

is not a fundamental right and thus does not protect Americans from actions by states and localities that prevent them from lawfully exercising their ability to bear arms. As with the Ricci and Didden cases, Judge Sotomayor gave the losing party's claims in these cases short shrift and did not thoroughly explain her analysis. In one case, she disposed of the party's second amendment claim in a mere one-sentence footnote. In the other case, which was argued after the Supreme Court's seminal second amendment decision in *District of Columbia v. Heller*, she gave this important precedent cursory treatment, devoting only one paragraph in an unsigned opinion to this important issue, which is unusual for a case of this significance.

The losing parties in these cases might not have belonged to the groups that the President had in mind when he was articulating his "empathy" standard. But they certainly underscore the hazards of such a standard. They had important constitutional claims, and they deserved to have their claims treated seriously and adjudicated fairly under the law, regardless of what Judge Sotomayor's personal and political agendas might be. Yet it strikes me that the losing parties in these cases did not in fact get the fair treatment they deserved.

Indeed, taken together, these cases strongly suggest a pattern of unequal treatment in Judge Sotomayor's judicial record, particularly in high-profile cases. This pattern is particularly disturbing in light of Judge Sotomayor's numerous comments about her view of the role of a judge, such as questioning a judge's ability to be impartial "even in most cases," asserting that appellate courts "are where policy is made," and concluding that her experiences and views affect the facts that she "chooses to see" in deciding cases.

Republicans take very seriously our obligation to review anyone who is nominated to a lifetime position on our Nation's highest court. That is why Senators have taken time to review Judge Sotomayor's record to make sure she has the same basic qualities we look for in any Federal judge: superb legal ability, personal integrity, sound temperament, and, most importantly, a commitment to read the law evenhandedly. At the beginning of this process, I noted that some of Judge Sotomayor's past statements and decisions raised concerns. As we begin the confirmation hearings, those concerns have only multiplied.

Boiled down, my concern is this: that Judge Sotomayor's record suggests a history of allowing her personal and political beliefs to seep into her judgments on the bench, which has repeatedly resulted in unequal treatment for those who stand before her.

But that is what these hearings are all about: giving nominees an opportunity to address the concerns that Senators might have about a nominee's record. In this case, the list is long.

So we welcome Judge Sotomayor as she comes before the Judiciary Committee today. And we look forward to a full and thorough hearing on her record and her views.

I yield the floor.

#### RESERVATION OF LEADER TIME

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

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of S. 1390, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1390) to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, on behalf of the Armed Services Committee, I am pleased to bring S. 1390, the National Defense Authorization Act for Fiscal Year 2010, to the Senate floor. This bill will fully fund the year 2010 budget request of \$680 billion for national security activities in the Department of Defense and the Department of Energy.

The Senate Armed Services Committee has a long tradition of setting aside partisanship and working together in the interest of the national defense. This year follows that tradition. I am pleased that S. 1390 was reported to the Senate on a unanimous 26-to-nothing vote of the committee. This vote stands as a testament to the common commitment of all of our Members to supporting our men and women in uniform. I particularly thank Senator MCCAIN, our ranking minority member, for his strong support throughout the committee process and, of course, for the dedication he has shown to national defense throughout his Senate career.

Earlier this year, the Armed Services Committee reported out the Weapons Systems Acquisition Reform Act of 2009 with similar bipartisan support. In less than 2 months, we were able to get the bill passed by the Senate, complete conference with the House, and have the President sign it into law. It is my hope that we will be able to move with similar dispatch on the bill now before us.

This bill contains many important provisions that will improve the quality of life of our men and women in uniform, provide needed support and assistance to our troops on the battlefields in Iraq and Afghanistan, make the investments we need to meet the challenges of the 21st century, and re-

quire needed reforms in the management of the Department of Defense.

First and foremost, the bill before us continues the increases in compensation and quality of life that our service men and women and their families deserve as they face the hardships imposed by continuing military operations around the world. For example, the bill contains provisions that would, first, authorize a 3.4-percent across-the-board pay raise for all uniformed military personnel, and that represents half a percent more than the budget request and the annual rate of inflation. The bill authorizes a 30,000 increase in the Army's Active-Duty end strength during fiscal years 2011 and 2012 in order to increase dwell time and reduce the stress created by repeated deployments. The bill authorizes payment of over 25 types of bonuses and special pays aimed at encouraging enlistment, reenlistment, and continued service by Active-Duty and Reserve military personnel. We increase the authorization for the Homeowners' Assistance Program by \$350 million in order to provide relief to homeowners in the Armed Forces who are required to relocate because of base closures or change of station orders. And we increase the maximum amount of supplemental subsistence allowance from \$500 to \$1,100 per month to ensure that servicemembers and their families do not have to be dependent on food stamps.

The bill also includes important funding and authorities needed to provide our troops the equipment and support they will continue to need as long as they remain on the battlefields in Iraq and Afghanistan. For example, the bill contains provisions that would provide \$6.7 billion for the Mine Resistant Ambush Protected, MRAP, vehicle fund, including an increase of \$1.2 billion above the President's budget request for MRAP all-terrain vehicles which will be deployed in Afghanistan. The bill fully funds the President's budget request for U.S. Special Operations Command and adds \$131 million for unfunded requirements identified by the commander of Special Operations Command. The bill provides full funding for the Joint Improvised Explosive Device Defeat Organization to continue the development and deployment of technologies to defeat these attacks. And we provide nearly \$7.5 billion to train and equip the Afghan National Army and the Afghan National Police so they can carry more of the burden of defending their own country against the Taliban.

The bill would also implement most of the budget recommendations made by the Secretary of Defense to terminate troubled programs and apply the savings to higher priority activities of the Department. For example, the bill will terminate the Air Force Combat Search and Rescue-X helicopter program, CSAR-X. It will terminate the VH-71 Presidential helicopter. It would cancel and restructure the manned ground vehicle portion of the Army's

Future Combat System Program. It would stop the growth of the Army brigade combat teams, the BCTs, at 45 instead of 48, while maintaining the planned increase in end strength. It would end production of the C-17 Program. It would terminate the Multiple Kill Vehicle Program, cancel the kinetic energy interceptor, cancel the second airborne laser prototype aircraft, and it would authorize \$900 million of additional funding in the budget request to field more theater missile defense systems, the Terminal High Altitude Area Defense, the THAAD, and the standard missile-3 interceptors, and converting additional AEGIS ships for missile defense to defend our forward-deployed forces and allies against the many short- and medium-range missiles held by countries such as North Korea and Iran.

The bill supports the decision of Secretary Gates to stop deployment of the ground-based interceptors at 30 missiles and to focus on improving the capability of this system to be more reliable and effective than the current system against the limited threat of long-range missiles.

The bill also supports the decision to continue production of those ground-based interceptors that are on contract and to use them as test missiles and as spares. By fielding the most modern version of the interceptor, using modern silos and conducting operationally realistic testing with the additional missiles instead of putting them in silos, the system will provide, in Secretary Gates' words, a "robust capability" that is "fully adequate to protect us against a North Korean threat for a number of years." According to testimony to the committee, the Joint Chiefs of Staff and the combatant commanders agreed that their highest priority for the GMD—ground missile defense—system was to have 30 interceptors with improved reliability, availability, and effectiveness. The bill before us again supports Secretary Gates' decision to field that improved capability.

I am disappointed that the committee voted on a very close vote not to terminate the F-22 aircraft production program, as requested by the Secretary of Defense and as supported by the Joint Chiefs of Staff. I plan to join with Senator McCain in seeking to overturn that decision during floor consideration of this bill.

Finally, the bill contains a number of provisions that will help improve the management of the Department of Defense and other Federal agencies. For example, the bill contains provisions that would, first, improve Department of Defense financial management by requiring the Department to engage in business process reengineering before acquiring new information technology systems and to submit regular reports on its progress toward auditable financial statements.

Second, it requires the Department of Defense to develop a comprehensive

plan to address longstanding problems in its inventory management systems which lead it to acquire and store hundreds of millions of dollars worth of unneeded items.

Third, it places a moratorium on public-private competitions under OMB circular A-76 until the Department complies with an existing statutory requirement to develop information needed to manage its service contractors, plan for its civilian employee workforce, and identify functions that would be subject to public-private competition.

Fourth, we would authorize the Secretary to establish a new defense civilian leadership program to help recruit, train, and retain highly qualified civilian employees to help lead the Department of Defense over the next 20 years.

A very important provision in this bill is section 1031, which would address the problems that exist with military commissions. The military commissions provisions we have in law today do not provide basic guarantees of fairness identified by our Supreme Court. The existing provisions place a cloud, therefore, over military commissions and have led some to conclude that the use of military commissions can never be fair, credible, or consistent with our basic principles of justice.

Earlier this year, the President stated that military commissions can be reformed to meet basic standards of fairness needed for them to play a legitimate role in prosecuting violations of the law of war. In his May 21, 2009, speech at the National Archives, President Obama stated that:

Military commissions have a history in the United States dating back to George Washington and the Revolutionary War. They are an appropriate venue for trying detainees for violations of the laws of war. They allow for the protection of sensitive sources and methods of intelligence-gathering; they allow for the safety and security of participants; and for the presentation of evidence gathered from the battlefield that cannot always be effectively presented in federal courts.

The President continued:

... Instead of using the flawed commissions of the last seven years, my administration is bringing our commissions in line with the rule of law. ... [W]e will make our military commissions a more credible and effective means of administering justice, and I will work with Congress and members of both parties, as well as legal authorities across the political spectrum, on legislation to ensure that these commissions are fair, legitimate, and effective.

We agree with the President, and section 1031 reflects our determination to reform the commissions. In its 2006 decision in the Hamdan case, the Supreme Court held that Common Article 3 of the Geneva Conventions requires that the trial of detainees for violations of the law of war be conducted in a manner consistent with the procedures applicable in trials by courts-martial and that any deviation from those procedures be justified by "evident practical need." The Supreme Court said that the "uniformity principle is not an inflexible one; it does

not preclude all departures from the procedures dictated for use by courts martial. But any departure must be tailored to the exigency that necessitates it." That is the standard the Armed Services Committee has tried to apply in adopting the procedures for military commissions that we have included in our bill.

This new language addresses a long series of problems with the procedures currently in law. For example, relative to the admissibility of coerced testimony, the provision in our bill would eliminate the double standard in existing law under which coerced statements are admissible if they were obtained prior to December 30, 2005. They would be inadmissible regardless of when the coercion occurred. Relative to the use of hearsay evidence, the provision in our bill would eliminate the extraordinary language in the existing law which places the burden on detainees to prove that hearsay evidence introduced against them is not reliable and probative. Relative to the issue of access to classified evidence and exculpatory evidence, the provision in our bill would eliminate the unique procedures and requirements which have hampered the ability of defense teams to obtain information and which have led to so much litigation. We would substitute more established procedures based on the Uniform Code of Military Justice, the UCMJ, with modest changes to ensure that the government cannot be required to disclose classified information to unauthorized persons.

Even if we are able to enact new legislation that successfully addresses the problems in existing law, we will have a ways to go to restore public confidence in military commissions and the justice they produce. However, we will not be able to restore confidence in military commissions at all unless we first substitute new procedures and language to address the problems with the existing statute.

As of today, we have almost 130,000 U.S. soldiers, sailors, airmen, and marines on the ground in Iraq. Over the course of the next fiscal year, we will undertake the difficult task of drawing down these Iraqi numbers while maintaining security and stability on the ground. At the same time, we have increased our forces in Afghanistan, with close to 60,000 troops engaged in increasingly active combat and combat support operations, and more are on the way.

While there are many issues where there may not be a consensus, we all know—and there is a consensus on this—that we must provide our troops the support they need as long as they remain in harm's way. Senate action on the National Defense Authorization Act for fiscal year 2010 will improve the quality of life for our men and women in uniform. It will give them the tools they need to remain the most effective fighting force in the world. And very importantly, it will send an important

message that we, as a nation, stand behind them and are deeply grateful for their service.

So we look forward to working with colleagues to pass this important legislation. Again, I thank Senator MCCAIN for all he and his staff have done to bring this bill to the floor.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank Chairman LEVIN, and I share his gratitude in thanking our subcommittee chairmen and ranking members who contributed so much to writing this bill. They held numerous hearings on many important issues, and I thank them all for their hard work. And they were ably assisted by our extremely competent committee staff. Bringing this bill to the floor each year is a tremendous undertaking, and it would not be possible without the hard work of our outstanding professional staff who ensure that the process goes smoothly.

I also extend my special thanks to Chairman LEVIN, with whom I have worked for many years now. I commend him on his leadership, grace, and integrity in shepherding this bill. It is not easy managing the competing interests, views, and opinions of 26 Senators, but Chairman LEVIN does an outstanding job at ensuring we all feel heard and understood, even if we do not always agree. I continue to admire his steadfast dedication to the committee's long tradition of bipartisan cooperation.

Chairman LEVIN, you are a friend and great colleague, and I appreciate your support in both regards.

Consistent with the longstanding, bipartisan practice of the Armed Services Committee, this bill reflects our committee's continued strong support for the brave men and women of the U.S. Armed Forces. It is, for the most part, an excellent bill, and I believe the committee has made informed decisions regarding the authorization of over \$680 billion in base and overseas contingency operations funding for fiscal year 2010. To a great extent, it reflects the priorities laid out by the Secretary of Defense and the administration. It also reflects his decision to end troubled programs and focus our limited resources on today's threats and the lessons we have learned after more than 8 years of war.

While the provisions in the bill demonstrate our commitment to provide our soldiers, sailors, airmen, and marines the very best available equipment, training, and support in order to provide them with the best possible tools to undertake their missions, I believe we can and should improve the bill in certain respects, and I will offer amendments during our floor debate to do so.

The bill takes care of our men and women in uniform and their families by providing military members with a 3.4-percent pay raise. It expands care for wounded warriors, supports fami-

lies, and improves military health care. It fully funds the growth of the Army and Marine Corps. Indeed, it authorizes further growth of the Army should that be necessary to sustain our combat operations and further reduce the strain on our forces.

The bill retains a balanced capability to deter aggression by increasing intelligence, surveillance, and reconnaissance capabilities, investing in tactical aircraft and ships, and accelerating the purchase of mine-resistant all-terrain vehicles for our troops in Afghanistan.

This bill acknowledges that the United States has a vital national security interest in ensuring that Afghanistan does not once again become a safe haven for terrorists. It supports a comprehensive counterinsurgency strategy that is adequately resourced and funded by Congress based on identified needs to date and calls on the President to provide our U.S. military commanders with the military forces they require in order to succeed.

In Iraq, the committee ensures that the Congress will support the President's plan to redeploy combat forces while providing our commanders the flexibility to hold hard-fought security gains and ensure the safety of our forces.

One of the toughest issues this committee has taken a leading role in—both in past years and in this bill—is detainee policy. Since 2005, this committee has developed legislation on detainee matters—sometimes in cooperation with the White House and sometimes over its strong objections—because it is critical to our national security and the preservation of our democratic principles.

This bill makes changes to the Military Commissions Act of 2006. We have all—Senator LEVIN, Senator GRAHAM, and others—worked closely together to address some of these difficult issues.

We have not resolved all of the challenges military commissions and other aspects of detainee policy present, but I believe we have made substantial progress that will strengthen the military commissions system during appellate review, provide a careful balance between protection of national security and American values, and allow the trials to move forward with greater efficiency toward a just and fair result.

The committee also had a healthy debate on the future of missile defense and our strategic deterrence capabilities. I welcome and share President Obama's aspirations, hope for a nuclear-free world. However, I believe we must also be prudent and practical in our reductions and remain vigilant about the global proliferation of advanced missile and nuclear technology. While recently much of our national defense posture supports combating terrorists, we cannot grow complacent to the danger that rogue nations such as North Korea and Iran pose to us—whether it is missile launches within range of Hawaii or transferring weapons to Hezbollah or Hamas.

We must strengthen our commitment to enforcing the Non-Proliferation Treaty and the existing inspections regime. We must lead an international effort to interdict and prevent the world's most dangerous weapons from getting into the hands of the world's worst actors. I know there are varying views on the future of missile defense and our long-term strategic force posture, and I look forward to those debates.

The bipartisan nature of our committee allows for candid discussion, lively debate, and, at times, disagreement. In that spirit, there are some items in the bill I do not support and were not in the President's budget request, such as continuation of the F-22 aircraft production line, funding for the Joint Strike Fighter alternate engine, and earmarks totaling approximately \$6.4 billion. I was disappointed that, in spite of a veto threat from the White House, our committee chose to add \$1.75 billion for seven F-22 aircraft and at least \$439 million for an alternate engine for the Joint Strike Fighter. Neither the President nor the Pentagon asked for F-22s or the alternate engine in the budget request, nor were they part of the Service's Unfunded Priority List. Secretary Gates has consistently opposed the need for additional F-22 aircraft and has indicated on a number of occasions that additional F-22 aircraft are not required to meet potential threats posed by near-term adversaries. I strongly support Secretary Gates' decision to end the F-22 production line at 187 aircraft and his commitment—and the President's commitment—to building a fifth-generation tactical fighter capability by focusing on the timely delivery of the F-35 Joint Strike Fighter to the Air Force, Navy, and Marines.

I look forward to lively debates on these and other important issues over the next few days.

I want to make very clear to my colleagues, the reason Senator LEVIN and I support the administration's and Secretary Gates' proposal to terminate at 187 the F-22 fighter aircraft is not because we believe we are going to leave the Nation undefended. We need the next-generation F-35 Joint Strike Fighter. Our armed services are counting on them. We want to increase funding for the F-35 Joint Strike Fighter, an aircraft and weapon system that in the view of many experts—including my view—would be far more capable of meeting the emerging threats of the future. So I want my colleagues to understand this debate is not just about cutting a weapon system or bringing to an end, frankly, the line of a fighter aircraft; it is bringing to the end the line of one fighter aircraft and moving forward with another generation—for all three services, a very capable weapons system, one that meets the threats of the 21st century.

So I think it is important that we look at the argument that will come forward about jobs created or jobs lost.

There will be jobs created, but the rationale for defense weapons systems should never be the creation of jobs. It should only be about the best way to defend this Nation in a very dangerous world.

So it is my understanding it is the wish of the chairman—and I join him—that the first amendment for debate will be the administration proposal to finish the F-22 aircraft production line, saving some \$1.75 billion. So I look forward to that debate. I look forward to my colleagues coming to the floor who would oppose that amendment. I hope my colleagues understand we would like to get this done this week, if possible.

One more comment about the F-22 and the alternate engine for the Joint Strike Fighter: The President of the United States, I am told, and the Secretary of Defense have made it very clear a veto is very likely if the Congress does not act to end production of the F-22 line. I would strongly recommend the President of the United States go ahead and veto this bill if the F-22 is included. At some point, with unemployment at 9.5 percent, with people not being able to stay in their jobs, with health care being less available and less affordable in America, we cannot afford to spend \$1.7 billion additional taxpayer dollars for a system that can be replaced by a more capable weapons system and one that can defend our Nation with greater efficiency and less cost.

So I believe, frankly, there is more at stake than just whether we adopt the Levin-McCain amendment to terminate production of the F-22 as originally scheduled. I think this is a much larger issue, and I hope my colleagues understand the importance of it. I hope, if the Levin-McCain amendment is defeated—I hope it is not because I believe Senator LEVIN and I can make a convincing argument on behalf of the administration and the Secretary of Defense—but if it is, that there be no doubt that the President of the United States would veto this bill.

I say that with great reluctance. I say it with almost a sense of deep regret because there are so many things in this bill that are important to the defense of our Nation, whether it be the care and pay raises and hospitalization and care of our wounded warriors, along with many other issues. But at some point this Congress and this Nation have to exercise the fiscal discipline the economic crisis we are in today demands.

I again wish to thank Senator LEVIN for the long and close relationship and work we have done together. Sometimes we have had very spirited but very informative discussions, and I know those will continue as we address this very important legislation before the Senate.

Mr. President, I ask unanimous consent to have printed in the RECORD material in support of my remarks.

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

JULY 8, 2009.

DEAR SENATOR, The undersigned groups urge you to eliminate funding for seven unneeded F-22 Raptor fighter jets from the National Defense Authorization Act of 2010.

The addition of these F-22s demonstrates not only wasteful spending that serves parochial interests but irresponsible, smoke and mirrors budgeting. Just as our national security strategy is based upon anticipating probable threats, our defense budget must also rely upon realistic sources of future income.

We are particularly concerned by recent media reports indicating that funding for the F-22 will rely on anticipated savings from defense procurement reform, even though the Congressional Budget Office has said there is no basis for determining these savings. Other sources report that the money will also take hundreds of millions from operations and maintenance accounts, a common budgeting gimmick that directly impacts our soldiers in the field.

Additionally, we are dismayed by proposals to pay for F-22s by taking \$146 million from the Joint Strike Fighter's management reserve fund. This fund, which has historically experienced shortfalls, is needed to address any unexpected issues in the program, and removing money may disrupt the Joint Strike Fighter's development. Both the Secretary of Defense and the Secretary of the Air Force have stressed that the Joint Strike Fighter program is critical to our national security, and both support ending F-22 procurement at 187 planes.

In a June 24 Statement of Administration Policy, the President's advisers said they would be forced to recommend a veto if the National Defense Authorization Act includes advance procurement of the F-22 or spending that would seriously disrupt the Joint Strike Fighter program. Procurement of additional F-22s does not serve our national security needs and jeopardizes the Department of Defense's higher priorities. We ask you to take a stand against wasteful and irresponsible spending and support amendments that will delete this funding from the 2010 defense authorization bill.

DANIELLE BRIAN,  
*Project On Government Oversight.*

RYAN ALEXANDER,  
*Taxpayers for Common Sense.*

PROJECT ON GOVERNMENT OVERSIGHT,  
*Washington, DC, July 9, 2009.*

HARRY REID,  
*Majority Leader, U.S. Senate, Hart Senate Office Bldg, Washington, DC.*

MITCH MCCONNELL,  
*Minority Leader, U.S. Senate, Russell Senate Office Building, Washington, DC.*

CARL LEVIN,  
*Chairman, Senate Armed Services Committee, Russell Senate Office Building, Washington, DC.*

JOHN MCCAIN,  
*Ranking Member, Senate Armed Services Committee, Russell Senate Office Building, Washington, DC.*

DEAR SENATORS, The Project On Government Oversight (POGO) is writing to express our serious concerns about the integrity of the process to add seven unneeded F-22s to the Senate's version of the National Defense Authorization Act of 2010.

Numerous congressional hearings and press reports have demonstrated that Air Force leadership supports Defense Secretary Robert Gates' decision to end production of the

F-22 at 187 aircraft. But it appears that even after Air Force leadership informed Senator SAXBY CHAMBLISS (R-GA) of their support of the Secretary's decision to end production of the F-22, the Senator continued to pursue funding for the program—made in Marietta, Georgia—by soliciting a request from Air National Guard Director Lieutenant General Harry M. Wyatt III, which the Director not surprisingly provided.

The Director's request flies directly in the face of the overarching strategic needs expressed by the Secretary of Defense and repeated by the Vice Chairman of the Joint Chiefs of Staff as recently as this morning.

Beyond the appalling nature of this solicitation, POGO is concerned by the "Additional Views of Senator Chambliss" section of the National Defense Authorization Act for Fiscal Year 2010 that encourages the Air Force to position F-22s in Massachusetts, California, Oregon, Louisiana, Florida, Alaska, and Hawaii. It appears that the specificity of this request may have been a politically motivated decision to garner support from the Senators and Governors of these states.

National security spending should be based solely upon strategic needs. Parochial interests have no place in our national defense. Both the Secretary of Defense and Air Force leadership have made it clear that continued procurement of the F-22 does not support our national security. To sell our national security as part of a horse-trade calls the integrity of Congress's procurement process into question.

We would welcome an opportunity to share our concerns. Sincerely,

DANIELLE BRIAN.

[From the Philadelphia Inquirer, July 9, 2009]

A JET EVEN THE MILITARY DOESN'T WANT  
(By Lawrence Korb and Krisila Benson)

Congress decided to end production of the costly F-22 Raptor fighter jet at 187 planes after a debate on the 2009 supplemental war budget last month. But the very next day, the House Armed Services Committee stripped \$369 million for environmental cleanup from the fiscal 2010 budget to fund an additional 12 F-22s. The Senate Armed Services Committee went a step further, providing \$1.75 billion for seven more F-22s without clearly identifying the source of funds.

The F-22 costs nearly \$150 million per plane—twice what was projected at the outset of the program. Factoring in development costs, the price tag increases to about \$350 million per plane for the current fleet of 187.

It may look as if the House Armed Services Committee has added "only" \$369 million. But given that it would provide funds for 12 additional F-22s, each with a price tag of \$150 million (excluding development costs), the real cost to American taxpayers would be about \$2 billion.

The F-22 is the most capable air-to-air fighter in the Air Force inventory. Yet it has only limited air-to-ground attack capabilities, which makes it unsuitable for today's counter-insurgency operations. In fact, the F-22 has never been used in either Iraq or Afghanistan. It was designed to fight next-generation Soviet fighters that never materialized, and, as Defense Secretary Robert Gates has noted, it is nearly useless for irregular warfare.

The F-22 has no known enemy. It is the most advanced fighter plane in the world, and there are no other planes that could threaten its supremacy in air-to-air combat. The United States already has 187 F-22s on hand or on order—a silver-bullet force that is more than adequate to deal with any likely

contingency. In fact, Gates said that even if he had \$50 billion more to spend, he would not buy any more F-22s.

The Air Force leadership itself no longer supports continued production of the F-22. Air Force Secretary Michael Donley and Air Force Chief of Staff Gen. Norton Schwartz have publicly said they would prefer to move on. The plane is not in the Defense Department's proposed budget for fiscal 2010 (which begins in October). It's not even on the Air Force's list of unfunded requests, which consists of items excluded from the budget for which it would nevertheless like funding—a wish list of sorts.

Why are congressional committees willing to override the military and civilian leadership of the Pentagon on the F-22? The latest in a string of arguments offered by proponents in Congress is the need to protect our industrial base—as if our technical capacity to develop and produce fighter planes is in immediate, grave danger. This argument overlooks the fact that the Obama administration's fiscal 2010 budget includes 28 F-35 Joint Strike Fighters—planes better suited for air-to-ground combat.

Moreover, as has been noted by the chairman of the Joint Chiefs of Staff, Adm. Mike Mullen, the era of producing manned aircraft is coming to an end. Mullen correctly points out that there will be a shift toward unmanned aircraft.

The F-22 is not an isolated case of unnecessary congressional equipment purchases. Congress has added \$2.7 billion to the 2009 supplemental budget to buy more C-17 and C-130 aircraft—planes neither requested nor needed by the Defense Department. It also added \$600 million to the 2010 budget for an unneeded alternate engine for the F-35, which will mean buying 50 fewer aircraft.

An administration policy statement issued on June 24 said the president's senior advisers would recommend a veto of a bill containing funding for more F-22s. If the entire Congress approves either of the armed services committees' recommendations on the F-22, President Obama should indeed veto the bill. Only then will Congress get the message that in this era of exploding national debt, we cannot waste billions on unnecessary military equipment.

Mr. MCCAIN. Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1469

Mr. LEVIN. Mr. President, on behalf of myself and Senator MCCAIN, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself and Mr. MCCAIN, proposes an amendment numbered 1469.

Mr. LEVIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To strike \$1,750,000,000 in Procurement, Air Force funding for F-22A aircraft procurement, and to restore operation and maintenance, military personnel, and other funding in divisions A and B that was reduced in order to authorize such appropriation)

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

**SEC. 106. ELIMINATION OF F-22A AIRCRAFT PROCUREMENT FUNDING.**

(a) ELIMINATION OF FUNDING.—The amount authorized to be appropriated by section 103(1) for procurement for the Air Force for aircraft procurement is hereby decreased by \$1,750,000,000, with the amount of the decrease to be derived from amounts available for F-22A aircraft procurement.

(b) RESTORED FUNDING.—

(1) OPERATION AND MAINTENANCE, ARMY.—The amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army is hereby increased by \$350,000,000.

(2) OPERATION AND MAINTENANCE, NAVY.—The amount authorized to be appropriated by section 301(2) for operation and maintenance for the Navy is hereby increased by \$100,000,000.

(3) OPERATION AND MAINTENANCE, AIR FORCE.—The amount authorized to be appropriated by section 301(4) for operation and maintenance for the Air Force is hereby increased by \$250,000,000.

(4) OPERATION AND MAINTENANCE, DEFENSE-WIDE.—The amount authorized to be appropriated by section 301(5) for operation and maintenance for Defense-wide activities is hereby increased by \$150,000,000.

(5) MILITARY PERSONNEL.—The amount authorized to be appropriated by section 421(a)(1) for military personnel is hereby increased by \$400,000,000.

(6) DIVISION A AND DIVISION B GENERALLY.—In addition to the amounts specified in paragraphs (1) through (5), the total amount authorized to be appropriated for the Department of Defense by divisions A and B is hereby increased by \$500,000,000.

Mr. LEVIN. Mr. President, this amendment is the F-22 amendment, which would delete the \$1.75 billion in the bill that was added in a very close vote in the Armed Services Committee, with strong opposition of the administration.

I may say that this is not the first administration that has attempted to end the F-22 line. President Bush also attempted to end this line at 183 planes.

Unless my friend from Arizona wants to speak, I will ask unanimous consent that the Senate recess until 1 p.m.

Mr. MCCAIN. No, I will not speak.

**RECESS**

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate stand in recess until 1 p.m.

There being no objection, the Senate, at 12:01 p.m., recessed until 1 p.m. and reassembled when called to order by the Presiding Officer (Mrs. HAGAN).

The PRESIDING OFFICER. The Senator from Michigan.

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010—Continued**

AMENDMENT NO. 1469

Mr. LEVIN. Madam President, the pending amendment Senator MCCAIN and I have offered would strike the \$1.75 billion that was added to the bill by a very close vote in committee to purchase additional F-22 aircraft that the military does not want, that the Secretary of Defense does not want, that the Chairman of the Joint Chiefs and all the Joint Chiefs do not want, that President Bush did not want, that the prior Chairman of the Joint Chiefs did not want, and they all say the same thing: The expenditure of these funds jeopardizes other programs which are important, and they provide aircraft we do not need.

These are fairly powerful statements from our leaders, both civilian and military leaders, in this country. I hope the Senate will heed them and reverse the action that was taken on a very close vote in the Armed Services Committee.

We received a few minutes ago a letter from the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. A letter is on its way also from the President. When I get that letter, I will, of course, read the President's letter. But for the time being, let me start with the letter we have received from the Chairman of the Joint Chiefs, as well as the Secretary of Defense, because it is succinct. It is to the point. It states the case for not adding additional F-22s as well as anything I have seen.

Dear Senators Levin and McCain: We are writing to express our strong objection to the provisions in the Fiscal Year 2010 National Defense Authorization Act allocating \$1.75 billion for seven additional F-22s. I believe it is critically important to complete the F-22 buy at 187—the program of record since 2005, plus four additional aircraft.

There is no doubt that the F-22 is an important capability for our Nation's defense. To meet future scenarios, however, the Department of Defense has determined that 187 aircraft are sufficient, especially considering the future roles of Unmanned Aerial Systems and the significant number of 5th generation Stealth F-35s coming on-line in our combat air portfolio.

It is important to note that the F-35 is a half generation newer aircraft than the F-22, and more capable in a number of areas such as electronic warfare and combating enemy air defenses. To sustain U.S. overall air dominance, the Department's plan is to buy roughly 500 F-35s over the next five years and more than 2,400 over the life of the program.

Furthermore, under this plan, the U.S. by 2020 is projected to have some 2,500 manned fighter aircraft. Almost 1,100 of them will be 5th generation F-35s and F-22s. China, by contrast, is expected to have only slightly more than half as many manned fighter aircraft by 2010, none of them 5th generation.

The F-22 program proposed in the President's budget reflects the judgment of two different Presidents, two different Secretaries of Defense, three chairmen of the Joint Chiefs of Staff, and the current secretary and chief of staff of the Air Force.

If the Air Force is forced to buy additional F-22s beyond what has been requested, it will