understood that under the order previously entered today, the Senate was to begin voting at 5:30 on amendments to the pending legislation.

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the Murkowski amendment No. 599.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNIS) and the Senator from Alabama (Mr. SESSIONS).

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

The result was announced—yeas 42, nays 52, as follows:

[Rollcall Vote No. 82 Leg.]

#### YEAS—42

Alexander	Crapo	Martinez
Barrasso	DeMint	McCain
Begich	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Graham	Nelson (NE)
Brownback	Grassley	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Specter
Cochran	Isakson	Thune
Collins	Kyl	Vitter
Corker	Lincoln	Voivovich
Cornyn	Lugar	Wicker

NAYS—52

Akaka	Gillibrand	Nelson (FL)
Baucus	Hagan	Pryor
Bayh	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown	Kerry	Schumer
Burris	Klobuchar	Shaheen
Byrd	Kohl	Stabenow
Cantwell	Lautenberg	Tester
Cardin	Leahy	Udall (CO)
Carper	Levin	Udall (NM)
Casey	Lieberman	Warner
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	Wyden
Feingold	Mikulski	
Feinstein	Murray	

NOT VOTING—5

Conrad	Kennedy	Sessions
Johanns	Landrieu	

The amendment (No. 599) was rejected.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 613

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 613, offered by the Senator from Oklahoma, Mr. INHOFE.

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, since 1996, we have had a provision in law that was put in and passed with a very strong majority and signed into law by President Clinton. It is a provision that states the United Nations is attempting to have a global funding, so we would not have anything to do with what they do with this funding. If they consider this, it would allow them to do something contrary to the—

The PRESIDING OFFICER. The Senator will suspend.

The Senate is not in order. Senators please take their conversations out of the Senate.

Mr. INHOFE. Mr. President, it might be easier to read the two sentences in the law that were there before:

None of the funds appropriated or otherwise made available under any title of this Act may be made available to make any assessed contribution or voluntary payment of the United States to the United Nations if the United Nations implements or imposes any taxation on any United States persons.

It has been there since 1996. It had broad support. Nobody knows why it was taken out, but in this law that language was taken out that has been there for 13 years. So I encourage us to support this amendment to put that language back.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, this is an unnecessary amendment. The Senator from Oklahoma asked an obvious question: Why is this language not in there? Nobody wanted it. No Republican asked for it. No Democrat asked for it. The Bush administration didn't

ask for it. We constantly remove outdated, unnecessary language from these bills to clean them up.

The United Nations has no power to tax the United States or any person in the United States. It would be like saying we want to pass a law that says that if the U.N. were to launch several divisions of soldiers against us, we will cut off their funding. They can't do that any more than they can impose a tax against us. They are not a taxing organization.

So we deleted provisions like this that serve no purpose, and which no senator requested. It has no practical effect. The Bush administration didn't want it. No Republican asked for it. No Democrat asked for it. Let's focus on the real problems such as Darfur, the Middle East, and Afghanistan where we are asking United Nations peacekeepers and aid workers to risk their lives to support our goals.

I oppose this amendment.

Mr. INHOFE. Mr. President, I think I have 30 seconds left.

The PRESIDING OFFICER. There is no time remaining.

The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNIS) and the Senator from Alabama (Mr. SESSIONS).

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

The result was announced—yeas 43, nays 51, as follows:

[Rollcall Vote No. 83 Leg.]

YEAS—43

Alexander	DeMint	McCain
Barrasso	Dorgan	McConnell
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Feingold	Risch
Brownback	Graham	Roberts
Bunning	Grassley	Shelby
Burr	Gregg	Snowe
Chambliss	Hatch	Specter
Coburn	Hutchison	Thune
Cochran	Inhofe	Vitter
Collins	Isakson	Voinovich
Corker	Kyl	Wicker
Cornyn	Lugar	
Crapo	Martinez	

NAYS—51

Akaka	Cantwell	Harkin
Baucus	Cardin	Inouye
Begich	Carper	Johnson
Bennet	Casey	Kaufman
Bingaman	Dodd	Kerry
Boxer	Durbin	Klobuchar
Brown	Feinstein	Kohl
Burris	Gillibrand	Lautenberg
Byrd	Hagan	Leahy

Levin	Nelson (FL)	Stabenow
Lieberman	Pryor	Tester
Lincoln	Reed	Udall (CO)
McCaskill	Reid	Udall (NM)
Menendez	Rockefeller	Warner
Merkley	Sanders	Webb
Mikulski	Schumer	Whitehouse
Murray	Shaheen	Wyden

NOT VOTING—5

Conrad	Kennedy	Sessions
Johanns	Landrieu	

The amendment (No. 613) was rejected.

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

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 635

The PRESIDING OFFICER. There is now 2 minutes of debate, equally divided, prior to a vote on the motion to waive the point of order relating to amendment No. 635, as modified, offered by Senator THUNE.

The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, lest there be any confusion, I filed this amendment on Monday and made it pending on Tuesday, and I spoke to it then. It is simple. Last July, the Senate, in the debate on the PEPFAR bill, voice voted an amendment to that bill that created a \$2 billion, 5-year authorization for an emergency fund for Indian health and safety. All my amendment does is fund it, \$400 million. It wasn't funded in the bill. I paid for it by taking a one-tenth of 1 percent across-the-board reduction in the entire bill to put the \$400 million into this fund, which is necessary to fund this important program for Indian health and safety. That means the increase in the bill won't be 8.3 percent, it will be 8.2 percent. Contrary to what was stated, it increases Indian health care by \$23 million. It was stated that it would reduce the health care account by a little over a million dollars. Congress authorized it last summer.

I hope my colleagues will vote to waive the budget.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I oppose the Thune amendment and ask this body to vote against it.

Last year's Interior appropriations bill provided \$5.6 billion for Native American programs. This year, the regular appropriations bill and the recently enacted Recovery Act will provide \$6.9 billion for Indian health. That is an increase of 23 percent over the 2008 level. The Thune amendment would increase the funding an additional 6 percent, or \$400 million, paid for by an across-the-board cut in every account in this omnibus bill. That would cause the Interior bill to exceed its allocation; consequently, a point of order would rest against the entire Interior bill and it would be dead.

I urge a "no" vote.

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

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

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNIS) and the Senator from Alabama (Mr. SESSIONS).

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

The yeas and nays resulted—yeas 26, nays 68, as follows:

[Rollcall Vote No. 84 Leg.]

YEAS—26

Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Burr	Hatch	Roberts
Chambliss	Inhofe	Shelby
Coburn	Isakson	Thune
Cornyn	Johnson	Wicker
Crapo	Kyl	

NAYS—68

Akaka	Feingold	Murray
Alexander	Feinstein	Nelson (FL)
Baucus	Gillibrand	Nelson (NE)
Bayh	Gregg	Pryor
Begich	Hagan	Reed
Bennet	Harkin	Reid
Bingaman	Hutchison	Rockefeller
Boxer	Inouye	Sanders
Brown	Kaufman	Schumer
Bunning	Kerry	Shaheen
Burr	Klobuchar	Snowe
Byrd	Kohl	Specter
Cantwell	Lautenberg	Stabenow
Cardin	Leahy	Tester
Carper	Levin	Udall (CO)
Casey	Lieberman	Udall (NM)
Cochran	Lincoln	Vitter
Collins	Lugar	Voivovich
Corker	Martinez	Warner
DeMint	McCaskill	Webb
Dodd	Menendez	Whitehouse
Dorgan	Merkley	Wyden
Durbin	Mikulski	

NOT VOTING—5

Conrad	Kennedy	Sessions
Johanns	Landrieu	

The PRESIDING OFFICER. On this vote, the yeas are 26, the nays are 68. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained. The amendment falls.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 634

The PRESIDING OFFICER. There will now be 10 minutes of debate equally divided prior to a vote in relation to amendment No. 634 offered by the Senator from Arizona, Mr. KYL.

The Senator from Arizona.

Mr. KYL. Mr. President, if my colleagues on the other side are willing, I am willing to cut this time in half.

My amendment is actually very simple. If my colleagues would give me a

moment to explain, all this amendment says is that none of the money that is spent in this bill can go to companies that are helping Iran; that is to say, they are doing business with Iran in the export or import business.

In the campaign, the President noted that the kind of sanction we need to impose is on the companies, for example, that are providing refined gasoline to Iran. One of the first reports to the President by nonproliferation expert, David Albright, said:

At a first step, the Obama administration should ask all of Iran's gasoline suppliers to stop their sales to Iran, followed by an initiative to seek agreement among supplier nations not to provide Iran gasoline.

The President has all of the authorities he needs to engage in this. The one thing that Congress can do that we have not done yet is with the power of the purse; that is, to make sure none of the money in the omnibus bill would go to any of the companies that are doing business with Iran.

One quick example of why it is necessary: Senator LIEBERMAN and I sent a letter to the Eximbank. Eximbank gets money. That money can go to companies. Once they got the letter, those companies stopped sending refined gas to Iran. I don't know if that is because of our letter. That is the kind of stuff we need to stop with this amendment.

I hope my colleagues agree we do not need to send this money to companies that do business with Iran.

The PRESIDING OFFICER. Who yields time?

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise to express my strenuous objection to the amendment that is being offered by the Senator from Arizona. The amendment has a purpose, no doubt, but it is particularly and solely political.

Let there be no doubt, we have to stop companies from doing business with Iran. Iran's nuclear technology program grows stronger every day, and it represents a serious threat to our country, to Israel, and to mankind. It is known that Iran also funds terrorist organizations, such as Hamas and Hezbollah. That is why we have to deal with this threat seriously whenever we can do so.

Over the last few years, I have offered three amendments to block American companies from helping Iran to develop its nuclear technology and promote terrorist actions. But when the chips were down, my Republican colleagues voted against three amendments.

My amendment would have closed the loophole in our laws that allows American-owned companies to use sham offshore subsidiaries to do business with Iran. Three times I brought amendments for a vote on the Senate floor to shut down this loophole. But each and every time, the Republican Members of the Senate voted against commonsense legislation. They voted to keep Iran open for business. They

voted to allow American companies to help the regime in Tehran, as the Senator said, to produce oil, to produce revenues they sent to Iraq to help those guys kill our troops.

So I ask, why now are these Members so interested in stopping companies from doing business with Iran? We know why. Raw political showmanship. But we have to stop Iran's serious nuclear threat from continuing to try to wipe Israel off the map and to attack the United States and other democratic nations. Our national security is at stake, and we should have a serious debate on how to block Iran's nuclear program. That is why we have to object to Senator KYL's amendment.

There is another problem with his amendment. My legislation would have closed the "business with terrorists" loophole, and this amendment does not. I checked with the Congressional Research Service. CRS says this amendment will not have any effect on present sanctions. It will have little or no influence on the mad stream of threats and the ugly hatred that comes from Iran.

If the Senator wants us to work together to get a decent approach to get at this problem, I would be happy to work with him on it in the days ahead. But this amendment before us does nothing to stop their mad dash to build a nuclear threat to humankind. I hope we can work together to come up with a strong piece of legislation to end this practice once and for all.

The amendment simply is a gimmick to attack the omnibus bill, and I urge my colleagues to vote no on this amendment.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has a little over a minute.

Mr. LAUTENBERG. I yield a minute to my friend from Connecticut, Senator DODD.

Mr. DODD. Mr. President, very briefly—and I say this because I happen to agree with, and I think most of our colleagues agree with, the intent of the Senator from Arizona—this has been a matter before the Banking Committee. In fact, in the last session of Congress, by a vote of 19 to 2, the Banking Committee—with Senator SHELBY as ranking member—approved Comprehensive Iran sanctions legislation, that went far beyond the scope of the amendment proposed by the Senator from Arizona. But when the legislation was sent to the Senate floor, it was blocked by the Senate minority. I thank my colleagues on the committee who supported it.

Right now, however, the administration is conducting a policy review on Iran at the very time we are gathering here to engage in this debate. I think before considering new legislation, it would be wise to have some hearings, after the administration completes its review and decide the appropriate course of action, in consultation with the appropriate federal agencies.

Clearly, sanctions dealing with Iran's energy sector, as Senator KYL pointed out, have great merit, as Congress has determined in years past. But I think there is a time and a place for deciding major changes in our sanctions policy—probably not this evening at 7 o'clock, at the end of a long debate on this omnibus bill, when so much is at stake. Such changes should not be added to this underlying bill. Speaker PELOSI has made clear she would pursue a year-long Continuing Resolution if this bill is changed in any way the day before funds for the government expire. If that happens, the amendment would essentially kill or potentially delay critical funding, including an additional \$5 million slated for the Department of the Treasury's Terrorism and Financial Intelligence unit to enforce our sanctions against Iran.

I say respectfully, while there is no disagreement that something must be done to stop Iran's efforts to promote terrorism and proliferate weapons of mass destruction, we must do so in close coordination with the new Administration, much as we worked with the Bush administration in fashioning our sanctions bill last year. Let the Obama Administration's Iran review be completed. Once we have an opportunity to examine it, we may then consider a new approach to our Iran policy. At that time, I look forward to working with my colleagues, on both sides of the aisle to address these critical matters. I therefore, urge my colleagues to vote against this amendment.

Ms. MIKULSKI. Mr. President, I support the aim and intent of the Kyl amendment that prohibits any omnibus funding being spent on new contracts with companies that do business with Iran's energy sector. Iran's energy resources provide massive amounts of petro-dollars to this regime.

In 2008 alone, Iran made over \$65 billion in profits from exporting oil. Make no mistake where these dollars are spent—these profits directly contribute to Iran's ability to arm, train, and fund Hezbollah, Hamas, and other terrorist groups that seek to do Israel, the United States, and our allies harm.

Although I support the intent of the Kyl amendment, I oppose it today because it is legislating in an appropriations bill and it would further delay the delivery of \$2.48 billion in urgently needed security assistance to Israel which is contained in the bill.

Tough, targeted, and enforceable sanctions against Iran must be implemented. I look forward to working on a comprehensive Iran sanctions policy with the Obama administration this Congress.

The PRESIDING OFFICER. The time has expired.

Mr. KYL. Mr. President, actually, I am not proposing a new regime of sanctions or anything that needs to be studied. My amendment simply goes to this Omnibus appropriations bill and says what I think all of us intend,

which is none of the money shall be spent or shall go to companies that are doing this kind of business with Iran, the kind of business that is already subject to sanctions. That is already the law.

All we are saying is, nothing in this bill can get money to those companies. It is the kind of thing we had to do with the Eximbank because as they, in their letter back to us said, we do not allow political considerations to determine whether we make a loan to a country. That is why they were able to make the loan to Iran and why we could do nothing to stop that. Once we wrote the letter, however, and pointed out this was a violation of our sanctions, then mysteriously, the effort of the company ceased.

All we want to make sure is that nothing in this bill, none of the money in this particular bill goes to those companies. So it is not a new sanctions regime or anything new that I think has to be studied.

With all due respect, this is not for political showmanship. Had this bill gone through a little different process, we could have worked this out. But under the circumstances, that wasn't possible. As a result, I thought it was important to make sure none of the money in this bill is spent on these companies.

Mr. KERRY. Does the Senator have time left?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. KERRY. Will the Senator yield for a question?

Mr. KYL. I would be happy to yield.

The PRESIDING OFFICER. The Senator from Massachusetts.

The majority leader.

Mr. REID. Mr. President, I think there is time here, if there is more time needed for everybody on this amendment. If there is more time needed, why don't we extend the time for a little bit.

Mr. KYL. I am happy to yield to my colleague from Massachusetts for a question.

Mr. KERRY. I appreciate the Senator doing that.

I wish to point out a couple things to the audience. First of all, we have had 3 days of hearings in the Foreign Relations Committee on Iran. Today, GEN Brent Scowcroft and Dr. Zbigniew Brzezinski made it clear this is the not an advisable way to approach the current situation in Iran; that we need to think carefully about the overall record of the type of sanctions we develop or that will be interpreted, as a result, as taking an effort unilaterally by the Senate outside the administration's review process and outside its foreign policy.

Moreover, the Foreign Assets Control Office, which is responsible now for rooting out Iran's program, actually loses money under this amendment and would, therefore, not be able to do the job it is doing today with respect to it.

Thirdly, there is no definition here of what a business presence is. The fact

is, the administration right now is working with a bunch of moderate Arab countries, as well as some of our allies in Europe, in order to put together a sanctions regime that has bite, if we need it. This, in fact, could prevent some of those countries from feeling good about joining in that effort or ultimately joining in it.

I would ask my colleague if he would be willing to come together with us. There isn't anybody in this body who doesn't understand the seriousness of what Iran is doing. We had classified briefings on it yesterday. But we owe the administration the opportunity to decide what it believes is the proper regime for sanctions, and so I ask my colleague if he would consider that it might be better, rather than even having a vote, to give us the opportunity to do that, and we will work together and see if we can't come up with a sensible, unified bipartisan approach to Iran.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Given the fact that I think my remaining 2 minutes have expired, I ask unanimous consent for an additional minute of time to respond to my colleague's question.

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

Mr. KYL. Mr. President, if I were proposing some new sanctions regime, that would be an entirely appropriate request, and of course I would accede to it. I am not asking for any new sanctions or any new law. All this amendment does is to say that the money in this appropriations bill doesn't go to a country that is doing these kinds of exports or imports to Iran. That is all. We have the power of the purse, and surely we can restrict our own expenditure of money to countries that are cooperating with us in dealing with Iran, rather than dealing with Iran.

I urge my colleagues to support this. It is a very limited amendment. It is not a new policy.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The majority leader.

Mr. REID. I ask unanimous consent that the Republican leader and I be allowed to offer a unanimous consent request.

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

Mr. REID. Mr. President, I ask unanimous consent that upon disposition of the pending amendments, no further amendments be in order this evening; that the vote on the motion to invoke cloture occur at 8:15 p.m. tonight, and that the time until then be equally divided and controlled between the leaders or their designees; that if cloture is invoked, then all postcloture time be

considered yielded back, the bill be read a third time, and the Senate then proceed to vote on passage of the bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNES) and the Senator from Alabama (Mr. SESSIONS).

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

The result was announced—yeas 41, nays 53, as follows:

[Rollcall Vote No. 85 Leg.]

YEAS—41

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Bond	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Shelby
Burr	Hatch	Snowe
Chambliss	Hutchison	Specter
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Collins	Kyl	Voivovich
Cornyn	Lieberman	Wicker
Crapo	Martinez	

NAYS—53

Akaka	Gillibrand	Murkowski
Baucus	Hagan	Murray
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown	Kerry	Sanders
Burr	Klobuchar	Schumer
Byrd	Kohl	Shaheen
Cantwell	Lautenberg	Stabenow
Cardin	Leahy	Tester
Carper	Levin	Udall (CO)
Casey	Lincoln	Udall (NM)
Corker	Lugar	Warner
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	Wyden
Feinstein	Mikulski	

NOT VOTING—5

Conrad	Kennedy	Sessions
Johannes	Landrieu	

The amendment (No. 634) was rejected.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 638, WITHDRAWN

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided, prior to a vote in relation to amendment No. 638, offered by the Senator from Idaho, Mr. CRAPO.

The Senator from Idaho is recognized.

Mr. CRAPO. Mr. President, this amendment would strike section 626 from the bill. This is a section that gives the Federal Trade Commission

authority to expedite rulemaking over mortgage loans that are now overseen by not only the FTC but Federal banking and credit union regulators. This grant of increased authority to the FTC is not appropriate because we already have Federal regulators over both the banking and credit union industries. I think everyone agrees we do not want to see this extended regulatory authority changed. I have been working with our Banking Committee chairman, Senator DODD, and with Senator DORGAN and Senator INOUE, to see if we can address this.

It is my understanding we have an agreement and Senator DODD will discuss that agreement and enter into a colloquy for the RECORD that will establish that we do not want to change the regulatory authority and the jurisdictional structures we now have for our Federal regulators over our depository institutions, and that we will, in a very expedited manner in the next available option for a legislative vehicle, make statutory changes to correct that. In the meantime we will make it clear the intent of this legislation is not to have the FTC engage in rulemaking that would seek to assert jurisdiction over any of the institutions over which it does not now have authority.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I seek time of my own time. My colleague is exactly right and I thank him immensely for his involvement. We thank Senator INOUE as well as others who were part of this exchange, a colloquy which we will submit for the RECORD, which explains exactly what the Senator from Idaho has described. He has it exactly right. This is an expanded removal of jurisdiction from one area to another. There are a lot of very serious questions raised by it.

Our intent is at the earliest possible time we will have legislation to correct what is in this bill and change that. I thank him for his cooperation on this. I thank Senator INOUE and the staff and other people who could have objected to this. Senator DORGAN and others have had some strong views on this and I am very grateful to him as well, understanding our concerns on this matter. We will have a chance to come back to it. I again thank my colleague who helped us craft this colloquy which allowed us to move beyond this particular point. There may be others who want to object to what we want to do, but we feel strongly about the language of the amendment that Senator CRAPO has crafted here and we will hopefully get to that quickly.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, let me thank my colleague from Idaho and my colleague from Connecticut. The Federal Trade Commission does not have jurisdiction over FDIC-insured banks. There was no intention in any legislation drafted here to give them that ju-

risdiction and I think this colloquy clarifies that. If there is any lack of clarity going forward, I certainly want to work with my colleagues from Idaho and Connecticut to make certain there is no confusion at all about what this applies to. This does not apply to FDIC-insured banks.

Mr. DODD. Mr. President, I seek clarification from the Senator from North Dakota and the Chairman of the Appropriations Committee about the intent and effect of section 626 of Division D of the bill. Will the Senators confirm that section 626 was designed to enhance the FTC's ability to impose new standards only on those mortgage industry participants that are currently subject to the FTC's rulemaking jurisdiction?

Mr. DORGAN. Yes, that is correct. Section 626 is not intended to alter the allocation of responsibility for the Federal oversight of lenders under current law. The FTC is currently authorized, under the Federal Trade Commission Act, to issue regulations defining unfair and deceptive acts and practices by mortgage industry participants that are regulated at the Federal level by the FTC, such as nonbank mortgage brokers. Section 626 directs the FTC to initiate such a rulemaking within 90 days, using procedures widely used by all agencies under the Administrative Procedure Act, instead of more protracted procedures specified for FTC unfair and deceptive practices rulemaking under section 18 of the FTC Act. Section 626 is not intended to apply to institutions including banks, thrifts and credit unions that are outside the FTC's jurisdiction.

Mr. INOUE. I concur with Senator DORGAN.

Mr. DODD. With respect to the provisions granting the states authority to take enforcement action, is it your intent the states limit their enforcement actions under the new mortgage standards promulgated by the FTC, or under TILA, only to those mortgage industry participants that are not currently supervised by the federal banking agencies or are not Federal credit unions?

Mr. DORGAN. Yes, the Senator from Connecticut is correct. Our intention was to permit state attorneys general to bring civil actions only against mortgage industry participants that are not supervised by the Federal banking agencies or are not Federal credit unions.

Mr. INOUE. Yes, I concur with Senator DODD and Senator DORGAN.

Mr. DODD. I ask the Senators to work with me to add an amendment to the next appropriate legislative vehicle that clarifies the scope of this provision to reflect the gentlemen's intent and that provides appropriate participation by state attorneys general in enforcement of federal mortgage standards.

Mr. DORGAN. I agree, and commit to work with the Senator from Connecticut to clarify this provision as expeditiously as possible on the next appropriate vehicle.

Mr. INOUE. I, too, will work with the Senator to clarify this provision.

Mr. CRAPO. Mr. President, I appreciate the fact that there is consensus that section 626 goes too far and that it is not the intention of the chairman of the Banking Committee and the chairman of the Appropriations Committee to provide the Federal Trade Commission authority in its rulemaking over mortgage loans overseen by the Federal banking and credit union regulators. However, if the intention is merely to expedite the FTC rulemaking process over nonbanks then the language should be clear on that account. Unfortunately, that is not the case.

It is important to remember that once this legislation is signed into law, the FTC is directed to initiate rulemaking within 90 days. Rather than agreeing to clarify this issue at a later point, it is my strong preference that the Senate would have deleted this section and agreed to working out compromise language at a later point. That is what my amendment would have accomplished by striking the section.

Per the colloquy of Senators DODD, INOUE, and DORGAN, I will follow up with the FTC that it is the clear intent of the Senate that the provision does not expand the FTC's regulatory jurisdiction and that the required FTC rulemaking will not attempt to include insured depository institutions. I will also note that there is a bi-partisan agreement that the Senate will shortly take up legislation to clarify the scope of the legislation to that effect. Additionally, in light of the focus by the Federal Reserve Board on mortgage lending, the FTC should be required to consult with the Federal Reserve Board in developing their rule. I would encourage my colleagues to send similar letters to the FTC.

If the initial FTC proposed rule attempts to go beyond this scope, it is my understanding that there is agreement that the Senate would immediately take up legislation and stop that from occurring. It would be a terrible mistake to add another patchwork of conflicting authorities and interpretations of Federal laws for insured depository institutions as it relates to home loans and other types of consumer finance transactions. This type of regulatory uncertainty and complexity will only further complicate the resurrection of our mortgage market, harming consumers who are having a difficult enough time obtaining appropriate mortgage loans.

I intend to closely monitor how the FTC proceeds and work with my colleagues to craft a narrow legislative clarification. If we cannot shortly come to agreement on this front, then I will push for a vote to eliminate this authority in the next appropriate vehicle before the Senate.

With that clarification and explanation, the FTC rulemaking that will be able to proceed under this legislation will not seek to extend to the FDIC depository institutions and credit union regulated institutions, then

I—and our agreement that we would on an expeditious basis statutorily seek to correct that and make that clear in the CONGRESSIONAL RECORD, I ask unanimous consent that the amendment be withdrawn.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

#### RESTORING NOMINAL DRUG PRICES

Ms. STABENOW. I would like to engage in a colloquy with the chairman of the Committee on Finance, Senator MAX BAUCUS. Senator BAUCUS, I am very pleased to see that the fiscal year 2009 Omnibus appropriations bill corrects an unintended consequence of a provision in the Deficit Reduction Act of 2005, DRA. Section 6001(d) of the DRA, which is Public Law 109-171, caused family planning clinics that do not receive Federal funding and university-based clinics to sustain increases in the price of oral contraceptives as much as tenfold over the past 2 years. This is because drug manufacturers stopped offering discounts to these clinics in response to changes to the Medicaid drug rebate program made by the DRA. While discounts remained perfectly legal, drug companies were concerned about the impact of their Medicaid rebate liability for the continued offering of discounts to certain family planning and college- or university-based clinics. The price increases have put a terrible strain on our country's first line of defense against unintended pregnancies. We have the highest unintended pregnancy rate of any advanced industrial country.

With enactment of this critical legislation, these clinics will once again have access to nominally priced drugs, should private sector manufacturers choose to provide these discounts. This access should begin immediately upon enactment, and manufacturers should feel confident that they can extend discounts to family planning clinics such as Planned Parenthood and college and university clinics without it affecting the rebates they must provide under Federal law to State Medicaid programs.

Mr. BAUCUS. I thank the Senator. I share the Senator's views on this matter. It has taken too long to correct what all parties agree was an unintended outcome of the DRA. I had asked the previous administration to use the discretion provided in the DRA to designate additional health providers as entities to whom the sale of nominally priced drugs is appropriate. The Bush administration chose not to make these designations when it promulgated final regulations on July 17, 2007, and so Congress is acting now to correct this error. The Senate included this provision in last year's Iraq supplemental appropriations bill, but the administration objected to its inclusion so it did not become law.

It is my understanding that, once this provision is enacted into law, drug manufacturers will immediately be able to restore the nominal drug prices they provided to these types of clinics—family planning clinics and college

and university health centers—for decades.

This provision simply restores the original policy in place since the enactment of the Medicaid rebate program in the Omnibus Reconciliation Act of 1990. Then, as now, no administrative action is necessary for manufacturers to commence offering deep discounts to the entities described in this provision.

Ms. STABENOW. I thank the Senator. I hope that the manufacturers will do this and that women will have access to affordable birth control and other critical health services.

#### TRANSPORTATION FUNDING

Mr. KOHL. Mr. President, I wish today to engage in a colloquy with my colleague, the Senator from Washington and the chairman of the Transportation Appropriations Subcommittee. As the chairman is aware, language was included in the explanatory statement accompanying the bill before us to help address an issue that has plagued the Milwaukee area for several years.

Due to a longstanding dispute between city and county officials, unobligated transportation dollars have lost value with each passing year. In an effort to spend down those funds on much needed transit projects, the report resolves this dispute by dividing the funding. I have spoken with Congressman OBEY, the chairman of the House Appropriations Committee, to confirm the intent of the language included in the explanatory statement. I would ask the Senator from Washington, is it your understanding that it is the expectation of both the House and Senate committees that 60 percent of the funding in question should be made available to the city of Milwaukee for a downtown fixed-rail corridor while 40 percent of the funding should be made available to the county of Milwaukee for energy efficient buses?

Mrs. MURRAY. To the Senator from Wisconsin I would say, yes, that is our expectation.

Mr. KOHL. I thank the chairman of the Transportation Appropriations Subcommittee for her help and for engaging in this colloquy.

Mrs. MURRAY. Mr. President, as chairman of the Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, I rise to clarify an error that we have found in the explanatory materials accompanying H.R. 1105, the Omnibus Appropriations Act. Included within the Transportation-Housing Division of the bill is an appropriation of \$570,000 within the TCSP program for transportation improvement in the Antelope Valley in Lincoln, NE. The attribution table that accompanies the explanatory statement to the bill inadvertently omits the name of the Senate sponsor of that appropriation. Mr. President, the Senate sponsor of the project is my colleague, Senator BEN NELSON.

Mrs. BOXER. Mr. President, the fiscal year 2009 Omnibus appropriations bill would provide \$5 million for design and real estate activities and pump supply elements for the Yazoo Basin, Yazoo Backwater Pumping Plant and for activities associated with the Theodore Roosevelt National Wildlife Refuge. I want to clarify that nothing in the language is intended to: (1) override or otherwise affect the final determination that was effective August 31, 2008, and published in the Federal Register on September 19, 2008, of the U.S. Environmental Protection Agency under section 404(c) of the Clean Water Act that prohibits the use of wetlands and other waters of the United States in Issaquena County, MS, as a disposal site for the discharge of dredged or fill material for the construction of the proposed Yazoo Backwater Area Pumps Project, (2) create or imply any exception with respect to the project to the requirements of the Clean Water Act, including any exceptions from the prohibitions and regulatory requirements of the Clean Water Act under section 404(r); or (3) affect the application of any other environmental laws with respect to the project.

As chairman of the committee with jurisdiction over the Clean Water Act and authorizations for the civil works program of the Corps of Engineers, I believe it is critical that our environmental laws be adhered to in the planning, construction, and operation and maintenance of all Corps of Engineers' projects.

Mr. ENZI. Mr. President, I wish briefly to discuss an amendment that I filed related to the royalty collection of coal and other leasable minerals. I want to be clear that I am in favor of having coal companies and other mining companies pay the royalties they are required to pay. I believe that they should pay them on time and I believe that they should face the consequences if they do not pay them on time.

The provision in the omnibus bill is arbitrary. It attempts to apply the penalty sections of the Federal Oil and Gas Royalty Management Act to coal leases. The provision comes out of nowhere and, to my knowledge, has not been studied by the Senate Energy Committee nor the House Natural Resources Committee. This is a policy change, not a funding matter, and therefore, it should be considered in the normal legislative process—not slipped into an omnibus appropriations bill.

I have put forth this amendment to take a more considerate approach. My amendment would strike this provision and replace it with a study by the Minerals Management Service, MMS, the Government's royalty collection agency. The MMS would examine the current royalty system and provide a report back to Congress within 180 days that includes any recommendations with ways that royalty collection process can be improved. Doing so would then give the Senate the appropriate

amount of background to consider making these changes and would ensure that we do not make a change that has unintended consequences.

Again, I want to reiterate that I fully support companies making royalty payments on time and if they don't, I support them being punished. I do not, however, support the process by which the majority has stuck this legislative provision in an appropriations bill. Rather than shooting from the hip, the Senate should give it proper consideration.

Ms. MIKULSKI. Mr. President, as chairwoman of the Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies, I rise today to clarify for the Senate the sponsorship of three congressionally designated projects, recipient name of one congressionally directed project, and locations of three congressionally designated projects included in the Joint Explanatory Statement to accompany H.R. 1105, the fiscal year 2009 Omnibus Appropriations Act. Specifically:

Senator BILL NELSON should be listed as having requested funding for the Rape, Abuse and Incest National Network, RAINN, Washington, DC, for national anti-sexual assault programs funded through the Department of Justice;

Senator BEN NELSON should not be listed as having requested funding for the Rape, Abuse and Incest National Network, RAINN, Washington, DC, for national anti-sexual assault programs funded through the Department of Justice;

Senators BEN NELSON and CRAPO should not be listed as having requested funding for the National Police Athletic League, Jupiter, FL, for National Police Athletic League Programs funded through the Department of Justice;

"Union Springs YMCA" should be listed as "Union Springs Recreation Program", Union Springs, AL, for youth mentoring and juvenile justice programs funded through the Department of Justice;

Location of the Citizenship Trust at American Village should be listed as Montevallo, AL, for youth mentoring and juvenile justice programs funded through the Department of Justice;

Location of the Scottsboro Police Department should be listed as Florence, AL, for the Scottsboro Police Department funded through the Department of Justice; and

Location of the Alabama 4-H Foundation should be listed as Columbiana, AL, for juvenile justice prevention programs funded through the Department of Justice.

Mr. LEAHY. Mr. President, as a long-time advocate of greater transparency in our government, I am pleased that the Omnibus appropriations bill includes several key provisions to strengthen the Freedom of Information Act—FOIA—and to protect Americans' privacy and civil liberties.

The Omnibus appropriations bill provides \$1 million in funding to establish the new Office of Government Information Services—OGIS—in the National Archives and Records Administration. When Congress enacted the Leahy-Cornyn OPEN Government Act of 2007, which made the first major reforms to FOIA in more than a decade, a key component of that bill was the creation of the OGIS to mediate FOIA disputes, review agency compliance with FOIA, and house a newly created FOIA ombudsman. Establishing this new FOIA office within the National Archives is essential to reversing the troubling trend of lax FOIA compliance and excessive government secrecy during the past 8 years. The OGIS will also play a critical role in meeting the goals of President Obama's new directive on FOIA. I thank Senators CORNYN, INOUE and COCHRAN for their support of funding for this critical new office. I also thank the many FOIA and open government groups, including OpenTheGovernment.org, the Sunshine in Government Initiative and the National Security Archive, who have advocated tirelessly for a fully operational OGIS.

The bill also includes much-needed funding to reconstitute the Privacy and Civil Liberties Oversight Board. When Congress enacted the Intelligence Reform and Terrorism Prevention Act in 2004, it implemented a 9/11 Commission recommendation to establish an independent board to help protect Americans' privacy and civil liberties. Since then, I have worked hard to make sure that the Privacy and Civil Liberties Oversight Board has the resources and personnel to fulfill this important mission.

During the last Congress, I worked with Senators LIEBERMAN and DURBIN to further strengthen this Board in the 9/11 reform bill. Unfortunately, the last administration left the Privacy and Civil Liberties Oversight Board with no members or staff. The Board is too important for us to let it fall by the wayside. The funding in the omnibus bill will help to reconstitute the Board so it can get back to work. Now that this initial funding is in place, I hope the President will promptly name qualified nominees so that the Board can carry out its important work.

Both of these provisions will help to make our government more open and accountable to the American people. That is something that Democrats, Republicans and Independents alike can—and should—celebrate. Again, I commend the bill's lead sponsors and the President for their demonstrated commitment to open and transparent government.

Ms. SNOWE. Mr. President, today I filed an amendment that would help millions of small businesses that receive valuable technical assistance and support through the Small Business

Administration's, SBA's, technical assistance and business development programs. The challenges facing America's small businesses are real. In today's economic climate, small businesses are fighting for survival. A December 2008 CNN survey found that 49 percent of small business owners expressed serious concerns about going out of business.

To that end, I humbly request my colleagues on both sides of the aisle to support the measure I am offering to provide essential resources to the Small Business Administration's crucial technical assistance and business development programs. This effort will help ensure that small businesses—our Nation's true job generators—will not be shortchanged at a time when the economy is struggling to grow and create jobs.

My amendment would direct that a small fraction, \$16.8 million of the existing funding provided in the omnibus appropriations bill for the SBA, be used to increase funding levels for vital SBA programs, including Veterans Business Outreach Centers, VBOCs, Small Business Development Centers, SBDCs, Women Business Centers, WBCs, SCORE, the Historically Underutilized Business Zone, HUBZone, program, and the Agency's international trade programs. These programs are some of the most successful job creators within the Federal Government, but they were woefully underfunded under the previous administration. Now is the time to reverse that trend, by ensuring that SBA devotes sufficient resources to support small business technical assistance and business development.

The SBA's programs are proven job creators—just look at the statistics! In 2006, clients of the SBDC program generated a total of approximately \$7.2 billion in sales and 73,377 new full time jobs as a result of the assistance received. The average cost of generating each job was a paltry \$2,658. Moreover, based on SBDC client assessments, an additional \$3.8 billion in sales and 93,449 jobs were saved due to SBDC counseling in that same year. My amendment would direct that \$6.5 million in SBA funding be used to fund SBDC veterans and energy grants, in addition to the \$110 million for core funding provided in the bill to support SBDCs nationwide.

Furthermore, the SCORE program has proven time and again to be one of the most cost-effective programs within the Federal Government. In fiscal year 2008 SCORE received \$4.95 million from the Federal Government and provided 357,637 clients with free technical assistance. Entrepreneurs assisted by SCORE created 25,000 new jobs in 2006, and one in seven new clients created a job. SCORE also provides American taxpayers with a great buy, as it is operated by volunteers—all of which are retired business experts. In fact, in fiscal year 2008 these volunteers donated 1.3 million hours valued at \$195 million when using a standard hourly con-

sulting fee of \$150. My amendment would direct that an additional \$2 million be directed to the SCORE program for a total of \$7 million.

Additionally, my amendment would direct an additional \$1.1 million to SBA's Veterans Business Outreach Centers, a modest increase to account for additional responsibilities taken on from the Vets Corps Centers, which no longer receive Federal funding. An additional \$3.35 million would be directed to the WBC program, one of SBA's most diverse, far-reaching entrepreneurial development efforts. In 2007, WBCs trained and counseled 148,123 clients who reported 8,751 new jobs and 3,304 new businesses.

My amendment also would direct additional funds to two programs, which I consider to be important business development programs, the SBA's International Trade programs and the HUBZone Program. With exports being one of the few bright spots in our economy last year, exporting by small firms has considerable room for growth. The amendment would direct that \$8 million in SBA funds be used for these export assistance programs, an increase of \$2 million over the current omnibus level. For the HUBZone program, which provides contracting preferences to small firms in economically disadvantaged areas, the amendment provides an additional \$1.85 million for urban and rural development under this program.

To reiterate, under my amendment, the increased funding for these programs comes from amounts already provided in the omnibus appropriations bill for the SBA. No additional funding is required; it simply directs the SBA to allocate adequate resources to these programs. For more than 50 years, the SBA has been a vital resource to small businesses, helping millions of Americans start, grow, and expand their businesses. I respectfully ask my colleagues to support this amendment to provide the SBA's technical assistance and business development programs with the resources to expand their proven success and economic value during this economic crisis.

Mr. FEINGOLD. Mr. President, I will vote against this Omnibus appropriations bill, which contains thousands and thousands of unjustified, unexamined earmarked spending provisions, and which is being rushed through the Senate. By one estimate, the total cost of those items is nearly \$8 billion. Even under ordinary circumstances it would be hard to defend those earmarks but there is certainly no defense for them at a time when the Nation is contending with this deep recession and millions of families are struggling to make ends meet.

The hundreds of pages of tables in the report accompanying the bill, each listing multiple earmarks, is probably the best rationale I have seen for earmark reform. I have been pleased to work with a number of my colleagues on a proposal to establish a new point

of order against unauthorized earmarks, and on another proposal to provide the President with authority similar to a line item veto to cancel earmark spending. We certainly need to enact something like those reforms because we cannot afford to continue this abusive process. After all the talk of reform last year, and after the promising beginning made by keeping the stimulus legislation free of earmarks, we have quickly slid back to business as usual. We are considering a bill that has nearly \$8 billion in earmarks. And that is just one bill. We haven't even begun the appropriations process for fiscal year 2010.

The President deserves great credit for keeping the stimulus bill free of earmarks. He should build on that achievement by insisting this omnibus appropriations bill be stripped of the earmarks currently in it. If that means vetoing the bill and sending it back to Congress for further work, then that is exactly what he should do.

I strongly prefer that Congress address this issue and clean up its own earmark mess. But right now there is little indication that Congress act without some tough leadership from the President.

Mr. President, I was pleased to support amendments offered by the Senator from Oklahoma, Mr. COBURN, that sought to eliminate some of the earmarks in the bill. I did not, however, support other efforts to cut overall funding levels in the bill. While I believe that Congress needs to be extra vigilant in ensuring that taxpayer dollars are well-spent, those efforts failed to specify where the funding would be cut. We should be making those tough decisions ourselves, and ensuring that any cuts are targeted and appropriate.

Mr. REID. Mr. President, I know everyone is anxiously awaiting the 8:15 time to arrive. I have had a number of conversations with Senator MCCONNELL, Senator KYL, and Senators on my side of the aisle. It appears at this time that we are going to have to continue to work on this bill. I have had calls from a number of my friends on the other side of the aisle, including conversations with my colleague from Nevada, and there are a number of amendments they feel strongly about, that they want the opportunity to offer. I wish that were not the case. We have had a significant number of amendments. But "enough" is in the eye of the beholder. As a result of that, we would probably be a vote short of being able to invoke cloture on this bill. My being a vote counter for a long time, discretion is the better part of valor.

I have not only heard from my friend from Nevada but other Senators. They have certain amendments they want to offer, and others have no amendments to offer but they want to be part of the team on the other side of the aisle, and if some of their colleagues want certain things done, they are going to go along with that. I don't criticize that.

I am not happy about it, but that is the way things work.

I have worked with Senators KYL and MCCONNELL, and by 11 o'clock tomorrow we will have a finite list of amendments, hopefully 10. There could be as many as 12. I doubt if we will need votes on all those. Senator KYL, who is the mechanic working through this process, is going to try to squeeze that down as much as he can.

With that brief statement, it would be wasted time to have a cloture vote tonight. We are not going to have a cloture vote tonight. We would just go back into a quorum and spend the rest of the night looking at each other.

We have had pleasant conversations with each other. No one is trying to game the system. I wish we could finish this bill. The House is going to send us a CR that will take us to midnight Tuesday, as I understand it.

If we get that finite list of amendments, the Senate certainly could be open tomorrow for people to offer amendments. We could have votes on some of these Monday night when we come back. I could schedule votes on Monday, but that would really make for an unhappy group of people. So I think we would be better off starting the votes at 5 or 5:30 Monday night if, in fact, people lay these amendments down.

Mr. MCCONNELL. Will the majority leader yield for an observation.

Mr. REID. Of course.

Mr. MCCONNELL. Let me underscore what the majority leader has indicated. The votes would not have been there tonight. We would be more than happy to have the vote, but since the majority leader and I concur that 60 votes are not there tonight, I think the way forward as he outlines is going to be widely acceptable on our side because we want amendments. There are additional amendments, probably, as he indicated, 10 or 12, which, as he indicates, I think would make sense to vote on on Monday.

I want to say to my Republican colleagues, we appreciate their accommodation, their requests of others of our Members to have a reasonable number of amendments on a bill of this magnitude. This is a huge appropriations bill. At the end of the day, we will not have had an unusual number of amendments voted on on a bill of this magnitude.

Mr. REID. Mr. President, I say in response to my friend, at quarter to 8 tonight, we had 59½ votes. If we can have consent, I could round that off—I don't think I could get that.

I ask unanimous consent to vitiate the cloture vote now pending.

Mr. VITTER. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, if I could simply inquire of the majority leader through the Chair, I would be happy to offer consent if I had assurance that my amendment that I have been trying

to call up, that I have been trying to get a vote on all week, which heretofore has been blocked, if I can have absolute assurance that will be on the list of amendments offered and voted on.

Mr. REID. Mr. President, I think he should direct that to his assistant leader, Senator KYL.

Is his amendment going to be on the list?

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, it seems to me if the Senator from Louisiana has indicated he will object to the unanimous consent unless his amendment—No. 621, I gather?

Mr. VITTER. Yes.

Mr. KYL. Is on the list, that is a question, then, for the leader to address.

I wanted to indicate that we have a number of Members who have amendments they want to offer, and we are going to work hard to make sure all our Members who want to offer amendments can do so. At the same time, we are going to do our best to ensure that is not an unreasonable list of amendments. Obviously, Members who insist on having an amendment as a condition to the unanimous consent request can make that point clear.

Mr. REID. Mr. President, I think it is clear from my friend—the conversations, plural, that we have had—that the list we are talking about is a list of 10 or 12 amendments; is that right?

Mr. KYL. Mr. President, I would say to the leader that I think that is correct. That is going to require a lot of effort on this side to reduce the number of amendments that are pending, as the leader is well aware.

Mr. REID. You think you are going to have to work hard, think how hard I am going to have to work to defeat those amendments. I have more work than you have.

Mr. KYL. In response to my friend, the leader, he has worked very hard, and he has been very successful. But I do, in all seriousness, want to note that in order to try to limit the number of amendments—because there is a list of 36—it is going to require a lot of work on our side. We are going to, in good faith, do the best we can, but I just want to reiterate as far as I am concerned the Senator from Louisiana will have to be on the list because otherwise he will object to the vitiation of the cloture vote. As far as I am concerned, his amendment is on the list, but at some point the majority leader will have to agree to the list that we offer.

Mr. REID. Mr. President, I think it is fair that we have a finite list. We are now up to 35 amendments?

Mr. KYL. Mr. President, as I told the leader, we had a list of 36 amendments filed. I told the majority leader that I thought we could get that list down to 10 or 12, and that is still my intention.

Mr. REID. What I think would be fair, Mr. President—I know the Sen-

ator from Arizona is going to act in good faith to cut the number down to as small a number as he can, but we can still come back with another cloture vote if there is a lot of unnecessary amendments in that number, if you can't get people to work reasonably with you.

So I ask unanimous consent to vitiate the cloture vote, and that a subsequent cloture vote occur—

Mr. VITTER. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. I didn't mean to cut off the majority leader, if he wants to finish. I just wanted to reiterate—having spent the week trying to get this one amendment up—that my top priority is my amendment will be recognized, and I get a vote on that. And having heard speeches on the floor that the floor was open to amendments, yet having been blocked consistently in my attempts to get this amendment up, I have not yet heard any guarantee that will happen.

So given that, I regretfully will object to the unanimous consent request.

Mr. REID. We are familiar with his amendment. Basically, as I understand the amendment, Members would never get a COLA again. So we are willing to debate that. That basically is what it is; is that right?

Mr. VITTER. That is not correct. If I could advise the Chair, the amendment would be to require votes for any future pay raises or COLAs. It would require Member votes to not have that be on autopilot and to happen automatically, particularly given the state of the economy and the income losses and the job losses that are being suffered around the country.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I say to my friend from Louisiana, we will make sure that Senator MCCONNELL has a vote in relation to the amendment.

Mr. VITTER. With that assurance, Mr. President, I lift my objection.

Mr. REID. I renew my unanimous consent request to vitiate the pending cloture vote; that we not have the vote tonight.

The PRESIDING OFFICER. Is there objection?

Hearing no objection, it is so ordered.

Mr. REID. Mr. President, for the benefit of all Members, we apologize for having Senators from all sides leave. I hope those Senators who are working with Senator KYL and want to offer these amendments will do so tomorrow or, if not, on Monday. We want to have some of these votes Monday night. We can have a series of votes Monday

night and work toward completing this stuff.

So I think that is about all I have to say, except that I appreciate everyone's cooperation.

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

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

AMENDMENT NO. 615

Mr. ENSIGN. Mr. President, I ask unanimous consent that the pending amendment be set aside and that I be allowed to call up amendment No. 615.

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

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN], for himself, Mr. VOINOVICH, Mr. KYL, Mr. DEMINT, Mr. BROWNBACK, and Mr. CORNYN, proposes an amendment numbered 615.

Mr. ENSIGN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To strike the restrictions on the District of Columbia Opportunity Scholarship Program)

On page 308, line 2, strike beginning with "Provided" through line 8 and insert a period.

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

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

The Chair clarifies that the cloture motion on H.R. 1105 has been withdrawn.

MORNING BUSINESS

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

PRESIDENT OBAMA'S 2010 BUDGET

Mr. BURRIS. Madam President, as we contemplate this 2009 Omnibus Appropriations Act before us this week, I wish to look ahead to President Obama's proposed 2010 budget.

As a proud member of the Veterans' Affairs Committee, I am particularly pleased by the significant increase in funding that the administration is

seeking for the Department of Veterans Affairs, led by its Secretary, GEN Eric Shinseki.

In the proposed 2010 budget, the Department of Veterans Affairs will see a \$25 billion increase over the next 5 years. This additional funding will be directed toward a major expansion of benefits for those who serve our Nation in uniform.

The 2010 budget will directly assist veterans by expanding access to high-quality care for approximately 5½ million veteran patients and ensuring that care is delivered in a timely manner. More remarkable, this funding establishes VA Centers of Excellence to provide veteran-oriented care in specialized areas, such as prosthetics, vision, spinal cord injury, aging, and women's health.

The President's budget also reaches out to veterans with moderate incomes, bringing an additional half million veterans into the VA system by 2013, while maintaining or expanding existing care for low-income and disabled veterans.

At the same time, the new budget enhances services related to mental health care and broadens access and treatment areas throughout rural America. America's veterans have earned through their service the very best care we can offer, and the 2010 VA budget is a promising start.

During a recent tour through Illinois, I had the remarkable opportunity to visit with both veterans of past service, as well as meeting the young recruits training to wear the American uniform in the years ahead.

During that trip, I visited the 1082nd Airlift Wing of the Illinois Air National Guard located in Peoria, IL, and spoke with many fine airmen from this wing, including MSG Warren McCray. Master Sergeant McCray is an air guardsman who trained as a joint terminal attack controller. He deploys with Army troops on the ground ensuring that airpower can be employed against enemy positions when needed.

This courageous young man has recently returned from a tour of duty in Afghanistan and was awarded a Bronze Star with Valor. While speaking with Master Sergeant McCray, he told me of the multiple tours he had served as an air guardsman mobilized in support of Operation Enduring Freedom in Afghanistan. I was deeply impressed by his professionalism and dedicated service to this country. Even more so by his dedication to his fellow service men and women of the 1082nd Airlift Wing.

As we consider our mission abroad and weigh the cost in terms of troops and treasure, it is our duty to also consider the capacity at which these young men and women are serving us.

It doesn't matter whether they are a soldier, sailor, airman, marine or Coast Guard, or whether they are Active Duty, Guard, or Reserve. We must never forget the personal toll and sacrifice of these brave Americans and the effects made on their lives, their future, their spouses, and their children.

We must ensure that our veterans receive superior accessible care in return for their service and sacrifice, and we have an obligation to honor our veterans by serving them in the same way they have served us so selflessly.

The administration's 2010 budget for the Department of Veterans Affairs recognizes this. And in addition to expanding health benefits and high quality of care, the budget provides for comprehensive educational benefits, particularly the post-9/11 GI bill so that following their service, veterans can have access to unprecedented levels of educational support to complete their schooling.

In the same week, I visited the Naval Station Great Lakes and the North Chicago VA Medical Center. During my visit to these sites, I learned about plans for the Naval Health Clinic Great Lakes, the North Chicago VA Medical Center to merge and expand over the next couple of years. This merger will be extensive and costly, but also essential for sailors and veterans of Illinois, many of whom spend much of their lives at these facilities.

At the North Chicago VA Medical Center, I met with veterans of all ages and backgrounds. I heard their stories, their hopes, and their needs. At the Recruiting Training Command, I met with both naval officers and naval recruits and was given a tour of the barracks by LT Ellen McElligott.

I was particularly impressed with Lieutenant McElligott, a Chicago native, who serves as the ship's officer for the USS Arizona. Her professionalism, discipline, and enthusiasm for her work are qualities she shares with countless young service men and women across this great country of ours.

While touring the facility with Lieutenant McElligott, I saw the faces of hundreds of young sailors training so that they may one day serve this country.

It is so very important that LT Ellen McElligott and the young men and women like her receive adequate care and compensation while on Active Duty, Guard, or Reserve, and, most importantly, that they receive the care and resources they deserve when they return from serving their country.

As a nation, we have a moral obligation to serve and care for those brave individuals as they work so hard to serve us.

HONORING OUR ARMED FORCES

SERGEANT DANIEL TALLOUZI

Mr. UDALL of New Mexico. Mr. President, today I rise to honor two American heroes. The first is Army SGT Daniel Tallouzi. Sergeant Tallouzi was the kind of soldier who hated getting injured—not because of the pain, but because it stopped him from doing his job. A fellow soldier describes meeting Dan when Dan was recovering from an injury at Fort Hood. The soldier recalls:

Another person might have been seriously injured, but Big Dan Tallouzi shook it off,