as the Congress provides the necessary funding, the United States will continue to develop and deploy effective missile defenses to protect the United States, our deployed forces, and our allies and partners. My Administration plans to deploy all four phases of the EPAA. While advances of technology or future changes in the threat could modify the details or timing of the later phases of the EPAA—one reason this approach is called ''adaptive''—I will take every action available to me to support the deployment of all four phases.

Sincerely,

BARACK OBAMA.

Mr. ALEXANDER. Madam President, ratifying this treaty would extend the policies of President Nixon, President Reagan, President George H.W. Bush, President George W. Bush, as well as Democratic Presidents.

I ask unanimous consent to have printed in the RECORD the statements of the last six Republican Secretaries of State, all of whom support ratification of the treaty.

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

[From the Washington Post, Dec. 2, 2010]

THE REPUBLICAN CASE FOR RATIFYING NEW START

(By Henry A. Kissinger, George P. Shultz, James A. Baker III, Lawrence S. Eagleburger, and Colin L. Powell)

Republican presidents have long led the crucial fight to protect the United States against nuclear dangers. That is why Presidents Richard Nixon, Ronald Reagan and George H.W. Bush negotiated the SALT I, START I and START II agreements. It is why President George W. Bush negotiated the Moscow Treaty. All four recognized that reducing the number of nuclear arms in an open, verifiable manner would reduce the risk of nuclear catastrophe and increase the stability of America's relationship with the Soviet Union and, later, the Russian Federation. The world is safer today because of the decades-long effort to reduce its supply of nuclear weapons.

As a result, we urge the Senate to ratify the New START treaty signed by President Obama and Russian President Dmitry Medvedev. It is a modest and appropriate continuation of the START I treaty that expired almost a year ago. It reduces the number of nuclear weapons that each side deploys while enabling the United States to maintain a strong nuclear deterrent and preserving the flexibility to deploy those forces as we see fit. Along with our obligation to protect the homeland, the United States has responsibilities to allies around the world.

The commander of our nuclear forces has testified that the 1,550 warheads allowed under this treaty are sufficient for all our missions—and seven former nuclear commanders agree. The defense secretary, the chairman of the Joint Chiefs of Staff and the head of the Missile Defense Agency—all originally appointed by a Republican president—argue that New START is essential for our national defense.

We do not make a recommendation about the exact timing of a Senate ratification vote. That is a matter for the administration and Senate leaders. The most important thing is to have bipartisan support for the treaty, as previous nuclear arms treaties did.

Although each of us had initial questions about New START, administration officials have provided reasonable answers. We believe there are compelling reasons Republicans should support ratification.

First, the agreement emphasizes verification, providing a valuable window into Russia's nuclear arsenal. Since the original START expired last December, Russia has not been required to provide notifications about changes in its strategic nuclear arsenal, and the United States has been unable to conduct on-site inspections. Each day, America's understanding of Russia's arsenal has been degraded, and resources have been diverted from national security tasks to try to fill the gaps. Our military planners increasingly lack the best possible insight into Russia's activity with its strategic nuclear arsenal, making it more difficult to carry out their nuclear deterrent mission.

Second, New START preserves our ability to deploy effective missile defenses. The testimonies of our military commanders and civilian leaders make clear that the treaty does not limit U.S. missile defense plans. Although the treaty prohibits the conversion of existing launchers for intercontinental and submarine-based ballistic missiles, our military leaders say they do not want to do that because it is more expensive and less effective than building new ones for defense purposes.

Finally, the Obama administration has agreed to provide for modernization of the infrastructure essential to maintaining our nuclear arsenal. Funding these efforts has become part of the negotiations in the ratification process. The administration has put forth a 10–year plan to spend $84 billion on the Energy Department's nuclear weapons complex. Much of the credit for getting the administration to add $14 billion to the originally proposed $70 billion for modernization goes to Sen. Jon Kyl, the Arizona Republican who has been vigilant in this effort. Implementing this modernization program in a timely fashion would be important in ensuring that our nuclear arsenal is maintained appropriately over the next decade and beyond.

Although the United States needs a strong and reliable nuclear force, the chief nuclear danger today comes not from Russia but from rogue states such as Iran and North Korea and the potential for nuclear material to fall into the hands of terrorists. Given those pressing dangers, some question why an arms control treaty with Russia matters. It matters because it is in both parties' interest that there be transparency and stability in their strategic nuclear relationship. It also matters because Russia's cooperation will be needed if we are to make progress in rolling back the Iranian and North Korean programs. Russian help will be needed to continue our work to secure ''loose nukes'' in Russia and elsewhere. And Russian assistance is needed to improve the situation in Afghanistan, a breeding ground for international terrorism.

Obviously, the United States does not sign arms control agreements just to make friends. Any treaty must be considered on its merits. But we have here an agreement that is clearly in our national interest, and we should consider the ramifications of not ratifying it.

Whenever New START is brought up for debate, we encourage all senators to focus on national security. There are plenty of opportunities to battle on domestic political issues linked to the future of the American economy. With our country facing the dual threats of unemployment and a growing federal debt bomb, we anticipate significant conflict between Democrats and Republicans. It is, however, in the national interest to ratify New START.

Mr. ALEXANDER. Madam President, I will vote to ratify this treaty. The vote we are about to have today is about whether to end debate. The majority's decision to jam through other matters during this lameduck session has poisoned the well, driven away Republican votes, and jeopardized ratification of this important treaty.

Nevertheless, this treaty was presented in the Senate on May 13, after 12 hearings in two committees and many briefings. The Foreign Relations Committee reported the treaty to the Senate on September 16 in a bipartisan vote of 14 to 4. For several months, there have been intense negotiations to develop a realistic plan and the funding for nuclear modernization. That updated plan was reported on November 17. The Senate voted to proceed to the treaty last Wednesday. I voted no because I thought there should still be more time allowed for amendment and debate.

Despite the flawed process, I believe the treaty and the nuclear modernization plan make our country safer and more secure. It will allow us to resume inspection and verification of disarmament of nuclear weapons in Russia. The head of our missile defense system says the treaty will not hamper our missile development program—and if it does, we can withdraw from the treaty.

All six former Republican Secretaries of State support ratification of this treaty. Therefore, I will vote to ratify the New START treaty and during the next several years vote to fund the nuclear modernization plan.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 3082, which the clerk will report.

The bill clerk read as follows:

Motion to concur in the House amendment to the Senate amendment, with an amendment to H.R. 3082, an act making appropriations for military construction, Department of Veteran Affairs and Related Agencies, for the fiscal year ending September 30, 2010, and for other purposes.

Pending:

Reid motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Reid amendment No. 4885 (to the House amendment to the Senate amendment), of a perfecting nature.

Reid amendment No. 4886 (to amendment No 4885), to change the enactment date.

Reid motion to refer the message of the House on the bill to the Committee on Apropriations, with instructions, Reid amendment No. 4887, to provide for a study.

Reid amendment No. 4888 (to (the instructions) amendment No. 4887), of a perfecting nature.

Reid amendment No. 4889 (to amendment No. 4888) of a perfecting nature.

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

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

The bill clerk proceeded to call the roll.

Mr. MCCONNELL. Madam 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.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

NET NEUTRALITY RULES

Mr. MCCONNELL. Madam President, later today the Federal Communications Commission is expected to approve new rules on how Americans access information on the Internet. There are a lot of people rightly concerned. The Internet has transformed our society, our economy, and the very way we communicate with others. It has served as a remarkable platform for innovation at the end of the 20th century and now at the beginning of the 21st century. All of this has been made possible because people have been free to create and to innovate, to push the limits of invention free from government involvement.

Now that could soon change. Today, the Obama administration, which has already nationalized health care, the auto industry, insurance companies, banks, and student loans, will move forward with what could be a first step in controlling how Americans use the Internet by establishing Federal regulations on its use. This would harm investment, stifle innovation, and lead to job losses. That is why I, along with several of my colleagues, have urged the FCC Chairman to abandon this flawed approach. The Internet is an invaluable resource. It should be left alone.

As Americans become more aware of what is happening here, I suspect many will be as alarmed as I am at the government's intrusion. They will wonder, as many already do, if this is a Trojan horse for further meddling by the government. Fortunately, we will have an opportunity in the new Congress to push back against new rules and regulations.

Madam President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. BROWN of Ohio. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. BROWN of Ohio. I thank the Chair.

Mr. INOUYE. Madam President, today the Senate will consider a 73-day continuing resolution, which will fund the government through March 4 of next year. This is a clean CR that is $1 billion above the spending level for fiscal year 2010. It meets the most basic needs of the Federal Government, and will allow Congress the time necessary to reconsider a funding bill next year. Most importantly, this temporary funding measure will avoid a government shutdown, which would be a terrible thing for the American people. That is the last thing any responsible Member of this body should wish for.

As I have previously stated, it is deeply unfortunate that we were unable to take up and pass the omnibus bill. An omnibus, as opposed to a CR, assumed responsibility for the spending decisions that are the most basic responsibility of Congress. I regret that our colleagues on the other side of the aisle, many of whom helped to craft the omnibus, failed to support it in the end. It was a far superior alternative to this short-term CR. The omnibus better protected our national security and would have brought a responsible conclusion to the fiscal year 2011 appropriations process.

The CR we have before us allows for a limited number of adjustments for programs that would lose either their funding or their authorization between now and March 4. The CR will also prevent the layoff of thousands of Federal workers and contractors during the holiday season.

When the 112th Congress convenes in January, I hope the Senate and the House will find a way to move forward in a responsible manner to conclude work on the fiscal year 2011 appropriations process. To do so, we will require a good-faith effort from Members of both parties to reach reasonable compromises on a range of issues. I hope that despite the current political environment, we can find a way to work together to fund critical priorities that will strengthen our economy and protect our Nation's security. That is what the American people expect of us, and they deserve no less. But for now, I urge my colleagues to support this 10-week continuing resolution.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to concur in the House amendment to the Senate amendment to H.R. 3082, the Full Continuing Appropriations Act, with an amendment.

Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, John F. Kerry, Richard J. Durbin, Mark L. Pryor, Robert Menendez, Amy Klobuchar, Patty Murray, Kay R. Hagan, Christopher J. Dodd, Daniel K. Inouye, Mark Begich, Al Franken, Robert P. Casey, Jr., Tom Carper.

The ACTING PRESIDENT pro tempore. By unanimous consent the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the motion to concur in the House amendment to the Senate amendment to H.R. 3082, with amendment No. 4885, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from New Hampshire (Mr. GREGG).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 82, nays 14, as follows:

[Rollcall Vote No. 288 Leg.]

YEAS—82

Akaka	Feinstein	Mikulski
Alexander	Franken	Murkowski
Barrasso	Gillibrand	Murray
Baucus	Graham	Nelson (FL)
Begich	Grassley	Pryor
Bennet	Hagan	Reed
Bennett	Harkin	Reid
Bingaman	Hutchison	Roberts
Bond	Inouye	Rockefeller
Boxer	Johanns	Sanders
Brown (MA)	Johnson	Schumer
Brown (OH)	Kerry	Sessions
Bunning	Kirk	Shaheen
Cantwell	Klobuchar	Shelby
Cardin	Kohl	Snowe
Carper	Kyl	Specter
Casey	Landrieu	Stabenow
Cochran	Lautenberg	Tester
Collins	Leahy	Thune
Conrad	Levin	Udall (CO)
Coons	Lieberman	Udall (NM)
Corker	Lincoln	Voinovich
Cornyn	Lugar	Warner
Dodd	Manchin	Webb
Dorgan	McCaskill	Whitehouse
Durbin	McConnell	Wicker
Ensign	Menendez	
Enzi	Merkley	

NAYS—14

Burr	Feingold	McCain
Chambliss	Hatch	Nelson (NE)
Coburn	Inhofe	Risch
Crapo	Isakson	Vitter
DeMint	LeMieux	

NOT VOTING—4

Bayh	Gregg
Brownback	Wyden

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 82, the nays are 14. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

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

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

The legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Madam President, if I could have the attention of the Senators, I have had a number of conversations with the Republican leader today. The collective goal is to move forward with the schedule as we know what it is. Senator MCCAIN has 15 minutes, Senator INOUYE has 10 minutes, and the farewell speech of our friend Senator SPECTER is going to be this morning. We hope to have agreement that at around 2 o'clock today, we will vote on a couple of judges. We will vote on the motion to concur on the continuing resolution and vote on cloture on the treaty. We don't have that down in writing yet, but that is the goal, so everyone understands. We will have four to five votes this afternoon around 2 o'clock. That would point us toward the final surge on this most important treaty. I had conversations with Senator KERRY and Senator KYL this morning. I think there is a way clear to complete this sometime tomorrow.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

FAREWELL TO THE SENATE

CLOSING ARGUMENT

Mr. SPECTER. Madam President, this is not a farewell address but, rather, a closing argument to a jury of my colleagues and the American people outlining my views on how the Senate and, with it, the Federal Government arrived at its current condition of partisan gridlock, and my suggestions on where we go from here on that pressing problem and the key issues of national and international importance.

To make a final floor statement is a challenge. The Washington Post noted the poor attendance at my colleagues' farewell speeches earlier this month. That is really not surprising since there is hardly anyone ever on the Senate floor. The days of lively debate with many Members on the floor are long gone. Abuse of the Senate rules has pretty much stripped Senators of the right to offer amendments. The modern filibuster requires only a threat and no talking. So the Senate's activity for more than a decade has been the virtual continuous drone of a quorum call. But that is not the way it was when Senator CHRIS DODD and I were privileged to enter the world's greatest deliberative body 30 years ago. Senators on both sides of the aisle engaged in collegial debate and found ways to find common ground on the Nation's pressing problems.

When I attended my first Republican moderates luncheon, I met Mark Hatfield, John Chafee, Ted Stevens, Mac Mathias, Bob Stafford, Bob Packwood, Chuck Percy, Bill Cohen, Warren Rudman, Alan Simpson, Jack Danforth, John Warner, Nancy Kassebaum, Slade Gorton, and I found my colleague John Heinz there. That is a far cry from later years when the moderates could fit into a telephone booth.

On the other side of the aisle, I found many Democratic Senators willing to move to the center to craft legislation—Scoop Jackson, JOE BIDEN, DAN INOUYE, Lloyd Bentsen, Fritz Hollings, PAT LEAHY, Dale Bumpers, David Boren, Russell Long, Pat Moynihan, George Mitchell, Sam Nunn, Gary Hart, Bill Bradley, and others. They were carrying on the Senate's glorious tradition.

The Senate's deliberate cerebral procedures have served our country well. The Senate stood tall in 1805 in acquitting Supreme Court Justice Samuel Chase in impeachment proceedings and thus preserved the independence of the Federal judiciary. The Senate stood tall in 1868 to acquit President Andrew Johnson in impeachment proceedings, and that preserved the power of the Presidency. Repeatedly in our 223-year history, the Senate has cooled the passions of the moment to preserve the institutions embodied in our Constitution which have made the United States the envy of the world.

It has been a great privilege to have had a voice for the last 30 years in the great decisions of our day: how we allocate our resources among economic development, national defense, education, environmental protection, and NIH funding; the Senate's role in foreign policy as we exercise it now on the START treaty; the protection of civil rights, as we demonstrated last Saturday, eliminating don't ask, don't tell; balancing crime control and defendants' rights; and how we have maintained the quality of the Federal judiciary, not only the high-profile 14 Supreme Court nominations I have participated in but the 112 Pennsylvanians who have been confirmed during my tenure on the Federal district courts or the Third Circuit.

On the national scene, top issues are the deficit and the national debt. The deficit commission has made a start. When raising the debt limit comes up next year, that will present an occasion to pressure all parties to come to terms on future taxes and expenditures, to realistically deal with these issues.

The Next Congress should try to stop the Supreme Court from further eroding the constitutional mandate of separation of powers. The Supreme Court has been eating Congress's lunch by invalidating legislation with judicial activism after nominees commit under oath in confirmation proceedings to respect congressional factfinding and precedents. That is stare decisis. The recent decision in Citizens United is illustrative. Ignoring a massive congressional record and reversing recent decisions, Chief Justice Roberts and Justice Alito repudiated their confirmation testimony given under oath and provided the key votes to permit corporations and unions to secretly pay for political advertising, thus effectively undermining the basic democratic principle of the power of one person, one vote. Chief Justice Roberts promised to just call balls and strikes. Then he moved the bases.

Congress's response is necessarily limited in recognition of the importance of judicial independence as the foundation of the rule of law, but Congress could at least require televising the Court proceedings to provide some transparency to inform the public about what the Court is doing since it has the final word on the cutting issues of the day. Brandeis was right when he said that sunlight is the best disinfectant.

The Court does follow the election returns, and the Court does judicially notice societal values as expressed by public opinion. Polls show that 85 percent of the American people favor televising the Court when told that a citizen can only attend an oral argument for 3 minutes in a chamber holding only 300 people. Great Britain, Canada, and State supreme courts permit television.

Congress has the authority to legislate on this subject, just as Congress decides other administrative matters such as what cases the Court must hear, time limits for decisions, number of Justices, the day the Court convenes, and the number required for a quorum. While television cannot provide a definitive answer, it could be significant and may be the most that can be done consistent with life tenure and judicial independence.

Additionally, I urge Congress to substantially increase funding for the National Institutes of Health. When NIH funding was increased from $12 to $30 billion annually and $10 billion added to the stimulus package, significant advances were made on medical research. It is scandalous—absolutely scandalous—that a nation with our wealth and research capabilities has not done more. Forty years ago, the President of the United States declared war on cancer. Had that war been pursued with the diligence of other wars, most forms of cancer might have been conquered.

I also urge colleagues to increase their activity on foreign travel. Regrettably, we have earned the title of ugly Americans by not treating other nations with proper respect and dignity.

My experience on congressional delegations to China, Russia, India, NATO, Jerusalem, Damascus, Bagdad, Kabul, and elsewhere provided an opportunity for eyeball-to-eyeball discussions with world leaders about our values, our expectations, and our willingness to engage in constructive dialog. Since 1984, I have visited Syria almost every year, and my extensive conversations with Hafiz al-Assad and Bashar al-Assad have convinced me there is a realistic opportunity for a peace treaty between Israel and Syria, if encouraged by vigorous U.S. diplomacy. Similar meetings I have been privileged to have with Muammar Qadhafi, Yasser Arafat, Fidel Castro, Saddam Hussein, and Hugo Chavez have persuaded me that candid, respectful dialog with our toughest adversaries can do much to improve relations among nations.

Now I will shift gears. In my view, a principal reason for the historic stature of the U.S. Senate has been the ability of any Senator to offer virtually any amendment at any time. This Senate Chamber provides the forum for unlimited debate with a potential to acquaint the people of America and the world with innovative proposals on public policy and then have a vote on the issue. Regrettably, that has changed in recent years because of abuse of the Senate rules by both parties.

The Senate rules allow the majority leader, through the right of his first recognition, to offer a series of amendments to prevent any other Senator from offering an amendment. That had been done infrequently up until about a decade ago and lately has become a common practice, and, again, by both parties.

By precluding other Senators from offering amendments, the majority leader protects his party colleagues from taking tough votes. Never mind that we were sent here and are paid to make tough votes. The inevitable and understandable consequence of that practice has been the filibuster. If a Senator cannot offer an amendment, why vote to cut off debate and go to final passage? Senators were willing—and are willing—to accept the will of the majority in rejecting their amendments but unwilling to accept being railroaded to concluding a bill without being provided an opportunity to modify it. That practice has led to an indignant, determined minority to filibuster and to deny 60 votes necessary to cut off debate. Two years ago on this Senate floor, I called the practice tyrannical.

The decade from 1995 to 2005 saw the nominees of President Clinton and President Bush stymied by the refusal of the other party to have a hearing or floor vote on many judicial and executive nominees. Then, in 2005, serious consideration was given by the Republican caucus to changing the longstanding Senate rule by invoking the so-called nuclear or constitutional option. The plan called for Vice President Cheney to rule that 51 votes were sufficient to impose cloture for confirmation of a judge or executive nominee. His ruling, then to be challenged by Democrats, would be upheld by the traditional 51 votes to uphold the Chair's ruling.

As I argued on the Senate floor at that time, if Democratic Senators had voted their consciences without regard to party loyalty, most filibusters would have failed. Similarly, I argued that had Republican Senators voted their consciences without regard to party loyalty, there would not have been 51 of the 55 Republican Senators to support the nuclear option.

The majority leader then scheduled the critical vote on May 25, 2005. The outcome of that vote was uncertain, with key Republicans undeclared. The showdown was averted the night before by a compromise by the so-called Gang of 14. Some nominees were approved, some rejected, and a new standard was established to eliminate filibusters unless there were extraordinary circumstances, with each Senator to decide if that standard had been met. Regrettably, again, that standard has not been followed as those filibusters have continued up to today. Again, the fault rests with both parties.

There is a way out of this procedural gridlock by changing the rule on the power of the majority leader to exclude other Senators' amendments. I proposed such a rule change in the 110th and 111th Congresses. I would retain the 60-vote requirement for cloture on legislation, with a condition that Senators would have to have a talking filibuster, not merely presenting a notice of intent to filibuster. By allowing Senators to offer amendments and a requirement for debate, not just notice, I think filibusters could be effectively managed, as they had been in the past, and still retain, where necessary, the opportunity to have adequate debate on controversial issues.

I would change the rule to cut off debate on judicial and executive branch nominees to 51 votes, as I formally proposed in the 109th Congress. Important positions are left open for months, and the Senate agenda today is filled with unacted-upon judicial and executive nominees, and many of those judicial nominees are in areas where there is an emergency backlog. Since Judge Bork and Justice Thomas did not provoke filibusters, I think the Senate can do without them on judges and executive officeholders. There is a sufficient safeguard of the public interest by requiring a simple majority on an up-down vote. I would also change the rule requiring 30 hours of postcloture debate and the rule allowing the secret hold, which requires cloture to bring the matter to the floor. Requiring a Senator to disclose his or her hold to the light of day would greatly curtail this abuse.

While political gridlock has been facilitated by the Senate rules, I am sorry to say partisanship has been increased greatly by other factors. Senators have gone into other States to campaign against incumbents of the other party. Senators have even opposed their own party colleagues in primary challenges. That conduct was beyond contemplation in the Senate I joined 30 years ago. Collegiality can obviously not be maintained when negotiating with someone simultaneously out to defeat you, especially within your own party.

In some quarters, ''compromise'' has become a dirty word. Senators insist on ideological purity as a precondition. Senator Margaret Chase Smith of Maine had it right when she said we need to distinguish between the compromise of principle and the principle of compromise. This great body itself was created by the so-called Great Compromise, in which the Framers decreed that States would be represented equally in the Senate and proportionate to their populations in the House. As Senate Historian Richard Baker noted: ''Without that compromise, there would likely have been no Constitution, no Senate, and no United States as we know it today.''

Politics is no longer the art of the possible when Senators are intransigent in their positions. Polarization of the political parties has followed. President Reagan's ''big tent'' has frequently been abandoned by the Republican Party. A single vote out of thousands cast can cost an incumbent his seat. Senator BOB BENNETT was rejected by the far right in his Utah primary because of his vote for TARP. It did not matter that Vice President Cheney had pleaded with the Republican caucus to support TARP or President Bush would become a modern Herbert Hoover. It did not matter that 24 other Republican Senators, besides BOB BENNETT, out of the 49 Republican Senators voted for TARP. Senator BENNETT's 93 percent conservative rating was insufficient.

Senator LISA MURKOWSKI lost her primary in Alaska. Congressman MIKE CASTLE was rejected in Delaware's Republican primary in favor of a candidate who thought it necessary to defend herself as not being a witch. Republican Senators contributed to the primary defeats of BENNETT, MURKOWSKI, and CASTLE. Eating or defeating your own is a form of sophisticated cannibalism. Similarly, on the other side of the aisle, Senator JOE LIEBERMAN, a great Senator, could not win his Democratic primary.

The spectacular reelection of Senator LISA MURKOWSKI on a write-in vote in the Alaska general election and the defeat of other Tea Party candidates in the 2010 general elections may show the way to counter right-wing extremists. Arguably, Republicans left three seats on the table in 2010—beyond Delaware, Nevada, and perhaps Colorado—because of unacceptable general election candidates. By bouncing back and winning, Senator MURKOWSKI demonstrated that a moderate centrist can win by informing and arousing the general electorate. Her victory proves that America still wants to be and can be governed by the center.

Repeatedly, senior Republican Senators have recently abandoned long-held positions out of fear of losing their seats over a single vote or because of party discipline. With 59 votes for cloture on this side of the aisle, not a single Republican would provide the 60th vote for many important legislative initiatives, such as identifying campaign contributors to stop secret contributions.

Notwithstanding the perils, it is my hope more Senators will return to independence in voting and crossing party lines evident 30 years ago. President Kennedy's ''Profiles in Courage'' shows the way. Sometimes a party does ask

too much. The model for an elected official's independence in a representative democracy has never been stated more accurately, in my opinion, than it was in 1774 by Edmund Burke, in the British House of Commons, when he said: '' . . . his [the elected representative's] unbiased opinion, his mature judgment, his enlightened conscience . . . [including his vote] ought not to be sacrificed to you, to any man or any set of men living.''

But, above all, we need civility. Steve and Cokie Roberts, distinguished journalists, put it well in a recent column, saying:

> Civility is more than good manners. . . . Civility is a state of mind. It reflects respect for your opponents and for the institutions you serve together. . . . This polarization will make civility in the next Congress more difficult—and more necessary—than ever.

A closing speech has an inevitable aspect of nostalgia. An extraordinary experience for me is coming to an end. But my dominant feeling is pride in the great privilege to be a part of this very unique body with colleagues who are such outstanding public servants. I have written and will write elsewhere about my tenure here, so I do not say farewell to my continuing involvement in public policy, which I will pursue in a different venue. Because of the great traditions of this body and because of its historic resilience, I leave with great optimism for the future of our country, a great optimism for the continuing vital role of the Senate in the governance of our democracy.

I thank my colleagues for listening.

(Applause, Senators rising.)

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Cloture having been invoked, the motion to refer falls.

Mr. WHITEHOUSE. Mr. 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.

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

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

TRIBUTE TO RETIRING SENATORS

ARLEN SPECTER

Mr. CASEY. Mr. President, I wish to offer some remarks in furtherance of what Senator SPECTER told us about this great institution. I wanted to spend a moment talking about his service to the Commonwealth of Pennsylvania.

When I came to the Senate in 2007 as a Senator-elect, one of the first things I did was go to see Senator SPECTER. He asked me at that time to go to lunch. From the moment I arrived in the Senate, he made it very clear to me that not only did the people of Pennsylvania expect, but he expected as well, that we work together.

From the beginning of his service in the Senate, way back when he was elected in 1980 all the way up to the present moment, he has been a Senator who was focused on building bipartisan relationships and, of course, focusing on Pennsylvania priorities. I am honored to have worked with him on so many priorities, whether it was veterans or workers, whether it was dairy farmers or the economy of Pennsylvania or whether it was our soldiers or our children or our families. We have worked on so many priorities. He has been a champion for our State and he has shown younger Senators the way to work together in the interests of our State and our country.

That bipartisanship wasn't just a sentiment; it was bipartisanship that led to results. I wish to point to one example of many I could list: the funding for the National Institutes of Health, that great bulwark and generator of discoveries that cures diseases and creates jobs and hope for people often without hope because of a disease or a malady of one kind or another. That bipartisanship Senator SPECTER demonstrated every day in the Senate has achieved results for Pennsylvania, for sure, in terms of jobs and opportunity and hope but also results for the Nation as well.

I know we are short on time, but I wanted to make one note about the history of his service. No Senator in the history of the Commonwealth—and we have had 55 or so Senators, depending on how you count those who have been elected and served, but of those 55, no Senator has served longer than Senator SPECTER. I recall the line—I think it is attributed to Abraham Lincoln, but it is a great line about what years mean and what service means, and I will apply the analogy to Senate service. The line goes something like this: It is not the years in a life, it is the life in those years. I am paraphrasing that. The same could be said of the life of a Senator. It is not just that he served 30 years. That alone is a singular, unprecedented achievement. In fact, the Senator he outdistanced in a sense in terms of years of service was only elected by the people twice. Senator SPECTER was elected by the people of Pennsylvania five times. But it is the life in those Senate years, the work in those Senate years, the contribution to our Commonwealth and our country in those Senate years that matters and has meaning. His impact will be felt for generations—not just decades but for generations.

Let me close with this. There is a history book of our State that came out in the year 2002, and it has a series of stories and essays and chapters on the history of Pennsylvania. It is a fascinating review of the State's history. The foreword to that publication was written by Brent E. Glass, at the time the executive director of the Pennsylvania Historical and Museum Commission. He wrote this in March of 2002. It is a long foreword which I won't read, but he said in the early part of this foreword the following:

> One way to understand the meaning of Pennsylvania's past is to examine certain places around the State that are recognized for their significance to the entire Nation.

Then he lists and describes in detail significant places in Pennsylvania that have a connection to our history, whether it is the Liberty Bell or the battlefield of Gettysburg; whether it is the farms in our Amish communities or whether it is some other place of historic significance. I have no doubt whatsoever that if the same history were recounted about the people who had an impact on our Commonwealth—the people who moved Pennsylvania forward; the people who in addition to moving our State forward had an impact on the Nation—if we make a list of Pennsylvanians who made such contributions, whether it would be William Penn or Benjamin Franklin—and you can fill in the blanks from there—I have no doubt that list would include Senator ARLEN SPECTER. He is a son of Kansas who made Pennsylvania his home. He is a son of Kansas who fought every day for the people of Pennsylvania.

So it is the work and the achievements and the passion and the results in those years in the Senate that will put him on the very short list of those who contributed so much to our Commonwealth that we love and to our country that we cherish.

For all of that and for so many other reasons, as a citizen of Pennsylvania, a resident of Pennsylvania, a citizen of the United States but as a Senator—I want to express my gratitude to Senator ARLEN SPECTER for his 30 years of service, but especially for what those 30 years meant to the people, sometimes people without a voice, sometimes people without power.

Thank you, Senator SPECTER.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to join my colleagues in noting the farewell address of Senator ARLEN SPECTER is an inspiring moment in the Senate.

It has been my great honor to serve with Senator SPECTER and to be a member of the Senate Judiciary Committee with him as well. I think of his contribution to the Senate at many levels. I certainly appreciate what he did for the Senate and for the Nation when he chaired the Judiciary Committee and served on that committee, particularly when it came to the hearings involving the appointment of new Supreme Court Justices. Without fail, Senator SPECTER at those hearings would always have dazzling insight into the current state of the law and the record of the nominee. I couldn't wait for him each time there was a hearing to see what his tack would be. It always reflected a thoughtful reflection on the historic moment we faced with each nominee. The questions he asked, the positions he took, the statements he made, all made for a better record for the United States as the

Senate proceeded to vote on those historic nominations.

But there is one area he touched on ever so slightly that I believe is equal to his mark on the Senate Judiciary Committee. This man, Senator ARLEN SPECTER, with the help in some respects and in some efforts by Senator TOM HARKIN, has done more to advance the cause of medical research in his time than virtually any other Member of the Congress. He had a single-minded determination to advance medical research and to put the investment in the National Institutes of Health. On the House side, Congressman John Porter joined him in that early effort—John Porter of Illinois—but time and again ARLEN SPECTER would have as his last bargaining chip on the table, whenever there was a negotiation, that we needed to put more money in the National Institutes of Health. I know he was probably inspired to that cause by many things, but certainly by his own life experience where he has successfully battled so many medical demons and is here standing before us as living proof that with his self-determination and the advancement of science, we can overcome even some of the greatest diseases and maladies that come our way.

He was, to me, a role model many times as he struggled through cancer therapy and never missed a bell when it came to presiding over a committee hearing or coming to the floor to vote. There were times when all of us knew he was in pain. Yet he never let on. He did his job and did it with a gritty determination, and I respect him so much for it. That personal life experience, I am sure, played some role in his determination to advance medical research.

So as he brings an end to his Senate career, there are countless thousands who wouldn't know the name ARLEN SPECTER who have been benefited by this man's public service and commitment to medical research. I thank him for that as a person, as does everyone in this Chamber who has benefited from that cause in his life.

I also think, as I look back on his work on the stimulus bill when he was on the other side of the aisle, that it took extraordinary courage and may have cost him a Senate seat to step forward and say, I will join with two other Republicans to pass a bill for this new President Obama to try to stop a recession and to give some new life to this economy. There were very few with the courage to do it. He was one of them. Sitting with him in the meetings where the negotiations were underway, then-Republican Senator ARLEN SPECTER drove hard bargains in terms of bringing down the overall cost of the project and dedicating a substantial portion—$10 billion, if I am not mistaken—to the National Institutes of Health. Again, the final negotiation on the stimulus bill for America included ARLEN SPECTER's demand that the National Institutes of Health have additional research dollars. His commitment to make that happen did make it happen. Those three votes from the Republican side of the aisle made it happen: a stimulus which averted, in my mind, a terrible, much worse recession, maybe even a depression in America. It was the best of the Senate, when a Senator had the courage to stand up, take a position, risk his Senate seat because he believed in it, and do some good for America which would benefit millions, as his vote and his effort did.

When I look at those whom I have served with in the Senate, there are precious few who meet the standards for ARLEN SPECTER. I am going to miss him for so many reasons, but I know his involvement in public life will not quit. That is often a cliche we hear on the floor after a farewell address. But I know it because he has been hammering away at me every single day about bringing those cameras over to the Supreme Court. So even when he leaves this body, if it is not done then, I am sure I am going to hear from him again on televising the Supreme Court proceedings. I give my word that as long as I am around here, Senator, I will carry that banner for you, and if I have a chance to help you pass that measure at some point in the future I am going to do it because I think it is the right thing to do and I know it has meant so much to you.

The Senate's loss is America's gain as he becomes a public figure in a different life. But during his tenure in the Senate he has graced this institution with an extraordinary intelligence, a determination, and a belief that the national good should rise above any party cause. I am going to miss ARLEN SPECTER and I thank him for being my friend.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I was pleased to have an opportunity to hear most of the remarks made this morning by my friend and colleague from Pennsylvania and others who have spoken on the occasion of his retirement from the Senate.

I couldn't help but remember when he was campaigning in his first race for the Senate and I had been asked to be available to help out in some campaigns that year. I was a brandnew Senator and didn't know a lot of the protocols, but when I heard ARLEN SPECTER wanted me to come up and speak in Pennsylvania somewhere during his campaign, I decided I would accept the invitation, although I was a little apprehensive about it, about how I would be received as a Republican from Mississippi going up and helping this new candidate who was running on the Republican ticket too. His wife Joan was a member of the city council in Philadelphia, as I recall—very well respected. Anyway, I enjoyed getting to know the Senator and his wife better during those early campaign events. Then, after he was elected, he asked me to make one more trip up.

He could not go to Erie, PA, and keep an invitation that he wanted to accept and speak to a retired group of businessmen. These were older gentlemen who had been prominent in Pennsylvania business and political life. I worried about it—that they would not think much about me. But I went up there and nearly froze to death. I thought this is just a payback for the Civil War, I guess, that ARLEN never got to express. He was going to do his part to help educate me and refine me in the ways of modern America. But that led to an entire career here working alongside him on both sides of the aisle, which I have enjoyed very much.

We have all learned from him the commitment that he makes to the job, the seriousness of purpose that he brings to committee work, and he has truly been an outstanding leader in the Senate, through personal performance and his serious and impressive record of leadership.

I am glad to express those thoughts today and wish ARLEN well in the years ahead. We will still have a friendship that will be appreciated. I look forward to continuing that relationship.

I yield the floor.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Pennsylvania is recognized.

NEW START TREATY

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly about the START Treaty, the consideration of which is now pending before the Senate, and to urge my colleagues to move forward to ratify this important treaty.

I have long been interested in the relationship between the United States and, at that time, the Soviet Union, following the end of World War II, with the emergence of our Nation and the Soviets emerging as the two great world powers.

In college, after the war, I devoted a good bit of study to U.S.-U.S.S.R. relations. I wrote a senior thesis on it as a major in political science and international relations, and I have continued that interest throughout my tenure in the Senate. One of my first initiatives, in 1982, after being elected in 1980, was to propose a resolution calling for a summit meeting between the President of the United States and the head of the Soviet Union.

President Reagan had a practice of making Saturday afternoon speeches—or Saturday morning speeches—on the radio. One day I listened in and heard him talk about the tremendous destructive power which both the U.S. and U.S.S.R. had, and how they had the capacity to destroy each other. Of course, that capacity became the basis of the mutual assured destruction period. But it seemed to me that what ought to be done was there ought to be a dialog and an effort to come to terms with the Soviet Union to reduce the tension and reduce the threat of nuclear war. I, therefore, offered a resolution to propose that.

My resolution was resisted by one of the senior Senators, Senator John Tower of Texas, who was chairman of the Armed Services Committee. When I proposed the resolution, it brought Senator Tower to the floor with a very really heated debate, with Senator Tower challenging my resolution and challenging my knowledge on the subject.

Early on, after being elected and starting to serve in 1981, I had traveled to Grand Forks, ND, to see the Missileman II. I went to Charleston, SC, to see our nuclear submarine fleet, and I went to Edwards Air Force Base in California to look at the B1–B, the B–1 bomber, at that time. I was prepared to take on these issues.

Senator Tower opposed it, offered a tabling motion, and standing in the well of the Senate, as if it was yesterday, I can remember that Senator Laxalt walked down the aisle from the door entering this Chamber and voted no. He started to walk up the aisle to the Republican cloakroom.

Senator Tower chased him and said: Paul, you don't understand. This is a tabling motion. I am looking for an ''aye.''

Laxalt turned and said: I understand it is a tabling motion, and I voted the way I wanted to, no. I want the resolution to go forward.

Senator Tower said: Well, ARLEN SPECTER is trying to tell the President what to do.

Senator Laxalt replied: Well, why shouldn't he? Everybody else does, he said jokingly.

That tabling motion was defeated 60 to 38. When a vote came up on the final resolution, it passed with 90 in favor and 8 in opposition. We know what happened. There were negotiations and President Reagan came up with the famous dictum, ''trust, but verify.''

I was then active in the negotiations, the discussions on the Senate observer group in Geneva around 1987. Then our record is plain that we have approved by decisive numbers three very important treaties. START I was approved by the Senate in 1992, with a vote of 93 to 6. The START II treaty was approved in 1996 by a vote of 87 to 4. The Moscow Treaty of 2003 was approved by a vote of 95 to 0.

We have heard extensive debate on the floor of the Senate. People have questioned the adequacy of the verification. I think those arguments have been answered by Senator JOHN KERRY, chairman of the Foreign Relations Committee, who has done such an excellent job in managing the treaty. Questions have been raised about the missile defense, and I think that, too, has been adequately responded to. This has nothing to do with the issue of missile defense.

For me, a very key voice in this entire issue has been the voice of Senator RICHARD LUGAR, who has pointed out that this treaty does not deal with these collateral issues. This treaty is, directly stated, an extension of the treaty which has been in effect up until the present time and has worked so very well.

Strenuous arguments have been made about modernizing our nuclear forces. Well, that is a subject for another day and another time. But those who have offered that advocacy have found a response from the administration with millions of dollars, from $85 million. That, as I say, belongs to another day and another analysis. But those who have advocated for modernization have gained very substantial responses from the administration on that subject. Curious, in that context, that notwithstanding that very substantial funding, it hasn't won them over, hasn't diminished their resistance to the treaty. Also, curious in the context of those expenditures on an issue, which didn't directly involve the necessity for modernization, there is a real question as to whether there has been adequate debate and study on that subject, on the hearings. It isn't part of the START treaty debate and discussion about the expenditure of that kind of money, considering the kind of a deficit we have, and also considering the advocates of those modernization additions with the great expense have been some of the loudest voices objecting to governmental expenditures.

Well, we ought to spend what it takes for defense. That is the fundamental purpose of the Federal Government, to protect its citizens. But real questions arise in my mind as to whether this was the proper place to have that argument, but that has gone by the boards.

I think the letter which Admiral Mullen, Chairman of the Joint Chiefs of Staff, has issued about the conclusion of the military, that this is a good treaty; about Admiral Mullen's statement that he personally was involved in the negotiations; that if the START treaty was not to be ratified there would be U.S. military resources that would have to be devoted to certain other issues which were taken by START so that it leads to an unequivocal recommendation by our No. 1 military expert, the Chairman of the Joint Chiefs of Staff.

One other very important element that has been discussed, but cannot be over emphasized, is the destructive consequence of having this treaty rejected in terms of our relations with Russia.

Russia is vitally important to us as we deal with Iran, vitally important to us as we deal with North Korea, vitally important to us as we deal with a whole range of international problems. For us to come right to the brink and then to say no and reject it and seek to reopen it would have a very serious effect on our relations with Russia, which are so important to our national security. The other nations of the world are watching in the wings what we do here. It would have a domino effect on our relationship with other nations.

It comes in a context where it is subject to being misunderstood as a political matter in the United States. I do not question for a moment the motivation of those who oppose START. Those who have spoken against it have been some of our body's most knowledgeable Members on this important subject. But there is so much publicity about some questioning whether President Obama can have both the START treaty and repeal of don't ask, don't tell at the same time, there has been so much public comment about not wanting to see President Obama have another victory before the end of the year, so much comment which raises a question as to whether opposition is politically motivated.

If the Russians and the other nations of the world cannot rely upon the Senate to make a judgment on the merits without regard to the politics or the appearance of politics, it has very serious consequences for our standing in the international community of nations.

For those reasons, I do believe we ought to move ahead promptly. We ought to ratify this treaty. We ought to continue our strenuous efforts to rid the world of the threat of nuclear war. This is part of that ongoing process.

I urge my colleagues to ratify this important treaty.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Alabama is recognized.

ARLEN SPECTER

Mr. SESSIONS. Mr. President, I see my other colleagues. I do wish to talk about one or two judicial nominees, but I want to say first how much I appreciate Senator SPECTER.

I have had the honor to serve on the Senate Judiciary Committee with Senator SPECTER the entire time I have been in the Senate—going on 14 years, I guess. No one has a clearer legal mind. The clarity of his thought and expression is always impressive to me. And as someone who practiced law, I see the great lawyer skills he possesses.

Also, I note that he has not just today but throughout his career defended the legitimacy of the powers of the Senate. He was very articulate over the past number of years in criticizing the abuse of filling the tree, where bills can be brought up and amendments are not allowed. He has believed that is an unhealthy trend in the Senate, and he has been one of the most effective advocates in opposition to it.

He sponsored and helped pass the Armed Career Criminal Act. He was one of the leaders in that. Having been a longtime prosecutor in Philadelphia, I like to tease our good friend Senator LEAHY that he was a prosecutor, but it was in Vermont. Senator SPECTER had to deal with a lot of crime in Philadelphia and was consistently reelected there for his effectiveness and is a true source of insight into crime in America and has been an effective advocate for fighting crime.

I note also that he has a good view about a Senator. He respects other Senators. He was talking with me one time or I was sharing with him my concern about a matter, and he used a phrase I heard him use more than once: Well, you are a U.S. Senator. In other words, if you do not like it, stand up and defend yourself. He respected that, even if he would disagree.

I remember another time Senator SPECTER was on the floor. I had just arrived in the Senate. I wanted him to do something—I have long since forgotten what.

I said: Senator SPECTER, you could vote for this, and back home, you could say thus and so.

He looked right at me, and he said: Senator, I don't need your advice on how to conduct myself back home politically.

I learned a lesson from that. I never told another Senator that, I say to Senator SPECTER. Who am I to tell you how to conduct yourself politically back home in the State of Pennsylvania?

Senator SPECTER chaired the Judiciary Committee during the confirmations of Chief Justice Roberts and Justice Alito. He was the leading Republican chair at that time. He raised questions about the nominees. But as chairman of the committee, with the votes and support of his Republican colleagues, he protected our rights, he protected our interests. He did not back down one time on any action by the other party that would have denied the ability to move that nomination forward to a vote and protect the rights of the parties on our side.

Those are a few things that come to mind when I think about the fantastic service he has given to the Senate. He is one of our most able Members, one of our most effective defenders of senatorial prerogative and independence, one of our crime fighters without par, and one of the best lawyers in the Senate, a person who is courageous and strong. Even when he was conducting those very intense Alito and Roberts hearings—it was just after he had serious cancer treatment, the chemotherapy. I know he didn't feel well, but he was fabulous in conducting himself at that time. Throughout all of that treatment, his work ethic surpassed by far that of most Senators in this body. It has been an honor to serve with him.

I see my other colleagues. I know Senator COBURN wanted to come down. He was told he might be able to speak around noon.

SENATOR SPECTER

Mr. BENNET. Mr. President, first, before I get into my remarks, I wish to say how much I appreciated the remarks of Senator SPECTER today. I, for one, hope Senators on both sides of the aisle, Democrats and Republicans, heed his closing remarks as he described them and also the farewell remarks of so many Senators over the last 2 or 3 weeks. I think there is a lot of wisdom we can apply to our work going forward.

I thank Senator SPECTER very much for his service.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

NEW START TREATY

Mr. BEGICH. Mr. President, I rise in support of the New START treaty. I do so for several reasons.

First, of course, the treaty is essential for national security. It promotes transparency and stability between the two countries that possess the majority of the world's nuclear weapons. It will decrease the likelihood of a nuclear weapon falling into the hands of a rogue nation.

For the residents of my State, the treaty is close to home, literally. Alaska and Russia are less than 3 miles apart at the closest point in the Bering Sea. Commerce, scientific, educational, and cultural exchanges are commonplace between Alaska and our Russian neighbors. So peaceful coexistence with Russia is more than an abstract concept to my constituents; it is a way of life.

The second reason this treaty is personal for Alaskans is because of our close proximity to North Korea. When North Korea's leader exercises his political muscle by firing test missiles or threatening to attack the United States, Alaskans get nervous because we are most directly in the line of fire.

Thankfully, my home State is home to the ground-based missile defense system. Based at Fort Greely, this sophisticated system of more than two dozen ground-based interceptors is maintained and operated by highly trained members of the Alaska National Guard. I was pleased to show Defense Secretary Robert Gates this state-of-the-art system last year. I worked with my colleagues on both sides of the aisle to make sure this system gets the resources and funding it warrants to protect us. I will continue to do that.

I would be troubled if the New START treaty impacted our Nation's missile defense system. I know some of my colleagues on the other side of the aisle would be equally concerned. Fortunately, such concerns are unfounded. I am confident nothing in this treaty will limit our ability to defend ourselves and our allies against a ballistic missile attack from a rogue nation.

The preamble of this treaty simply acknowledges the relationship between offensive and defensive strategic arms and verifies that current defensive strategic arms do not undermine the offensive forces. The preamble is nonbinding. There is no action or inaction arising from this statement.

The section of the treaty prohibiting conversion of missile silos or launchers for ballistic missile defense purposes does not impact us. It is not something we are planning to do. In fact, we are in the process of completing a missile field in Alaska to field interceptors. The field will have seven spare silos to deploy more interceptors if we need them. We are moving forward with the phased adaptive approach to protect our allies, with the two-stage interceptor as a hedge.

The unilateral statement by Russia also is nonbinding and is not even part of the treaty. Our own unilateral statements make it clear that this treaty will not constrain missile defense in any way and that we will continue improving and deploying missile defense systems to protect us and our allies. These types of statements in a treaty are not unprecedented. The right to withdraw has been stated in many previous treaties—the nonproliferation treaty and the START treaty. Those statements did not stop the Senate from ratifying those treaties. The language in the New START treaty should not either. In fact, this treaty actually helps missile defense because it lessens restrictions on test targets that were in the previous treaty. We will have more flexibility in testing.

We have heard from our national security leaders that this treaty does not constrain ballistic missile defense in any way. Secretary of State Hillary Clinton, Secretary of Defense Robert Gates, Chairman of the Joint Chiefs of Staff Mike Mullen, Missile Defense Agency Director LTG Patrick O'Reilly, former Strategic Commander GEN Kevin Chilton, and countless others confirm that this treaty in no way limits our ballistic missile defense plans. We cannot disregard the views of our Nation's most senior military and civilian leaders on this critical issue because of politics.

We have had almost 7 months to consider this treaty. We have had numerous hearings and briefings—more on this treaty than any other single item I have been involved in since I have been here. In that time, I heard no current or former national security leader say this treaty is a detriment to ballistic missile defense. What they say and what we know is that the New START treaty will strengthen national security and will not constrain ballistic missile defense.

For all of these reasons, I urge a prompt approval of this vital treaty for our Nation and our world.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BENNET. Mr. President, I ask unanimous consent that my statement and that of Senator UDALL appear as in executive session and that the time be charged postcloture.

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

NOMINATION OF BILL MARTINEZ

Mr. BENNET. Mr. President, I rise today to state my strong support for the nomination of Bill Martinez to serve on the U.S. District Court for the District of Colorado. Having recommended his candidacy to the President, along with my colleague Senator UDALL, I believe he is eminently qualified for the Federal bench.

Bill was nominated to serve on the U.S. District Court for the District of

Colorado in February of this year. His nomination cleared the Senate Judiciary Committee in April. Since then, he has been in a state of limbo awaiting a final vote allowing him to serve. That is why I am very grateful for the hard work of the Judiciary Committee, both Democrats and Republicans, who have moved this nomination forward and are trying to finish it before the end of the 111th Congress.

Our State has two vacancies on the district court. Both vacancies are over 2 years old, with one close to 3 years old. Because there are only seven Federal judgeships in our State, the other judges are facing ever-growing caseloads, resulting in significant backlogs for those seeking justice.

In fact, the administrative office of the courts has declared the vacancy situation in Colorado a judicial emergency. It is important that we move these nominations forward to prevent further backlogs and judicial emergencies, and I pledge to work with my colleagues on both sides of the aisle to make sure we can work together to confirm judicial nominees such as Bill Martinez in a timely manner.

I believe, after careful review of Bill Martinez's experience, my colleagues will see this is someone well worth confirming. Bill is currently at a law firm in Denver, where he primarily represents plaintiffs in Federal and State courts and before arbitrators and administrative agencies. He is certified as AAA arbitrator in employment disputes.

Prior to starting his own firm, he was a regional attorney of the U.S. EEOC in its Denver district office. Senator UDALL will be going into more detail regarding this nominee.

There, Bill had responsibility for the Commission's legal operations and Federal court enforcement litigation in the office's six-State jurisdiction.

Before joining the EEOC, Bill worked in private practice on employment, securities and commercial litigation.

I know some want to focus on his pro bono work and try to make political assumptions about him from a small portion of his career. But I know Bill, and he is the sum of a lot of great work in the public and private sectors.

For example, while at the EEOC Bill was in charge of an age discrimination class action suit that resulted in a settlement of nearly $200 million for 3,200 laid off engineers. This is one of the largest ever age discrimination class actions.

Bill began his career at the Legal Assistance Foundation of Chicago, representing indigent clients and other individuals seeking low- or no-cost counsel. This is a nominee whose breadth of legal experience has spanned the profession, and I think for that reason alone he should be confirmed.

Over the course of his legal career, Bill has been lead or colead counsel in complex litigation, resulting in 18 published opinions from Federal and State courts in Colorado and Illinois. Bill's time as a litigator and advocate has provided him with the necessary skills and perspective to deal with the diverse docket that comes before U.S. district court judges.

Beyond his distinguished legal skills, Bill's personal story is a tribute to this country and embodies the American dream. He is an immigrant success story. Bill was born in Mexico and immigrated with his family to the United States at a young age. He was the first in his family to attend college and law school. His rise through the legal profession is a great example for bright, young law students, and, indeed, for us all.

I urge my colleagues to vote for Bill's nomination. He is a model nominee for the Federal district court, an expert in labor and employment law who will serve Coloradans well. Bill Martinez has the experience and strong sense of civic responsibility we need on the Federal bench.

I thank the chairman for his guidance of this nomination, and I urge my colleagues to vote to confirm Bill to Colorado 's Federal bench.

I also would be remiss, if I didn't thank my senior Senator, MARK UDALL, for his extraordinary efforts to make sure we had a fair, balanced, and thoughtful search process. I think that process for this appointment and for the others whom we have done already are a model for the country, and it is a real testament to Senator UDALL's leadership.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

NEW START TREATY

Mr. CORKER. Mr. President, I know today is a pretty monumental day as it relates to the START treaty we have been discussing for some time, and tomorrow will be a big day in that regard too. I think there is nothing more we care about than our country being secure. I have two daughters who are 21 and 23, a wonderful wife, and extended family, as does every Member in this room, and there is nothing I take more seriously than making sure our country is secure.

So as a member of the Foreign Relations Committee, when we entered into discussions relating to the START treaty, I attended 11 of the 12 hearings. I have been in multiple classified meetings, I have spoken to military leaders across our country, and I have been in so many intelligence briefings that I have begun to speak like an intelligence officer. So I have taken this responsibility very seriously.

I wish to say there are numbers of people who obviously are still making up their mind regarding this treaty, and that is why I came to the floor. One of the things we do when we end up ratifying a treaty is we have something called a resolution of ratification. No doubt this treaty was negotiated by the President and his team—the Secretary of State and others who work with Secretary Clinton—and no doubt that is done by people on the other side of the aisle. But what I would like to bring to the attention of my colleagues is that whenever we ratify a treaty, we do so through something called a resolution of ratification. For those who might not have been involved in the markup, I would like for everyone in this body to know this resolution of ratification, thanks to the good will of the chairman of our committee, was mostly drafted by Republicans. It was drafted, with the approval, certainly, of the chairman, but this was drafted by Senator LUGAR, by myself, Senator KYL had tremendous input into this, and Senator ISAKSON.

So the resolution of ratification we are amending today had tremendous Republican input. As a matter of fact, it was done mostly by Republicans. As a matter of fact, this resolution of ratification is called the Lugar-Corker resolution. This is what came out of committee.

One of the things that has concerned people on both sides of the aisle has been this whole issue of modernization. I have seen something of beauty over the last year. About 1 year ago, I met with Senator KYL in the Senate Dining Room, and we began looking at the modernization of our nuclear arsenal. Many people have focused during this debate on the fact that we have 1,550 warheads as a limitation, if you will, in this treaty. But they fail to realize we have over 5,000 warheads in our nuclear arsenal, all of which need to be modernized, and all of which are getting ready to be obsolete if we don't make the investment.

As a matter of fact, the Presiding Officer and I have visited some of the labs throughout our country. There are seven facilities we have in this country that deal with our nuclear arsenal. Many of those are becoming obsolete and must have needed investment.

I have watched Senator KYL over the last year, in a very methodical way—under his leadership, with me as his wing man, and others—working to make sure the proper modernization of our nuclear arsenal takes place. There is no question in my mind—there is no question in my mind—if it were not for the discussion of this treaty, we would not have the commitments we have today on modernization.

This is the 1251 report that is required by Defense authorization. This has been updated twice due to the efforts of Republicans, led by Senator KYL, who has done an outstanding job. This has been updated twice. First, we had a 5-year update about 60 days ago, and we had a 10-year update that came thereafter. This is our nuclear modernization plan.

Mr. President, I ask unanimous consent to have printed in the RECORD the nuclear modernization plan as part of this debate.

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

NOVEMBER 2010 UPDATE TO THE NATIONAL DEFENSE AUTHORIZATION ACT OF FY2010 SECTION 1251 REPORT

NEW START TREATY FRAMEWORK AND NUCLEAR FORCE STRUCTURE PLANS

Introduction

This paper updates elements of the report that was submitted to Congress on May 13, 2010, pursuant to section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) (''1251 Report'').

2. National Nuclear Security Administration and modernization of the complex—an overview

From FY 2005 to FY 2010, a downward trend in the budget for Weapons Activities at the National Nuclear Security Administration (NNSA) resulted in a loss of purchasing power of approximately 20 percent. As part of the 2010 Nuclear Posture Review, the Administration made a commitment to modernize America's nuclear arsenal and the complex that sustains it, and to continue to recruit and retain the best men and women to maintain our deterrent for as long as nuclear weapons exist. To begin this effort, the President requested a nearly 10 percent increase for Weapons Activities in the FY 2011 budget, and $4.4 billion in additional funds for these activities for the FY 2011 Future Years Nuclear Security Plan (FYNSP). These increases were reflected in the 1251 report provided to Congress in May 2010.

The Administration spelled out its vision of modernization through the course of 2010. In February, soon after the release of the President's budget, the Vice President gave a major address at the National Defense University in which he highlighted the need to invest in our nuclear work force and facilities. Several reports to Congress provided the details of this plan, including: NNSA's detailed FY 2011 budget request, submitted in February; the strategy details in the Nuclear Posture Review (NPR) (April); the 1251 report (May); and the multi-volume Stockpile Stewardship and Management Plan (SSMP) (June). Over the last several months, senior Administration officials have testified before multiple congressional committees on the modernization effort.

The projections in the Future Years Nuclear Security Plan (FYNSP) that accompanied the FY 2011 budget submission and the 1251 report by the President are, appropriately called, 'projections.' They are not a 'fixed in stone' judgment of how much a given project or program may cost. They are a snapshot in time of what we expect inflation and other factors to add up to, given a specific set of requirements (that are themselves not fixed) over a period of several years. Budget projections, whether in the FYNSP and other reports, are evaluated each year and adjusted as necessary.

Indeed, planning and design, as well as budget estimates, have evolved since the budget for FY 2011 was developed. Notably, stockpile requirements to fully implement the NPR and the New START Treaty have been refined, and the NNSA has begun executing its Stockpile Stewardship and Management Plan (SSMP). This update will discuss, in particular, evolving life extension programs (LEP) and progress on the designs of key facilities such as the Uranium Processing Facility (UPF) and the Chemistry and Metallurgy Research Replacement (CMRR).

Based on this additional work, and the development of new information and insights, the President is prepared to seek additional resources for the Weapons Activities account, over and above the FY 2011 FYNSP, for the FY 2012 budget and for the remainder of the FYNSP period (FY 2013 through FY 2016).

Specifically, the President plans to request $7.6 billion for FY 2012 (an increase of $0.6 billion over the planned FY 2012 funding level included in the FY 2011 FYNSP). Thus, in two years, the level of funding for this program requested will have increased by $1.2 billion, in nominal terms, over the $6.4 billion level appropriated in FY 2010. Altogether, the President plans to request $41.6 billion for FY 2012–2016 (an increase of $4.1 billion over the same period from the FY 2011 FYNSPT—).

Given the extremely tight budget environment facing the federal government, these requests to the Congress demonstrate the priority the Administration's places on maintaining the safety, security and effectiveness of the deterrent.

3. NNSA—Program Changes and New Requirements since submission of the 1251 Report

A. Update to Stockpile Stewardship and Sustainment

Surveillance—Surveillance activities are essential to enabling continued certification of the reliability of the stockpile without nuclear testing. Surveillance involves withdrawing weapons from deployment and subjecting them to laboratory tests, as well as joint flight tests with the DoD to assess their reliability. These activities allow detection of possible manufacturing and design defects as well as material degradation over time. NNSA has also received recommendations from the National Laboratory directors, the DoD, the STRATCOM Strategic Advisory Group, and the JASON Defense Advisory Panel that the nuclear warhead/bomb surveillance program should be expanded.

In response to this broad-based advice, NNSA has reviewed the stockpile surveillance program and its funding profile. From FY 2005 through FY 2009, funding for surveillance activities, when adjusted for inflation, fell by 27 percent. In recognition of the serious concerns raised by chronic underfunding of these activities, beginning in FY 2010, the surveillance budget has been increased by 50 percent, from $158 million to $239 million. In the FY 2012 budget, the President will seek to sustain this increase throughout the FYNSP. This level of funding will assure that the required surveillance activities can be fully sustained over time.

Weapon System Life Extension—The Administration is committed to pursuing a fully funded Life Extension Program for the nuclear weapons stockpile. The FY 2011 budget submission and the NPR outlined initial plans. Since May 2010, additional work has further defined the requirements to extend the life of the following weapon systems:

W76—The Department of Defense has finalized its assessment of the number of W76 warheads recommended to remain in the stockpile to carry out current guidance. The number of W76–1 life-extended warheads needing completion is larger than NNSA built into its FY 2011 budget plans. NNSA, with the support of the DoD, has adjusted its plan accordingly to ensure the W76–1 build is completed in FY 2018, an adjustment of one year that is endorsed by the Nuclear Weapons Council. This adjustment will not affect the timelines for B61 or W78 life extensions. The LEP will be fully funded for the life of the program at $255 million annually.

B61—NNSA began the study on the nuclear portion of the B61 life extension in August 2010, six months later than the original planning basis. To overcome this delay, NNSA will accelerate the technology maturation, warhead development, and production engineering that is necessary to retain the schedule for the completion of the first production unit in FY 2017. An additional $10 million per year has been added to the FY 2012 FYNSP for this purpose.

W88 AF&F—The 1251 Report addressed the intent to study, among other things, a common warhead for the W78 and the W88 as an option for W78 life extension. Early development of a W88 Arming, Fuzing, and Firing system (AF&F) would enhance the evaluation of commonality options and enable more efficient long-term sustainment of the W88. Approximately $400 million has been added to the FY 2012–16 FYNSP for this purpose.

Stockpile Systems and Services—NNSA is now seeking to execute a larger program of stockpile maintenance than assumed in planning the FY 2011 budget and than projected in the 1251 Report. The additional work includes an increase in the development/production of the limited life components to support the weapons systems. Consequently, the Administration plans to request increased funding of $40 million in FY 2012 for the production of neutron generators and gas transfer systems. NNSA and DoD are aligned for the delivery of essential hardware to ensure no weapon fails to meet requirements.

New Experiments—NNSA's current science and surveillance activities have been more successful than originally anticipated in ensuring the reliability of our existing stockpile without nuclear testing. As we continue to develop modern life extension programs, however, NNSA and the laboratories are considering even more advanced methods for evaluating the best technical options for life extension programs, including refurbishment, reuse and replacement of nuclear components. One such effort of interest that could aid in our efforts includes expanded subcritical experiments designed to modernize warhead safety and security features without adding new military capabilities or pursuing explosive nuclear weapons testing. This program might include so-called ''scaled experiments'' that could improve the performance of predictive capability calculations by providing data on plutonium behavior under compression by insensitive high explosives. In order to thoroughly understand this issue, to assess its cost-effectiveness and to ensure that there is a sound technical basis for any such effort, the Administration will conduct a review of these proposed activities and potential alternatives.

B. Updates to Modernization of the Nuclear Weapons Complex

Modernization of the complex includes reducing deferred maintenance, constructing replacement facilities, and disposing of surplus facilities. The Administration is committed to fully fund the construction of the Uranium Processing Facility (UPF) and the Chemistry and Metallurgy Research Replacement (CMRR), and to doing so in a manner that does not redirect funding from the core mission of managing the stockpile and sustaining the science, technology and engineering foundation. To this end, in addition to increased funding for CMRR and UPF, the FY 2012 budget will increase funding over the FY 2012 number in the 2011 FYNSP for facilities operations and maintenance by approximately $176 million.

Readiness in Technical Base and Facilities (RTBF): CMRR and UPF Construction—These two nuclear facilities are required to ensure the United States can maintain a safe, secure and effective arsenal over the long-term. The NPR concluded that the United States needed to build these facilities; the Administration remains committed to their construction.

Construction of large, one-of-a-kind facilities such as these presents significant challenges. Several reviews by the Government

Accountability Office, as well as a ''root-cause'' analysis conducted by the Department of Energy in 2008, have found that initiating construction before designs are largely complete contributes to increased costs and schedule delays. In response to these reviews, and in order to assure the best value for the taxpayers, NNSA has concluded that reaching the 90% engineering design stage before establishing a project baseline for these facilities is critical to the successful pursuit of these capabilities.

The ten-year funding plan reported in the 1251 Report reflected cost estimates for these two facilities that were undertaken at a very early stage of design (about 10% complete), were preliminary, and could not therefore provide the basis for valid, longer-range cost estimates. The designs of these two facilities are now about 45% completed; the estimated costs of the facilities have escalated. Responsible stewardship of the taxpayer dollars required to fund these facilities requires close examination of requirements of all types and to understand their associated costs, so that NNSA and DoD can make informed decisions about these facilities. To this end, NNSA, in cooperation with the DoD, is carrying out a comprehensive review of the safety, security, environmental and programmatic requirements that drive the costs of these facilities. In parallel with, and in support of this effort, separate independent reviews are being conducted by the Corps of Engineers and the DOE Chief Financial Officer's Cost Analysis Office. In addition, the Secretary of Energy is convening his own review, with support from an independent group of senior experts, to evaluate facility requirements.

The overriding focus of this work is to ensure that UPF and CMRR are built to achieve needed capabilities without incurring cost overruns or scheduling delays. We expect that construction project cost baselines for each project will be established in FY 2013 after 90% of the design work is completed. At the present time, the range for the Total Project Cost (TPC) for CMRR is $3.7 billion to $5.8 billion and the TPC range for UPF is $4.2 billion to $6.5 billion. TPC estimates include Project Engineering and Design, Construction, and Other Project Costs from inception through completion. Over the FYNSP period (FY 2012–2016) the Administration will increase funding by $340 million compared with the amount projected in the FY 2011 FYNSP for the two facilities.

At this early stage in the process of estimating costs, it would not be prudent to assume we know all of the annual funding requirements over the lives of the projects. Funding requirements will be reconsidered on an ongoing basis as the designs mature and as more information is known about costs. While innovative funding mechanisms, such as forward funding, may be useful in the future for providing funding stability to these projects, at this early design stage, well before we have a more complete understanding of costs, NNSA has determined that it would not yet be appropriate and possibly counterproductive to pursue such mechanisms until we reach the 90% design point. As planning for these projects proceeds, NNSA and OMB will continue to review all appropriate options to achieve savings and efficiencies in the construction of these facilities.

The combined difference between the low and high estimates for the UPF and CMRR facilities ($4.4 billion) results in a range of costs beyond FY 2016 as shown in Figure 3. Note that for the high estimate, the facilities would reach completion in FY 2023 for CMRR and FY 2024 for UPF. For each facility, functionality would be attainable by FY 2020 even though completion of the total projects would take longer.

Readiness in the Technical Base of Facilities (RTBF)—Operations and Maintenance

In order to implement an increased scope of work for stockpile activities, especially surveillance and the ongoing life extension programs (LEPs), the following will be supported:

NNSS—Full experimental facility availability to support ongoing subcritical and other experiments necessary for certification of life extension technologies.

Pantex—Funds are included in the FY 2012 request to fully cover anticipated needs for flood prevention.

SNL—Replacement of aging and failing equipment at the Tonopah Test Range in Nevada to facilitate the increasing pace of operations support for the B61; and Micro-electronics, engineering test, and surveillance actions at SNL to support the B61, W76 and W78 that require additional equipment maintenance in facilities and the need to operate engineering test facilities that currently operate in a periodic campaign mode.

LLNL, LANL, and Y–12—Investments in infrastructure and construction, including support for Site 300, PF–4, and Nuclear Facilities Risk Reduction.

Kansas City—Investment sufficient to meet LEP needs for the W76–1, B–6I, and W78/88 while preparing and completing the move to the KCRIMS site at Botts Road.

Savannah River—Sufficient investment to ensure that availability of tritium supplies adequate for stockpile needs is assured.

RTBF: Other Construction—As the CMRR and UPF projects are completed, NNSA will continue to modernize and refurbish the balance of its physical infrastructure over the next ten years. The FY 2012 budget request includes $67 million for the High Explosive Pressing Facility project that is ongoing at Pantex, $35 million for the Nuclear Facilities Risk Reduction Project at Y–12, $25 million for the Test Capabilities Revitalization Project at Sandia, as well as $9.8 million for the Transuranic Waste Facility and $20 million for the TA–55 Reinvestment Project at LANL.

RTBF: Construction Management—Because of the unprecedented scale of construction that NNSA is initiating, both in the nuclear weapons complex and in non- proliferation activities, the Administration recognizes that stronger management structures and oversight processes will be needed to prevent cost growth and schedule slippage. NNSA will work with DoD, OMB, and other affected parties to analyze current processes and to consider options for enhancements.

C. Pension Cost Growth and Alternative Mitigation Strategies

NNSA has a large contractor workforce that is covered by defined-benefit pension plans for which the U.S. Government assumes liability. Portfolio management decisions, market downturns, interest rate decreases, and new statutory requirements have caused large increases in pension costs. The Administration is fully committed to keeping these programs solvent without harming the base programs. The Administration will therefore cover total pension reimbursements of $875 million for all of NNSA for FY 2012, adding $300 million more to the NNSA topline than the amount provided in FY 2011. Over the five year period FY 2012 to FY 2016, the Administration will provide a total of $1.5 billion above the FY 2011 level. About three-quarters of this funding is associated with Weapons Activities and is included in the funding totals for those programs noted above.

The Administration will conduct an independent study of these issues using the appropriate statutory and regulatory framework to inform longer-term decisions on pension reimbursements. The Administration is evaluating multiple approaches to determine the best path to cover pension plan contributions, while minimizing the impact to mission. Contractors are evaluating mitigation strategies, such as analyzing plan changes, identifying alternative funding strategies, and seeking increased participant contributions. Also, contractors have been directed to look into other human resource areas where savings can be achieved, in order to help fund pension plan contributions.

3. Summary of NNSA Stockpile and Infrastructure Costs

A summary of estimated costs specifically related to the Nuclear Weapons Stockpile, the supporting infrastructure, and critical science, technology and engineering is provided in Table 1.

TABLE 1—TEN-YEAR PROJECTIONS FOR WEAPONS STOCKPILE AND INFRASTRUCTURE COSTS

$ Billions	Fiscal year										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Directed Stockpile	1.5	1.9	2.0	2.1	2.3	2.5	2.6	2.6	2.6	2.6	2.6
Science Technology & Engineering Campaigns	1.6	1.7	1.8	1.8	1.8	1.8	1.9	2.0	2.1	2.2	2.3
Readiness in Technical Base and Facilities	1.8	1.8	2.1	2.3	2.5	2.5	2.5	2.7	2.8–2.9	2.9–3.1	2.9–3.3
UPF	0.1	0.1	0.2	0.2	0.4	0.4	0.4	0.48–0.5	0.48–0.5	0.48–0.5	0.38–0.5
CMRR	0.1	0.2	0.3	0.3	0.4	0.4	0.4	0.48–0.5	0.4–0.5	0.3–0.5	0.2–0.5
Secure Transportation	0.2	0.2	0.3	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Defense Programs Subtotal	5.2	5.7	6.1	6.5	6.9	7.1	7.3	7.5–7.6	7.7–7.9	7.9–8.2	8.0–8.4
Other Weapons	1.2	1.3	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.5
Subtotal, Weapons	6.4	7.0	7.4	7.8	8.2	8.5	8.7	8.9–9.0	9.2.9.3	9.4–9.6	9.4–9.8
Contractor Pensions Cost Growth			0.2	0.2	0.2	0.2	0.2	*TBD	*TBD	*TBD	*TBD
Total, Weapons	6.4	7.0	7.6	7.9	8.4	8.7	8.9	8.9–9.0	9.2–9.3	9.4–9.6	9.4–9.8

Numbers may not add due to rounding.

*Anticipated costs for contractor pensions have been calculated only through FY 2016. For FY 2017–2020, uncertainties in market performance, interest rate movement, and portfolio management make prediction of actual additional pension liabilities, assets, and contribution requirements unreliable.

4. Plans for Sustaining and Modernizing U.S. Strategic Delivery Systems

The Administration remains committed to the sustainment and modernization of U.S. strategic delivery systems, to ensure continuing deterrent capabilities in the face of evolving challenges and technological developments. DoD's estimates of costs to sustain and modernize strategic delivery systems will be updated as part of the President's FY 2012 budget request; until this budget request is finalized, figures provided in the May 2010 1251 report remain the best available cost estimates.

The following section of this report provides the latest information on DoD's efforts to modernize the Triad, including expected timelines for key decisions.

Strategic Submarines (SSBNs) and Submarine-Launched Ballistic Missiles (SLBMs)

As the NPR and the 1251 Report note, the United States will maintain continuous at-sea deployments of SSBNs in the Atlantic and Pacific Oceans, as well as the ability to surge additional submarines in crisis. The current Ohio-class SSBNs, have had their service life extended by a decade and will commence retirement in FY 2027. DoD plans a transition between the retiring Ohio-class SSBNs and the Ohio-class replacement that creates no gap in the U.S. sea-based strategic deterrent capability.

Current key milestones for the SSBN replacement program include:

Research, development, test, and evaluation (RDT&E) began in FY 2010 and continues with the goal of achieving 10 percent greater design maturity prior to starting procurement than the USS VIRGINIA class had before procurement started;

In FY 2015, the Navy will begin the detailed design and advanced procurement of critical components;

In FY 2019, the Navy will begin the seven-year construction period for the new SSBN lead ship;

In FY 2026, the Navy will begin the three-year strategic certification period for the lead ship; and

In FY 2029, the lead ship will commence active strategic at-sea service.

The Analysis of Alternatives (AoA) considered three platforms concepts for the Ohio-class Replacement: VIRGINIA-Insert, OHIO-Like, and a New Design. DoD is currently evaluating the advantages and disadvantages of each concept, including cost tradeoffs, with the goal of meeting military requirements at an affordable cost. An initial milestone decision is expected by the end of calendar year 2010 to inform the program and budget moving forward.

After the initial milestone design decision is made, DoD will be able to provide any adjustments to the estimated total costs for the Ohio-class replacement program. Thus, today's estimated total costs for FY 2011 through FY 2020 remain the same as reported in the 1251 Report: a total of approximately $29.4 billion with $11.6 billion for R&D and $17.8 billion for design and procurement.

As noted in the 1251 Report, the Navy plans to sustain the Trident II D5 missile, as carried on Ohio-class Fleet SSBNs as well as the next generation SSBN, through a least 2042 with a robust life-extension program.

Intercontinental Ballistic Missiles (ICBMs)

As stated in the Nuclear Posture Review, while a decision on an ICBM follow-on is not needed for several years, preparatory analysis is needed and is in fact now underway. This work will consider a range of deployment options, with the objective of defining a cost-effective approach for an ICBM follow-on that supports continued reductions in U.S. nuclear weapons while promoting stable deterrence. Key milestones include:

The Capabilities-Based Assessment (CBA) for the ICBM follow-on system is underway.

By late 2011, the study plan for the AoA, including the scope of options to be considered, will be completed.

In 2012, the AoA will begin.

In FY 2014, the AoA will be completed, and DoD will recommend a specific way-ahead for an ICBM follow-on to the President.

The Air Force is funding the ongoing CBA effort at approximately $26 million per year. Given the inherent uncertainties about missile configuration and basing prior to the completion of the AoA, DoD is unable to provide costs for its potential development and procurement at this time. However, DoD expects to be able to include funding for RDT&E for an ICBM follow-on system in the FY 2013 budget request, based on initial results from the AoA.

The Air Force plans to sustain the Minuteman III through 2030. That sustainment includes substantial ongoing life extension programs, cost data for which was provided to Congress in the May 2010 Section 1251 Report.

Heavy Bombers

DoD plans to sustain a heavy bomber leg of the strategic Triad for the indefinite future, and is committed to the modernization of the heavy bomber force. Thus, the question being addressed in DoD's ongoing long-range strike study is not whether to pursue a follow-on heavy bomber, but the appropriate type of bomber and the timelines for development, production, and deployment. The long-range strike study, which is also considering related investments in electronic attack, intelligence, surveillance and reconnaissance, air- and sea-delivered cruise missiles, and prompt global strike, will be completed in time to inform the President's budget submission for FY 2012.

As stated in the May 2010 1251 Report, pending the results of the long-range strike study, estimated costs for a follow-on bomber for FY 2011 through FY 2015 are $1.7 billion and estimated costs beyond FY 2015 are to-be-determined. DoD intends to provide any necessary updates to cost estimates along with the President's budget submission for FY 2012.

The Air Force plans to retain the B–52 in the inventory through at least 2035 to continue to meet both nuclear and conventional mission requirements. The Air Force will make planned upgrades and life extensions to the fleet. The B–2 fleet is being upgraded through three top priority acquisition programs: the Radar Modernization Program (RMP), Extremely High Frequency (EHF) Satellite Communications and Computers, and Defensive Management System (DMS), as well as multiple smaller sustainment initiatives.

Air Launched Cruise Missile (ALCM)

DoD intends to replace the current ALCM with the advanced long range standoff (LRSO) cruise missile. The CBA for the LRSO is underway. An AoA will be conducted from approximately spring 2011 through fall 2013. The AoA will define the platform requirements, provide cost-sensitive comparisons, validate threats, and establish measures of effectiveness, and assess candidate systems for eventual procurement and production.

The Air Force has programmed approximately $800 million for RDT&E over the FYDP for the development of LRSO. Based on current analysis of the program, the Air Force expects low rate initial production of LRSO to being in approximately 2025, while the current ALCM will be sustained through 2030. Until the planned AoA is completed, DoD will not have a basis for accurately estimating subsequent costs.

Mr. CORKER. Mr. President, the reason I want that entered into the RECORD, over the next 10 years, what this calls for is $86 billion—$86 billion—worth of investment throughout the seven facilities throughout our country on nuclear armaments and over $100 billion on the delivery mechanisms to ensure that these warheads are deliverable.

So one might say: Well, that is great, but how are we going to be sure? How are we going to be sure the appropriators actually ask for the money?

Mr. President, I ask unanimous consent to have printed in the RECORD a letter signed on December 16 by Chairman INOUYE, Senators DIANNE FEINSTEIN, THAD COCHRAN, and LAMAR ALEXANDER.

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

U.S. SENATE,
Washington, DC, December 16, 2010.

THE WHITE HOUSE,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to express our support for ratification of the New START Treaty and full funding for the modernization of our nuclear weapons arsenal, as outlined by your updated report that was mandated by Section 1251 of the Defense Authorization Act for Fiscal Year 2010.

We also ask that, in your future budget requests to Congress, you include the funding identified in that report on nuclear weapons modernization. Should you choose to limit non-defense discretionary spending in any future budget requests to Congress, funding for nuclear modernization in the National Nuclear Security Agency's proposed budgets should be considered defense spending, as it is critical to national security and, therefore, not subject to such limitations. Further, we ask that an updated 1251 report be submitted with your budget request to Congress each year.

We look forward to working with you on the ratification of the New START Treaty and modernization of the National Nuclear Security Agency's nuclear weapons facilities. This represents a long-term commitment by each of us, as modernization of our nuclear arsenal will require a sustained effort.

Sincerely,

DANIEL K. INOUYE.
DIANNE FEINSTEIN.
THAD COCHRAN.
LAMAR ALEXANDER.

Mr. CORKER. Mr. President, that letter says to the President that they will ask for the moneys necessary to modernize our nuclear arsenal; that they agree to ask for that money as part of their appropriations bill.

So, then, you might say: Well, what about the President? Will the President actually, in his budget, ask Congress to ask for that money?

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the President of the United States, dated December 20, addressed to the appropriators who just wrote the letter I mentioned, saying that he, in fact, will ask for those funds in the budget he puts forth in the next few months.

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

THE WHITE HOUSE,
Washington, December 20, 2010.

Hon. LAMAR ALEXANDER,
U.S. Senate,
Washington, DC.

DEAR SENATOR ALEXANDER: Thank you for your letter regarding funding for the modernization of the nuclear weapons complex and for your expression of support for ratification of the New START Treaty.

As you know, in the Fiscal Year 2011 budget, I requested a nearly 10 percent increase in the budget for weapons activities at the National Nuclear Security Administration (NNSA). In May, in the report required by Section 1251 of the National Defense Authorization Act for Fiscal Year 2010, I laid out a 10 year, $80 billion spending plan for NNSA. The Administration submitted an update to that report last month, and we now project over $85 billion in spending over the next decade.

I recognize that nuclear modernization requires investment for the long-term, in addition to this one-year budget increase. That is my commitment to the Congress—that my Administration will pursue these programs and capabilities for as long as I am President.

In future years, we will provide annual updates to the 1251 report. If a decision is made to limit non-defense discretionary spending in any future budget requests, funding for nuclear modernization in the NNSA weapons activities account will be considered on the same basis as defense spending.

In closing, I thought it important for you to know that over the last two days, my Administration has worked closely with officials from the Russian Federation to address our concerns regarding North Korea. Because of important cooperation like this, I continue to hope that the Senate will approve the New START Treaty before the 111th Congress ends.

Sincerely,

BARACK OBAMA.

Mr. CORKER. Mr. President, there has been a lot of discussion about many things—and I will get to missile defense in just one moment—but I don't think there is anything, as it relates to nuclear issues, that threatens our national security more than our not investing in the arsenal we have. I think what we see is a commitment by appropriators on the Senate side, the President of the United States, those within the NNSA and our military complex who believe modernization has to occur.

Candidly, the only thing today that would keep us from actually doing modernization the way it needs to be done would be Republican appropriators. So I just wish to say to my friends on this side of the aisle, it seems to me, through Senator KYL's efforts and the efforts of people working in a cooperative way, we have been very successful in getting the commitments we need on modernization.

By the way, I would add, I do not think we would be talking about the issue of modernization today—something that hasn't been done for many years to this scale—if it were not for discussions of the START treaty. So I say to the Chair, I think we have enhanced our country's national security just by having this debate, and I would say we have sought and received commitments that otherwise we would not have received if it were not for the discussion of this treaty.

The two are very related. I have heard a lot of people say there is no real relationship between the two. There is a lot of relationship between the two, in that I think Americans want to know if we are going to limit ourselves to 1,550 warheads, that we know they operate, we know they can be delivered, and we know the thousands of warheads we have that are not deployed are warheads that will be kept up.

We have talked a lot about missile defense, and I just wish to say I have been through every word of this treaty, I have been through every word of the annexes, I have been through every word of the protocols and I have been in countless briefings and there is nothing in this treaty that limits our missile defense other than the fact that we cannot convert ICBM launchers that we use on the offense for missile defense—something our military leaders do not want to do. That is the most expensive way of creating a missile defense system. That is something they do not want to do.

So a lot of discussions have been brought up because in the preamble something was stated that was nonbinding. How do we clear that up? We clear that up by virtue of a letter the President has sent to us absolutely committing to the missile defense system that is now being deployed in Europe, absolutely committing to a national defense system. People might say: Well, but that is no commitment.

I have reasonable assurance that by the time this debate ends we will codify, as part of the resolution of ratification, the operative words in the President's language committing to all four phases of our adaptive missile system in Europe, committing to those things we need to do as relates to our national defense system and making that a part of the resolution of ratification.

I would say to you that I doubt very seriously we would have received the types of commitments, the strident commitments from the President as relates to missile defense today, if we were not debating this treaty.

Mr. President, I ask unanimous consent that Senator LAMAR ALEXANDER be added as a cosponsor to my amendment, amendment No. 4904, dealing with ensuring the President's language becomes a part of this resolution of ratification.

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

Mr. CORKER. Mr. President, let me conclude by saying it is obviously up to us, as Senators. We are the ones who have the right and the responsibility and the privilege to take up the types of matters we are taking up today. It is up to us to do the due diligence, to have the intelligence briefings, to look at our nuclear posture reviews, to look at what this treaty itself says, and to look at what our force structure is. That is our responsibility. It is up to each of us, the 100 of us in this body, to decide whether we ratify this treaty. But I think it is also at least interesting to get input from others.

One of the things our side of the aisle likes to do is we like to listen to military leaders and what they have to say about issues relating to the war—Afghanistan or Iraq—and certainly the issue of how we enter into nuclear treaties with other countries.

I will ask to have printed in the RECORD a letter to Senator KERRY from the Joint Chiefs of Staff talking about their firm commitment for the START treaty on the basis that it increases our national security.

I ask unanimous consent to have printed in the RECORD this letter dated December 20 from ADM Mike Mullen, Chairman of our Joint Chiefs.

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

CHAIRMAN OF THE
JOINT CHIEFS OF STAFF,
Washington, DC, December 20, 2010.

Hon. JOHN F. KERRY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

MR. CHAIRMAN, Thank you for your letter of 20 December asking me to reiterate the positions of the Joint Chiefs of Staff on ratification of the New START Treaty and several related questions.

This treaty has the full support of your uniformed military, and we all support ratification. Throughout its negotiation, Secretaries Clinton and Gates ensured that professional military perspectives were thoroughly considered. During the development of the treaty, I was personally involved, to include two face-to-face negotiating sessions and several conversations with my counterpart, the Chief of the Russian General Staff, Gen Makarov, regarding key aspects of the treaty.

The Joint Chiefs and I—as well as the Commander, U.S. Strategic Command—believe the treaty achieves important and necessary balance between four critical aims. It allows us to retain a strong and flexible American nuclear deterrent that will allow us to maintain stability at lower levels of deployed nuclear forces. It helps strengthen openness and transparency in our relationship with Russia. It will strengthen the U.S. leadership role in reducing the proliferation of nuclear weapons. And it demonstrates our national commitment to reducing the worldwide risk of a nuclear incident resulting from proliferation.

More than a year has passed since the last START inspector left Russian soil, and even if the treaty were ratified by the Senate in the next few days, months would pass before inspectors could return. Without the inspections that would resume 60 days after entry into force of the treaty, our understanding of Russia's nuclear posture will continue to erode. An extended delay in ratification may eventually force an inordinate and unwise shift of scarce resources from other high priority requirements to maintain adequate awareness of Russian nuclear forces. Indeed, new features of the treaty's inspection protocol will provide increased transparency for both parties and therefore contribute to greater trust and stability.

The Joint Chiefs and I are confident that the treaty does not in any way constrain our ability to pursue robust missile defenses. We are equally confident that the European Phased Adaptive Approach to missile defense

will adequately protect our European allies and deployed forces, offering the best near- and long-term approaches to ballistic missile defense in Europe. We support application of appropriately modified Phased Adaptive Approaches in other key regions, as outlined in the Ballistic Missile Defense Review Report.

I can also assure you that U.S. senior military leaders monitored very closely all provisions related to conventional prompt global strike (CPGS) throughout the negotiation process. During that process, the Russian Federation publicly declared on several occasions that there should be a ban on placement of conventional warheads on strategic delivery systems. In the end, we agreed that any reentry vehicle (nuclear or non-nuclear-armed) contained on an existing type of ICBM or SLBM would be counted under the central limits of the treaty. Importantly, the New START Treaty allows the United States not only to deploy CPGS systems but also to continue any and all research, development, testing, and evaluation of such concepts and systems. It is true that intercontinental ballistic missiles with a traditional trajectory would be accountable under the treaty, but the treaty's limits accommodate any plans the United States might pursue during the life of the treaty to deploy conventional warheads on ballistic missiles.

Further, the United States made clear during the New START negotiations that we would not consider non-nuclear, long-range systems, which do not otherwise meet the definitions of the New START Treaty (such as boost-glide systems that do not fly a ballistic trajectory), to be accountable under the treaty.

Finally, I am comfortable that the Administration remains committed to sustainment and modernization of the nuclear triad and has outlined its plans to do so in the so-called Section 1251 report to Congress, as well as a recent update to that report and a letter from Secretary of Defense Gates to Senator Lugar dated 10 December. Plans for sustainment and replacement of current ICBMs, ballistic missile submarines, heavy bombers, and air launched cruise missiles are in various stages of development, in a process that will be implemented over the next three decades and across multiple administrations.

The Administration's proposed ten-year, $85B commitment to the U.S. nuclear enterprise attests to the importance being placed on nuclear deterrence and the investments required to sustain it—especially given the country's present fiscal challenges. The increased funding commitment, if authorized and appropriated, allows the United States to improve the safety, security, and effectiveness of our nuclear weapons and develop the responsive nuclear weapons infrastructure necessary to support our deterrent. I also fully support a balanced Department of Energy program that sustains the science, technology, and engineering base.

In summary, I continue to believe that ratification of the New START Treaty is vital to U.S. national security. Through the trust it engenders, the cuts it requires, and the flexibility it preserves, this treaty enhances our ability to do that which we in the military have been charged to do: protect and defend the citizens of the United States. I am as confident in its success as I am in its safeguards. The sooner it is ratified, the better.

Sincerely,

M.G. MULLEN,
Admiral, U.S. Navy.

Mr. CORKER. Mr. President, I would like to point out, too, just for clarification, if you look at the makeup of our Joint Chiefs—Admiral Mullen, General Cartwright, General Schwartz, General Casey, Admiral Roughead—every single one of these gentlemen was appointed by a Republican President. In addition to them, we have General Amos. My sense is, based on some of the comments he has made over the course of time, he would have Republican leanings. But all of these people have firmly stated their support for this treaty.

In closing, I will also ask unanimous consent that the statement of Robert Gates, again appointed by a Republican President, head of our Defense Department, where yesterday he said:

The treaty will enhance the strategic stability at lower numbers of nuclear weapons, provide a rigorous inspection regime including on-sight access to Russian missile silos, strengthen our leadership role in stopping the proliferation of nuclear weapons, and provide the necessary flexibility to structure our strategic nuclear forces to best meet the national security interests.

This treaty stands on its merits and its prompt ratification will strengthen U.S. national security.

I ask unanimous consent that this be printed in the RECORD.

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

[From the U.S. Department of Defense, News Release, Dec. 21, 2010]

STATEMENT BY SECRETARY ROBERT GATES ON THE NEW START TREATY

I strongly support the Senate voting to give its advice and consent to ratification of the New START Treaty this week.

The treaty will enhance strategic stability at lower numbers of nuclear weapons, provide a rigorous inspection regime including on-site access to Russian missile silos, strengthen our leadership role in stopping the proliferation of nuclear weapons, and provide the necessary flexibility to structure our strategic nuclear forces to best meet national security interests.

This treaty stands on its merits, and its prompt ratification will strengthen U.S. national security.

Mr. CORKER. There has been a lot of discussion about the role of the Senate in this ratification. There are a lot of things that go into the ratification of a treaty. I have laid out a number of things we have discussed that are relevant to the ratification of this treaty.

As we move through a process such as this, I try to make sure all of the t's are crossed and i's are dotted that can possibly be crossed and dotted to ensure that I, as a U.S. Senator, feel comfortable that the type of agreement we are entering into is one that is in the best interests of our country. I have done that over the last year working on nuclear modernization. Again, my hat is off to Senator KYL and his great leadership in that regard. I have done that over the course of this last year as we have looked at missile defense. We spent incredible amounts of time in our committee making sure people on my side of the aisle had tremendous input into the resolution of ratification. We have worked through to make sure that if we are going to have fewer warheads deployed—again, we have thousands more that are not deployed—that we, in fact, can assure the American people that they will operate, that they are actually there for our national security.

The question for me and for all of us who care so deeply about our country's national security is, Will we say yes to yes? I firmly believe that signing this treaty, that ratifying this treaty, and that all the things we have done over the course of time as a result of this treaty are in our country's national interest, and I am here today to state my full support for this treaty. I look forward to its ratification, and I hope many others will join me in that process.

I yield the floor.

Mr. UDALL of Colorado. Mr. President, before I begin the focus of my remarks and the reason I came to the floor, I wish to commend the Senator from Tennessee for his thoughtful remarks and what I think is a thoughtful and important position he is taking on the START treaty. I listened with great interest, and I learned additional information about the importance of putting this treaty in effect. I also acknowledge the Senator's concerns about missile defense, about tactical nuclear weapons, and the other concerns that have been raised in this very important and obviously historic debate on the floor of the Senate. I thank the Senator from Tennessee for his leadership.

TRIBUTES TO RETIRING SENATORS

ARLEN SPECTER

I also wanted to associate myself with the remarks of Senator BENNET, the Senator from Colorado, in regard to Senator SPECTER's farewell address to the Senate. In particular, I think Senator SPECTER laid out a thoughtful and comprehensive way we can change the Senate rules in the upcoming 112th Congress in ways that respect the rights of the minority but also provide the Senate with some additional ways to do the people's business.

I know the Presiding Officer spent significant time on finding a way forward for the Senate. I look forward to the debate that will begin when we convene in just a couple of weeks for the 112th Congress.

NOMINATION OF WILLIAM MARTINEZ

Let me turn to the reason I came to the floor initially, and that is to urge my colleagues to support an outstanding nominee to the Federal bench, Mr. William Martinez. Bill's story is an inspirational one, and I will share that with you in a moment, but I wanted to first talk about why there is such an urgency to confirm this fine nominee.

The situation in our Colorado District Court is dire, and I don't use that word lightly. There are currently five judges on the court and two vacancies, both of which are rated as judicial emergencies by the Administrative Offices of the U.S. Courts. These five judges have been handling the work of seven judges for nearly 2 years. It has

been over 3 years since our court had a full roster of judges.

I know the Presiding Officer is familiar with the need for a fully stocked Federal bench as a former attorney general.

There is even more to the story. In 2008, based on the significant caseload in Colorado, the Judicial Conference of the United States recommended the creation of an eighth judgeship on the Colorado District Court.

This is a pressing situation, but I know it is not unique just to Colorado. Of the 100 current judicial vacancies, 46 are considered judicial emergencies—almost half of those vacancies. I understand the Senate has confirmed just 53 Federal circuit and district court nominees since President Obama was elected, including the judges over the last weekend. This is half as many as were confirmed in the first 2 years of the Bush administration and represents a historic low, which, no matter who is to blame, is very detrimental to our system of justice.

Bill Martinez was nominated in February of this year, had a hearing in March, and was referred favorably by the Judiciary Committee to the full Senate in April. So today his nomination has been sitting on the Senate's Executive Calendar for over 8 months.

I am not going to complain about partisan delays, although I know this continues to plague the Senate. Instead, in hope that we might improve the nomination process, I want my colleagues to hear the real effect of imposing these delays on nominees.

The people of Colorado deserve well-qualified justices, but what the Senate put Bill Martinez through should make each of us question where our priorities are—and I say that because, unlike other judicial nominees before the Senate, Bill Martinez' life has been turned upside down because of this delay in his confirmation. While many other nominees—and I don't begrudge them this—continued their judicial careers because they were sitting on the bench, he has essentially had to dismantle his law practice to avoid Federal conflicts and even limit taking clients to ensure they continue to receive representation once he is confirmed. Both his life and his livelihood have been put on hold just because he was willing to become a dedicated public servant. If we continue this record or this habit of needlessly delaying judicial nominations, we risk chasing off qualified nominees such as Bill Martinez.

His long and winding road began last year when Senator BENNET and I convened a bipartisan advisory committee, chaired by prominent legal experts in Colorado, to help us identify the most qualified candidates for the Federal bench. The committee interviewed many impressive individuals, and then, based on his life experience, his record of legal service, and his impressive abilities, both Republicans and Democrats on this panel together recommended Bill Martinez for a Federal judgeship. The President agreed and then subsequently nominated Bill for the vacant judgeship I mentioned.

There is no doubt that being nominated for a Federal judgeship is a prestigious honor, but since being nominated, Senate delays have not only affected Bill and his family, but those delays have sent a discouraging message to future nominees. Despite these disruptions the process has caused for Bill and the dangerous precedent his delay may have set, I am relieved that the Senate is finally giving this qualified candidate the confirmation vote he deserves today.

I have spoken about his impressive intellect and experience on the floor before, but in advance of my vote, I would like my colleagues to hear one more time why Bill Martinez was selected by the bipartisan advisory committee for this judgeship.

In addition to being an accomplished attorney and a true role model in our community in Colorado, he has a personal story that captures what is great about America and highlights what can be accomplished with focus, discipline, and extraordinary hard work.

Bill was born in Mexico City, and he immigrated lawfully to the United States as a child. He worked his way through school and college and toward a career in law, becoming the first member of his family to attend college. He received undergraduate degrees in environmental engineering and political science from the University of Illinois and earned his law degree from the University of Chicago.

As a lawyer, Bill has become an expert in employment and civil rights law. He first began his legal career in Illinois, where he practiced with the Legal Assistance Foundation of Chicago, litigating several law reform and class action cases on behalf of indigent and working-class clients. For the last 14 years, he has been in private practice and previously served as a regional attorney for the U.S. Equal Employment Opportunity Commission in Denver.

As you can imagine, over the years Bill has been a very active member of the Denver legal community. During the 1990s, he was an adjunct professor of law at the University of Denver College of Law and has been a mentor to minority law students. He is currently vice chair of the Committee on Conduct for the U.S. District Court for the District of Colorado, and he has been a board member and officer of the faculty of Federal Advocates.

Bill also sits on the board of directors of the Colorado Hispanic Bar Association, where he serves as the chair of the bar association's Ethics Committee. More recently, he was appointed by the Colorado Bar Association to the board of directors of Colorado Legal Services and by the chief justice of the Colorado Supreme Court to the Judicial Ethics Advisory Board.

Like all of us, I believe in a strong, well-balanced court system that serves the needs of our citizens. Bill Martinez will bring that sense of balance because of his broad legal background, professionalism, and his outstanding intellect. I am proud to have recommended Bill, and I am certain that once confirmed he will make an outstanding judge.

Before I conclude, I did want to give special acknowledgment to my general counsel, Alex Harman, who has worked night and day on this nomination. Alex has worked tirelessly to see that Bill Martinez receives the vote he deserves, and I want to acknowledge him here on the floor of the Senate.

I ask my colleagues to give their full support to this extraordinary candidate and vote to confirm his nomination to the Colorado District Court as a new Federal judge.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. BROWN of Ohio. Mr. President, I appreciate the words from the senior Senator from Colorado. His comments about the delays in the judicial process here, the selection of Federal judges, the nomination and confirmation, are identical to the situation for so many of the rest of us. Very qualified people are put forward. At times, the White House, perhaps, didn't move as fast as we would like. But the delays on these judges is pretty outrageous.

NOMINATION OF BENITA PEARSON

Judge Pearson, who sits as a U.S. magistrate in the Northern District Court in Ohio, didn't have the same disruption in her life as soon-to-be, I hope, Justice Martinez had, having a law practice to put aside and having to wrap it up and figure out all that, but she has waited since February when Senator LEAHY and his Judiciary Committee voted her out, had a wait of 9 months, almost 10 months, until we are about ready to confirm.

I speak perhaps in criticism of the other party but, more importantly, how do we fix this so people are not dissuaded, discouraged from wanting to fill these very important jobs?

When I interview potential judicial candidates, I always ask them: Are you willing to put your life on hold for at least a year before you can actually be confirmed and sworn in, if it gets to that?

All are surprised, some are shocked, and some walk away and say: Find somebody else. That is going to start happening. So I thank the Senator from Colorado and his comments.

I rise in support of another very strong candidate for a Federal judgeship, the nomination of Magistrate Judge Benita Pearson to become a judge in the U.S. District Court in the Northern District of Ohio.

Magistrate Pearson will make an excellent addition to the bench. That is not just my opinion. She has tremendous support from the judges with whom she serves today and whose ranks she will soon join. She knows them from her work, obviously, as a

magistrate. Judge James Carr, the chief U.S. district judge at the time of her nomination, lauded Judge Pearson as ''a splendid choice . . . eminently well-qualified by intelligence, experience . . . and judicial temperament.'' Judge Carr's successor, Solomon Oliver, who now is the chief U.S. district judge, is just as supportive of her nomination.

Support for that nomination extends throughout the State. The other day when I gave a few remarks in the wake of Senator VOINOVICH's farewell address, I neglected to mention how much I appreciated Senator VOINOVICH's cooperation in the process of selecting candidates for nomination to the Federal bench.

Senator VOINOVICH and I did something, and I do not know if any other Senator in this body does this, any other pair of Senators—I do know nobody in Ohio has done this—I asked Senator VOINOVICH, as the Senator from the President's party—and, generally, by tradition, the Senator who suggests nominees to the President—I asked Senator VOINOVICH to be part of the selection system with me. We chose 17 people. We chose 17 people from northern Ohio to interview Southern District of Ohio potential judges, and 17 people in southern Ohio—central and southern Ohio—to interview prospective judges for the Northern District.

These panels, one of them was a Republican majority, the other was a democratic majority, I believe, by one vote. These panels met, took this job very seriously. Each of the 17 people was given the name of a candidate, one of the people who was applying to interview, references and all that. Each candidate got an hour in front of the 17-member committee, this Commission we appointed, and were subjected, after filling out a very lengthy questionnaire designed, again, bipartisanly by my predecessor, Republican Senator DeWine, in large part, to, after filling out this questionnaire, testifying, spending an hour in front of this panel of 17 very distinguished judges, some who are lawyers, some, I believe, former judges, all people who were very interested in the Federal judiciary.

Anybody who came out of that had to have a strong supermajority recommendation from the 17. I then interviewed the top three, made the selection, cleared it with Senator VOINOVICH, and brought the name forward.

That produced Judge Timothy Black, who has been confirmed, sits in the Southern District. It also produced Judge Benita Pearson. A similar selection committee, not identical but a similar selection committee, enabled me, helped me come to the conclusion to reappoint a Bush appointee to the U.S. marshal's job in Cleveland, Pete Elliott, to appoint the first—to send to the President, nominate, and confirm the first female U.S. marshal in the Southern District of Ohio, Cathy Jones, and then the first African-American U.S. attorney in Columbus, and a very qualified U.S. attorney in Cleveland.

So that is the process we have in Ohio to make sure we get the best qualified people. As I said, they put in a tremendous amount of time and energy, and I wish to thank those 17 members of each of those Commissions, the 34 people who served again from both parties, prominent jurists and lawyers and community activists, to come up with Judge Pearson and others.

Judge Pearson currently resides in Akron but was born in Cleveland. I got a chance to meet her mother and many of her family and friends almost 1 year ago when she testified before the Judiciary Committee. They were understandably proud of her, her achievements, and the honor of her nomination, certainly, but I got the sense they were most proud of her as a daughter, as a sister, as a family member. Nobody knows us better than our family.

Judge Pearson earned her J.D. from Cleveland State University, her bachelor's degree from Georgetown. Before law school, she spent several years as a certified public accountant. I asked her how being a CPA would help her in the judiciary as a judge. She said you can tell stories with numbers. She smiled when she said it. She, clearly, had kind of thought through what this means to be a Federal judge and what qualifications she brings. Throughout her career, Judge Pearson has litigated and presided over a range of criminal and civil matters, including housing, public corruption cases. In addition to her work as a magistrate judge since 2008, her legal experience includes serving as an adjunct professor at Cleveland State's law school, 8 years as an assistant U.S. attorney in Cleveland, the Northern District, and several years in private practice.

If confirmed, Judge Pearson will become the first African-American woman to serve as a Federal judge in Ohio. She will also be the only U.S. district judge in the Youngstown courthouse, which, because of delays here, for no apparent reason, has lacked a judge since this past summer.

Last year, at the Akron Bar Association's annual Bench-Bar luncheon, she urged attorneys to improve in two ways: to be better prepared to litigate their cases and to be more civil to one another. Good advice to this body and for all of us, I suppose, in our daily lives.

Judge Pearson's community service includes more than a decade of ongoing work as a board member of Eliza Bryant Village. Eliza Bryant Village is a multifacility campus, providing services for impoverished elderly citizens. It was founded and named after the daughter of a freed slave.

The facility began simply as a nursing facility built to serve Eliza's mother and other African Americans who had been turned away from nursing homes simply because of their race.

Judge Pearson's background as a prosecutor, as a private attorney, as a CPA, and as a Federal magistrate make her uniquely qualified to serve as U.S. district judge. Members of the law enforcement and legal community throughout northern Ohio have attested to Judge Pearson's ability and impartiality. As a magistrate and prosecutor, she, of course, as I said, is supported by our State's senior Senator, Republican GEORGE VOINOVICH. First assistant U.S. attorney, David Sierlega, for example, called Judge Pearson ''an extremely hardworking bright lawyer'' with an exemplary track record in handling public corruption cases.

When asked to describe the ''most significant legal activities'' she has been engaged in, Judge Pearson replied: ''My most significant legal activity has been my steadfast commitment to administering equal justice for all . . . the poor and the rich, the likable and unlikable . . . the first-time offender and the repeat offender.''

At the end of the day, it is this demonstrated commitment to equal justice, delivered after thorough consideration and fidelity to the law, that distinguishes Judge Pearson as an invaluable asset to Ohio's judicial system.

I urge my colleagues, this afternoon, to quickly confirm her in her new position as U.S. district judge for the Northern District of Ohio.

I would close with thanking two people on my staff who have gone above and beyond the call of duty: Mark Powden, my chief of staff, who has, almost weekly, spoken with Judge Pearson, talking about the delays and what is going to get this back on track and how are we going to get her confirmed. I appreciate the work Mark Powden has done. And Patrick Jackson in her office, who, while all this was going on, was getting married. He got married earlier this month, and he was doing that at the same time as we were doing all this. I am grateful to both of them. I thank my colleagues.

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

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

LITTORAL COMBAT SHIP

Mr. SHELBY. Mr. President, I rise today in support of the Navy's acquisition strategy to purchase 20 littoral combat ships, LCS.

The Navy's plan would allow 20 littoral combat ships to be awarded to two shipyards: Austal, which will build 10 ships in Mobile, AL, and Lockheed Martin, which will build 10 ships in Wisconsin.

Under the new procurement strategy, our sailors will receive the ships they need to operate in shallow waters and

combat the threats of surface craft, submarines, and mines. These ships will be used for a variety of security issues from sweeping for mines in coastal waters to fighting pirates and chasing drug smugglers. They are a needed asset for our Navy.

The Navy's dual acquisition plan, included in the continuing resolution, brings significant advantages to the LCS program.

Our Navy will receive this capability faster, bring assets into operational service earlier, and will assist the Navy in reaching a 313-ship Navy sooner.

The LCS strategy will stabilize the program and the industrial base with an initial award of 20 ships. This will sustain competition throughout the life of the program.

It is critical to ensure that the capabilities of our naval fleet are the very best and that our Armed Forces receive the equipment they need in executing future operations.

However, as the foundation of our ability to project force globally for the next half century, we must obtain the best platform for the taxpayer investment.

The LCS dual award does both.

The dual procurement of the LCS will bring tremendous cost savings to the program that would not have been realized had the Navy moved forward with a down select of designs.

According to the Navy, the acquisition savings for a dual award is projected to be $2.9 billion as measured against the President's fiscal year 2011 request. Of these savings, approximately $1 billion is directly attributable to the dual award.

Acquisition decisions made in the near term will affect fleet effectiveness and operating costs for decades to come.

This is the best outcome for all involved. The Navy will be able to obtain the best solution for the taxpayer investment.

I urge my colleagues to support the dual acquisition strategy included within the continuing resolution.

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

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

The PRESIDING OFFICER. The Senator from Alabama.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, through the Chair to my friend from Alabama, would it be agreeable to the Senator that I do a UC request so we can find out what we are going to do?

Mr. SESSIONS. Mr. President, I would be pleased to yield to the majority leader for that. And if I could ask consent to be recognized afterward. I would note I did have time set aside for these remarks.

Mr. REID. Yes. I understand.

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

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that at 2 p.m. today, all postcloture time be considered expired and that the second-degree amendment be withdrawn; that no further amendments or motions be in order; that the Senate then proceed to vote on the Reid motion to concur in the House amendment to the Senate amendment to H.R. 3082 with amendment No. 4885; that upon disposition of the House message, the Senate proceed to executive session to consider Executive Calendar Nos. 703 and 813; that all time under the order governing consideration of the nominations be yielded back, except for 8 minutes to be divided 4 minutes on each nomination, equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that upon the use or yielding back of all time with respect to the two nominations, the Senate then proceed to vote on confirmation of the nominations in the order listed; that upon disposition of the nominations, the other provisions of the order remain in effect, except that the Senate remain in executive session and there then be 4 minutes of debate, equally divided and controlled between the leaders or their designees, prior to the vote on the motion to invoke cloture on the New START treaty; that upon the use of the time, the Senate then proceed to vote on the motion to invoke cloture on the treaty; that after the first vote in this sequence, the second and third votes be limited to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that Members have until 1:30 p.m. today to file any germane second-degree amendments to the New START treaty.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I further ask unanimous consent that following Senator SESSIONS, Senator HARKIN then be recognized, to be followed by Senator VOINOVICH for up to 20 minutes.

I say to my friend from Iowa, how much time—15 minutes.

Does that give us enough time to do all that? It appears it does. So Senator HARKIN would be recognized for 15 minutes and then Senator VOINOVICH for 20 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I was pleased to yield to the majority leader and just observe that although we do fuss a lot around here, many things are done by agreement. Senator REID has obviously talked with the Republican leaders and reached this agreement on how we can proceed on some of these matters, and I was pleased to yield to him.

Mr. REID. Mr. President, I would say to my friend from Alabama, my friend from Alabama and I do not always agree on the substantive issues, but there is no one more of a gentleman and easier to work with than the Senator from Alabama, Mr. SESSIONS.

The PRESIDING OFFICER. The Senator from Alabama.

NOMINATION OF WILLIAM MARTINEZ

Mr. SESSIONS. Mr. President, I rise to speak on the President's nomination of Mr. William Martinez to the United States District Court for Colorado. I will oppose the nomination, and I have several reasons for doing so. He has a lot of good friends and people who respect him and like him, but we are trying to make a decision about a lifetime appointment to the federal district court. There are some concerns with this nomination that are serious and, in particular, trends of the President to nominate individuals with judicial philosophies outside the mainstream.

There is one reason in particular that concerns me about Mr. Martinez. It is his longtime affiliation with the American Civil Liberties Union and the questions we asked him about that were answered insufficiently for me. We have had a number of ACLU nominations. I have supported some and opposed others. The ACLU is a very leftwing organization. It seeks openly to defy the will of the American people in many lawsuits while at the same time they endeavor to undermine and oppose traditions and institutions that make up the very fabric of our culture, our national identity, and who we are as a people, assuming those things are insignificant and only pure philosophical approaches, as they have, of an extreme nature should guide our Nation.

Mr. Martinez has been a member of the ACLU in Colorado for nearly a decade, and since 2006 served on its legal panel. In this role he reviews memorandum prepared by ACLU staff and attorneys and decides whether to pursue litigation, a very significant post in that organization. Of course that is not disqualifying. One can be a member of an organization, even though some of us might not like it or agree with the organization. But any nominee from a conservative organization who takes extreme positions would certainly have to answer those positions and justify why they might take them. Likewise it is fair and appropriate to ask questions about this nominee and about this organization and whether the nominee agrees with them or why, if they don't agree, they are a member.

A lot of people say they didn't agree with this position or that position. I was left asking: Why are you a member? It is on their Web site.

When asked about some of the positions on important issues, he failed to

clearly respond and repeatedly refused to answer questions in a direct and clear manner. For example, at his hearing I asked whether he agreed with the ACLU's position that the death penalty was unconstitutional in all circumstances. He refused to answer. Instead he noted that the Supreme Court has held the death penalty constitutional, adding:

What my view would be as a sitting Federal district judge is something that would be quite different from my views as a personal citizen or an advocate or a litigant and member of the ACLU.

I asked him whether he personally thinks the death penalty violates the Constitution and whether he had ever expressed that view. He again failed to answer, stating only that he had never expressed any view.

So I put the question to him again, and again he did not answer.

Let me stop and say why I think this is a very important issue. The Constitution was passed as a unified document with 10 amendments. The American people ratified it. Some people, in recent years, have come up with the ingenious idea that they could disqualify and eliminate the death penalty without a vote of the people, without the popular will to change laws that exist all over the country. They decided they could change it by finding something in the Constitution that would say the death penalty is wrong, and they reached out to the provision that says you should not have cruel and unusual punishment. They said the death penalty is cruel and unusual and is unconstitutional, which is not sound. Let me be respectful.

Why is that not a sound policy? There are multiple references in the Constitution to a death penalty. It talks about capital crimes, taking life without due process. it is in the Constitution. How could one say, when there are multiple provisions explicitly providing for the death penalty, how could we reach over here and take a position on cruel and unusual punishment which was designed to prevent people from being hung on racks and tortured and that kind of thing? But that is the ACLU position.

This nominee, who is going to be given a lifetime appointment, the power to interpret the Constitution on this very real issue of national import that good lawyers know about, refused to state that the Constitution is clear, that the death penalty is legal.

In fact, I note parenthetically that every Colony, every State had a death penalty at the time, and so did the United States Government. Surely the people, when they ratified it, had no idea that somebody coming along in 2000 would create the view that the Constitution prohibits the death penalty.

I also asked Mr. Martinez whether he agreed with the President's so-called empathy standard, but rather than state flatly that empathy should play no role in decisionmaking, as did Justice Sotomayor when she came up—she flatly said no, a judge has to be impartial; one should decide it on the facts and the law, not on feelings—he said that empathy ''can provide a judge with additional insight and perspective as to the intent and motivations of the parties appearing before the court.'' Empathy, to me, is far too much like politics, far too much like something other than law. It is certainly not law.

When a nominee such as Mr. Martinez, who has dedicated so much time and legal expertise to the ACLU, refuses to answer basic questions about these issues, it is fair and appropriate to conclude that perhaps he agrees with the other positions of the ACLU. I have done a little checking on that.

What is this organization of which he is a member? Some people like the position they take on this issue or that issue. But what overall are some of the policy and legal positions taken by the ACLU? Over the last several decades it has taken positions far to the left of mainstream America and the ideals and values the majority of Americans hold dear. Roger Baldwin, the ACLU's founder, was openly vocal about his support and belief in ''socialism, disarmament, and ultimately for abolishing the State itself as an instrument of violence and compulsion.''

He was quoted as saying:

I seek social ownership of property, the abolition of the profited class and sole control by those who produce wealth. Communism is the goal.

Mr. Baldwin's influence and impact on the ACLU could not be overstated. As former ACLU counsel Arthur Hays says:

The American Civil Liberties Union is Roger Baldwin.

As I mentioned earlier, the ACLU opposes the death penalty under any circumstances, even for child rapists. They filed a brief recently in Kennedy v. Louisiana arguing that a State could not apply the death penalty to a child rapist regardless of the severity of the crime or the criminal history unless the child died from his or her injuries. Here the defendant had raped his own 8–year-old stepdaughter and caused horrific injuries that a medical expert said were the most severe he had ever seen. The defendant had done the same thing to another young girl within the family a few years earlier. Even President Obama, when the case came before the Supreme Court, said he opposed that view. Yet President Obama continues to nominate a host of ACLU lawyers to the Federal bench and presumably has some sort of sympathy with the views they have been taking.

In recent years, the ACLU has litigated on behalf of sex offenders, including suing an Indiana city on behalf of a repeat sex offender who was barred from the city's park after he admitted stalking children who played there. Even though the convicted offender had admitted that he thought about sexually abusing the children in the park, the ACLU sued to give him full access to the park and the children. I agree with the mayor of the city who said:

Parents need to be able to send their children to a park and know they are going to be safe, not being window shopped by a predator.

I would hope all nominees would share this view rather than the ACLU's position on the subject. Although many view the ACLU as a neutral defender of the Bill of Rights, the ACLU takes a very selective view of the rights it advocates.

That is just a fact. Otherwise, if they were defending the Constitution and what it says plainly, they would defend the constitutionality of the death penalty. It should not take them 2 seconds to figure that out. They have an agenda.

As it explains on its Web site, the ACLU openly disagreed with the Supreme Court's landmark ruling in the Heller case—the right to keep and bear arms—in Washington because the ACLU does not believe the second amendment confers an individual right to keep and bear arms. Well, OK. So the lawyers might disagree on that. But if this institution, this ACLU, is so committed to constitutional rights and opposes the power of the State, why would they not read the plain words of the second amendment: The right to keep and bear arms shall not be infringed. Why wouldn't they defend that individual right of free Americans to be armed and oppose the power of the State to take away what has historically been an American right? I think it represents and reveals a political agenda as part of this organization.

It also has a selective view of what exactly is protected by the first amendment. It has done some good work on the first amendment, the ACLU has, but it has gone to great lengths to limit freedom of religion, as provided for in the first amendment, suing religious organizations and groups such as the Salvation Army and even individuals and supported the removal of ''under God'' from the Pledge of Allegiance and ''in God we trust'' from our currency. It sued the Virginia Military Institute to stop the longstanding tradition of mealtime prayer for cadets. You do not have to bow your head if you go to lunch and somebody wants to have a prayer. Nobody makes you pray. But if other people want to take a moment before they partake of their meal and, say, acknowledge a bit of appreciation for the blessings they have received, what is wrong with that? I do not believe it violates the first amendment.

The Constitution says that you cannot establish a religion in America, and we cannot prohibit the free exercise of religion either. The establishment clause and the free exercise clause are both in that amendment. But the ACLU only sees one. They see everything as an establishment of religion.

The ACLU has also argued for the removal of religious symbols and scriptures from national parks and monuments and cemeteries that have stood for years regardless of how innocuous they may be.

I am very surprised we do not have the ACLU filing a lawsuit to deal with those words right over that door: ''In God We Trust.'' It won't be long. They will want to send in gendarmes with chisels to chisel it off the wall. It is an extreme view of the first amendment, and has never been part of what we understood the Constitution to be about. The reference in a public forum to a ''higher being'' is not prohibited by the Constitution—except in the minds of some extremists.

So the ACLU has argued for the removal of all vestiges of Christmas, going so far as to sue school districts to bar them from having Santa Claus at school events and threatening to sue if Christmas carols are sung anywhere on school grounds. Give me a break.

In addition, the ACLU has sought to limit or remove the rights of children to salute the U.S. flag, recite the Pledge of Allegiance, and openly pray.

It has sued the Boy Scouts—I am honored to have been an Eagle Scout at one time in my life—and government entities that have supported this honorable institution. It has sued them.

It has fought for the rights of child pornographers and against statutes seeking to stop its production and distribution or limit children's exposure to it. The ACLU absolutely not only opposes adult pornography laws, they oppose laws that prohibit child pornography, which is where so much of the problem of pedophilia occurs.

The ACLU has sought to overturn the will of the people by challenging numerous State laws that define marriage as between a man and a woman and has encouraged city mayors across the country to openly defy State law by granting same-sex marriage licenses, even in contradiction to law.

It has vehemently opposed the 1996 Defense of Marriage Act, calling it ''a deplorable act of hostility unworthy of the United States Congress.'' That passed a year before I came here—not too long ago. It just said that if one State allows a marriage to be between members of the same sex, another State would not be forced to acknowledge it and recognize it. That is what the Defense of Marriage Act did, and it passed here not too many years ago.

The ACLU has consistently opposed all restrictions on abortion—all restrictions—including partial-birth abortion, the Unborn Victims of Violence Act, and statutes requiring parental notification before a minor child can have an abortion. If they want to defend the innocent against wrongdoing, what about defending a child partially born whose life is taken from them? The ACLU's extreme advocacy on abortion would force even religious health care providers—doctors and nurses—to perform abortions as a condition of Medicare or Medicaid reimbursement eligibility. A doctor could not say: I will treat you, but I don't do abortions. Oh, if you take Medicare or Medicaid money, then under the ACLU's position, you would have to do so.

According to the ACLU:

> There is no basis for a hospital to impose its own religious criteria on a patient to deny [her] emergency care.

So this type of religious liberty is not, I think, what the Founders said. I do not think a hospital that is founded on personal values and has certain moral values should be required to give them up as a capitulation to State domination, which is what they were asking for actually, having the State be able to tell a hospital that did not believe in abortion.

What about other issues that may come up, such as end-of-life issues. Hospitals ought to be able to have—and doctors and nurses should be able to have moral views about those matters and not do something they think is wrong and not have to give up their practice or their hospital in order to comply with what this group thinks is the right way to do business.

So those are some of the examples of the ACLU's out-of-the-mainstream point of view. It is no secret that this administration shares this kind of legal reasoning. This is, of course, one of a long line of ACLU nominees whom we have seen, and this kind of reasoning and legal thought is well to the left of and out of touch with the American people and, I think, for the most part, established law. It seeks to impose its liberal progressive agenda any way it can, including by filing lawsuits and having judges—unelected lifetime appointed judges who have been popped through the Senate—ratify what the people who filed the lawsuits want to achieve as a matter of policy, not being neutral umpires who adjudicate disputes and decide them narrowly but to try to use the courts as a vehicle to advance an agenda. That is what has really been at the core of the debate in recent years over judicial nominations.

So it is not surprising that many of the President's judicial and executive branch nominees have been deeply involved in the ACLU—many of them. For example, President Obama's first nominee, Judge David Hamilton, who was confirmed to the Seventh Circuit last year, was a leading member of the Indiana Civil Liberties Union for 9 years, where he served as a board member and its vice president for litigation. Judge Gerard Lynch, who now sits on the Second Circuit, was a cooperating attorney and member of the ACLU for 25 years. Judge Rogeriee Thompson, who was confirmed to the First Circuit earlier this year, had been a member of the ACLU for 10 years. Judge Dolly Gee, who now sits on the District Court for the Central District of California, had been a member of the ACLU for 9 years. Carlton Reeves, who was confirmed two days ago to the Southern District of Mississippi, was a member for 12 years and served as a board member.

Three of President Obama's most controversial judicial nominees have had extensive involvement with the ACLU. Edward Chen, nominated to the Northern District of California, was a staff attorney on staff and member of the ACLU of Northern California for 16 years. Goodwin Liu, a professor, one of the most extreme nominees now pending, was nominated to the Ninth Circuit, already the most activist circuit in America. He was a member of the board of directors of the ACLU of northern California for years. Jack McConnell, nominated to the district of Rhode Island, was a volunteer lawyer for the ACLU as recently as last year.

A number of nominees who were recently considered by the Judiciary Committee also have significant ties to the ACLU. Amy Totenberg, nominated to the Northern District of Georgia, has been a member for 21 years. Robert Wilkins, nominated to the District of DC, was also a member. Michael Simon, nominated to the District of Oregon, has been a member since 1986. He served on the lawyers committee and the board of directors and as its vice president for legislation and vice president for litigation.

That is more than I thought when we started going back and looking at this. I am sure less than 1 percent of the lawyers in America are members of the ACLU, but it seems if you have the ACLU DNA, you get a pretty good leg up on being nominated by this President. It is clear the President, our President, a community activist, a liberal progressive, as his own friends have described him, and former law professor is attempting to pack the courts with people who share his views and who will promote his vision of, as he has said about judges, what America ''should be.'' That was his phrase. He said, We want judges who help advance a vision of what America should be.

But that is not good. We all have visions of what America should be. I wish to see us be a more frugal nation, more local government, more individual responsibility. I do not support cradle-to-grave government. His vision is what? That we want judges on the bench promoting an agenda because they were picked by a President who shares that agenda? That is not the classical American heritage of what judges should be about. Judges should take the bench and they should attempt, as objectively as they possibly can, having put on that robe and having taken an oath to do equal justice to the poor and the rich, and to be not a respecter of persons, but to analyze that case objectively and decide it based on the law and the facts, not on their empathy and not on what their vision of what America should be because it may not be what the people's vision is.

Democracy is undermined if a judge gets on the bench and feels that they

can promote visions. I have to tell my colleagues, they are not appointed to be vision promoters. They are appointed to decide the strict matters of law and fact, to the best of the ability the Lord gives them.

We can't stand idly by and allow that heritage of law that benefits us so greatly, the American rule of law and the greatest strength this Nation has, in my opinion, to be altered by promoting a Federal judiciary that is agenda oriented. Any individual—regardless of the position to which they have been nominated, to what kind of court position they are nominated to—who demonstrates unwillingness to subordinate his or her personal views, religious, political, ideological, social, liberal, or conservative. Conservatives can't promote their views, either—if they can't be faithful to the law and the Constitution, they should not be on the bench.

I am not going to support such nominees and no Senator should support them. I have given it a lot of thought. I know Mr. Martinez has had a long affiliation with the ACLU. He refused to give clear answers to these questions I posed to him. I am not convinced that those views, which I think are outside legitimate constitutional theory, have been objected to and are not by Mr. Martinez—indeed, it appears he supports them because he has not with clarity rejected a single one. He has not made any defense to participating in an organization that openly advocates these kinds of legal views.

We ask a lot of the nominees: Do you believe the Constitution prohibits the death penalty? They said, No. Even though they were part of an organization and some of them—a lot—have been confirmed and I have voted for a number of them, but I am not able to vote for this one.

I have to say this: We are paid to judge and to vote, and when it comes down to some of the positions taken by the ACLU—let's take the one that the Constitution prohibits the death penalty—are so extreme and are so nonlegal that if a person can't understand that, I have serious doubt that they can understand any other significant constitutional principle.

Therefore, I have concluded I would not be able to support the nominee, although I respect my colleagues who think he will do well. I certainly don't think he is a bad person. I think he is an able person who has a wonderful background, but his legal history evidences an approach to law that I think is outside the mainstream and I will oppose the nomination. We are not blocking a vote. We will allow him to have his up-or-down vote and Senators will cast their vote based on how they conclude it should be decided.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER (Mr. MANCHIN). The Senator from Ohio.

NEW START TREATY

Mr. VOINOVICH. Mr. President, I rise today to discuss the Senate's deliberation of the New START treaty and the treaty's implications for our friends and allies in Eastern and Central Europe and, more importantly, the national security of the United States.

On November 17, I came to the Senate floor to discuss my concerns about the treaty and the President's reset policy. Following my remarks, I received a significant amount of feedback—some positive, some critical—and throughout my deliberations on the treaty, my intention was to contribute to advancing this important debate in a meaningful way.

First, I wish to make it clear I remain concerned about the direction of Russia in terms of its commitment to human rights and an effort to reassert its influence over what Russia considers Eastern and Central Europe, their sphere of influence—those countries I often describe as the captive nations. One cannot ignore the statement of Vladimir Putin when he described the collapse of the Soviet Union as the greatest geopolitical catastrophe of the 20th century.

Two years ago, after listening to Russia's Foreign Minister Sergey Lavrov at the German Marshall Fund Forum in Brussels, I concluded that Russia's internal political dynamic suggested that its people were deeply concerned by the growth in U.S. influence through NATO expansion and incursion into their part of the world. The Russian people, it seems, believed there was a post-Cold War promise, once the Iron Curtain came down, to not interfere in the region.

As one of the leaders in helping the captive nations movement and to this day regretting the way our brothers and sisters in these countries were treated during the postwar conferences at Yalta and Tehran—I must say I never thought the wall would come down or their curtain torn, but once it did, I did everything I could to ensure these newly democratized countries were invited to join NATO. In 1998, as chairman of the National Governors Association, I worked to get a resolution passed encouraging the United States to invite Poland, the Czech Republic, and Hungary to join the alliance.

One of the proudest moments as a Senator was when I joined President Bush, Secretary of State Powell, Secretary of Defense Rumsfeld, and Chairman of the Joint Chiefs of Staff General Myers at the NATO summit in Prague on November 21, 2002. I was in the room when NATO Secretary General Lord Robinson officially announced the decision to invite Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia into NATO. I mention all of this history for a simple reason. I don't think there is a Member of the Senate more wary of the intentions of Russia toward the former captive nations than I.

So it brings me back to the subject of the treaty now pending before the Senate. I take the Senate's constitutional advice and consent duties very seriously. Since the treaty was signed in April, I have attended numerous meetings and classified briefings on the treaty. I suspect I have spent at least 10 to 12 hours on it. Since I last spoke on this floor about the treaty in November, I have held additional consultations with a number of former Cabinet Secretaries, ambassadors, and experts from the intelligence community, including former Secretaries of State Albright, Powell, and Rice, seeking their views about the treaty's effect on our bilateral relationship with Russia, as well as our relationship with our Eastern and Central European allies. While some of those I met with had concerns about specific technical aspects of the treaty, I continually heard that we should ratify the treaty.

I believe it is noteworthy that five former Republican Secretaries of State, including Kissinger, Shultz, Baker, Eagleburger, and Powell, in a December 2, 2010 Washington Post opinion piece urged the Senate:

> . . . to ratify the New START Treaty signed by President Obama and Russian President Dmitry Medvedev. It is a modest and appropriate continuation of the START I treaty that expired almost a year ago.

These former Republican Secretaries of State described some of the outstanding issues with the treaty, but describe convincingly, in my opinion, why ultimately it is in our national interest to ratify the treaty.

Mr. President, I ask unanimous consent that the op-ed piece from the Washington Post be printed in the RECORD.

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

[From the Washington Post, Dec. 2, 2010]

THE REPUBLICAN CASE FOR RATIFYING NEW START

(By Henry A. Kissinger, George P. Shultz, James A. Baker III, Lawrence S. Eagleburger and Colin L. Powell)

Republican presidents have long led the crucial fight to protect the United States against nuclear dangers. That is why Presidents Richard Nixon, Ronald Reagan and George H.W. Bush negotiated the SALT I, START I and START II agreements. It is why President George W. Bush negotiated the Moscow Treaty. All four recognized that reducing the number of nuclear arms in an open, verifiable manner would reduce the risk of nuclear catastrophe and increase the stability of America's relationship with the Soviet Union and, later, the Russian Federation. The world is safer today because of the decades-long effort to reduce its supply of nuclear weapons.

As a result, we urge the Senate to ratify the New START treaty signed by President Obama and Russian President Dmitry Medvedev. It is a modest and appropriate continuation of the START I treaty that expired almost a year ago. It reduces the number of nuclear weapons that each side deploys while enabling the United States to maintain a strong nuclear deterrent and preserving the flexibility to deploy those forces as we see fit. Along with our obligation to protect the homeland, the United States has responsibilities to allies around the world. The commander of our nuclear forces has

testified that the 1,550 warheads allowed under this treaty are sufficient for all our missions—and seven former nuclear commanders agree. The defense secretary, the chairman of the Joint Chiefs of Staff and the head of the Missile Defense Agency—all originally appointed by a Republican president—argue that New START is essential for our national defense.

We do not make a recommendation about the exact timing of a Senate ratification vote. That is a matter for the administration and Senate leaders. The most important thing is to have bipartisan support for the treaty, as previous nuclear arms treaties did.

Although each of us had initial questions about New START, administration officials have provided reasonable answers. We believe there are compelling reasons Republicans should support ratification.

First, the agreement emphasizes verification, providing a valuable window into Russia's nuclear arsenal. Since the original START expired last December, Russia has not been required to provide notifications about changes in its strategic nuclear arsenal, and the United States has been unable to conduct on-site inspections. Each day, America's understanding of Russia's arsenal has been degraded, and resources have been diverted from national security tasks to try to fill the gaps. Our military planners increasingly lack the best possible insight into Russia's activity with its strategic nuclear arsenal, making it more difficult to carry out their nuclear deterrent mission.

Second, New START preserves our ability to deploy effective missile defenses. The testimonies of our military commanders and civilian leaders make clear that the treaty does not limit U.S. missile defense plans. Although the treaty prohibits the conversion of existing launchers for intercontinental and submarine-based ballistic missiles, our military leaders say they do not want to do that because it is more expensive and less effective than building new ones for defense purposes.

Finally, the Obama administration has agreed to provide for modernization of the infrastructure essential to maintaining our nuclear arsenal. Funding these efforts has become part of the negotiations in the ratification process. The administration has put forth a 10-year plan to spend $84 billion on the Energy Department's nuclear weapons complex. Much of the credit for getting the administration to add $14 billion to the originally proposed $70 billion for modernization goes to Sen. Jon Kyl, the Arizona Republican who has been vigilant in this effort. Implementing this modernization program in a timely fashion would be important in ensuring that our nuclear arsenal is maintained appropriately over the next decade and beyond.

Although the United States needs a strong and reliable nuclear force, the chief nuclear danger today comes not from Russia but from rogue states such as Iran and North Korea and the potential for nuclear material to fall into the hands of terrorists. Given those pressing dangers, some question why an arms control treaty with Russia matters. It matters because it is in both parties' interest that there be transparency and stability in their strategic nuclear relationship. It also matters because Russia's cooperation will be needed if we are to make progress in rolling back the Iranian and North Korean programs. Russian help will be needed to continue our work to secure ''loose nukes'' in Russia and elsewhere. And Russian assistance is needed to improve the situation in Afghanistan, a breeding ground for international terrorism.

Obviously, the United States does not sign arms control agreements just to make friends. Any treaty must be considered on its merits. But we have here an agreement that is clearly in our national interest, and we should consider the ramifications of not ratifying it.

Whenever New START is brought up for debate, we encourage all senators to focus on national security. There are plenty of opportunities to battle on domestic political issues linked to the future of the American economy. With our country facing the dual threats of unemployment and a growing federal debt bomb, we anticipate significant conflict between Democrats and Republicans. It is, however, in the national interest to ratify New START.

Mr. VOINOVICH. Mr. President, I believe many of these experts remain concerned, as do I, that a failure to ratify the treaty would be exploited by those factions in Russia who wish to revert back to our Cold War posture. Such a failure could easily be used by those factions to play on Russian nationalism, which I fear, from what I have heard from some people, is bordering on paranoia. Since I last spoke about the treaty, a number of our new NATO allies have come out and supported the treaty because they believe the treaty's approval should help advance other issues related to Russia, including the lack of compliance with the Conventional Forces in Europe Treaty, tactical nuclear weapons, and cooperation on missile defense.

For example, during his recent visit to Washington, Polish President Bronislaw Komorowski has stated he supports the treaty's ratification. And at a press conference at the conclusion of the NATO Lisbon Summit, Hungarian Foreign Minister Janos Martonyi stated:

My country has a very special experience with Russia, and also a special geographic location . . . We advocate ratification of START. It is in the interest of my nation, of Europe and most importantly for the transatlantic alliance.

During this press conference, Lithuania's Foreign Minister pointed out that he saw the treaty as a prologue to additional discussions with Russia about other forms of nuclear arms in the region such as tactical nuclear weapons. About three weeks ago, I received a call from President Zatlers, the President of Latvia, urging me: Mr. Senator, please ratify the START treaty.

Still, as history has taught us, the United States must make clear in regard to our relationship with Russia that it will not be at the expense of our NATO allies. Thus, I was pleased to see President Obama provided the leaders of our Central and European allies public reassurance regarding the U.S. commitment to article V of the North Atlantic Treaty during the recent NATO summit in Lisbon which, by the way, was one of the best NATO summits I think that has been held in the last dozen years. The President reaffirmed this commitment in his December 18, 2010 letter to the majority and minority leaders, and I hope that letter from the President has been circulated among my colleagues. It is very clear on where the President stands.

This NATO Summit meeting in Lisbon last month underscore, we are proceeding with a missile defense system in Europe designed to provide full coverage for NATO members on the continent, as well as deployed U.S. forces, against the growing threat posed by the proliferation of ballistic missiles.

I know that some of my colleagues are concerned with issues related to the treaty, including the modernization of our nuclear infrastructure, missile defense, and verification, and I will discuss each of these issues to explain why I believe they have been adequately addressed.

First of all, as others have pointed out—and I reiterate—Senator KYL has made a valiant effort to ensure we modernize the U.S. nuclear infrastructure. I have worked with Senator KYL on reviewing the treaty. I believe his hard work has led to nuclear modernization receiving the attention it deserves. It is long overdue. I remember Pete Domenici talking about the fact that we needed to do something about it and, frankly, we ignored Senator Domenici.

In a December 1, 2010, letter to Senators KERRY and LUGAR, the National Lab Directors from Lawrence Livermore, Los Alamos, and Sandia stated:

We are very pleased by the update to the Section 1251 report, as it would enable the laboratories to execute our requirements for ensuring a safe, secure, reliable, and effective stockpile under the Stockpile Stewardship and Management Plan.

I ask unanimous consent to have that letter printed in the RECORD.

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

DECEMBER 1, 2010.

Hon. JOHN KERRY,
Hon. RICHARD LUGAR,
Senate Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR CHAIRMAN KERRY AND RANKING MEMBER LUGAR: This letter is a joint response to the letters received November 30, 2010, by each of us in our current roles as directors of the three Department of Energy/National Nuclear Security Administration (NNSA) laboratories—Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Sandia National Laboratories.

We are very pleased by the update to the Section 1251 Report, as it would enable the laboratories to execute our requirements for ensuring a safe, secure, reliable and effective stockpile under the Stockpile Stewardship and Management Plan. In particular, we are pleased because it clearly responds to many of the concerns that we and others have voiced in the past about potential future-year funding shortfalls, and it substantially reduces risks to the overall program. We believe that, if enacted, the added funding outlined in the Section 1251 Report update—for enhanced surveillance, pensions, facility construction, and Readiness in Technical Base and Facilities (RTBF) among other programs—would establish a workable funding level for a balanced program that sustains the science, technology and engineering base. In summary, we believe that the proposed budgets provide adequate support to sustain the safety, security, reliability and effectiveness of America's nuclear deterrent within the limit of 1550 deployed strategic warheads established by the New START Treaty with adequate confidence and acceptable risk.

As we emphasized in our testimonies, implementation of the future vision of the nuclear deterrent described by the bipartisan Strategic Posture Commission and the Nuclear Posture Review will require sustained attention and continued refinement as requirements are defined and baselines for these major projects are established. We appreciate the fact that this 1251 update calls out the importance of being flexible and the need to revisit these budgets every year as additional detail becomes available.

We look forward to working with you and the Administration to execute this program to ensure the viability of the U.S. nuclear deterrent.

Sincerely,

DR. GEORGE MILLER,
Lawrence Livermore National Laboratory,
DR.MICHAEL ANASTASIO,
Los Alamos National Laboratory,
DR. PAUL HOMMERT,
Sandia National Laboratories.

Mr. VOINOVICH. Mr. President, a number of experts I have consulted with have pointed out—and I have agreed with—the need for the President to provide public assurances regarding the U.S. commitment to a robust missile defense system. So I was pleased with the President's letter to our leadership reiterating such support. Here I quote directly from the President's letter:

Pursuant to the National Missile Defense Act of 1999, it has long been the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack, whether accidental, unauthorized, or deliberate.

With regard to the Russian assertion—and we have heard this—that the treaty's preamble prohibits the buildup in missile defense capabilities, the President has stated in very clear language that the ''United States did not and does not agree with the Russian statement. We believe the continued development and deployment of U.S. missile defense systems, including qualitative and quantitative improvements to such systems, do not and will not threaten the strategic balance with the Russian Federation. . . . we believe the continued improvement and deployment of U.S. missile defense systems do not constitute a basis for questioning the effectiveness and the viability of the New START Treaty, and therefore would not give rise to circumstances justifying Russia's withdrawal from the Treaty.''

Mr. President, as I have discussed, I know many of my colleagues have concerns about the treaty. But after my own research and consultations with current and former Secretaries of State and numerous foreign policy experts, including many conservative experts, as well as yesterday's 3-hour closed session in the Old Senate Chamber, I support this treaty and do not believe the concerns that we have heard from some of our colleagues rise to the level at which the Senate should reject the treaty.

The President signed the treaty in April. It is now December, and we are coming up on 1 full year without any verification regime in place. I believe we should work to get this treaty done because these verification procedures are needed now. I am not the only one who believes this. I recently received a letter from Bulgaria's Ambassador to the United States, Elena Poptodorova. I have known her a long time and worked with her to get Bulgaria into NATO. She wrote:

A failure to swiftly ratify the treaty would mean discontinuation of the verification regime that could result in negative consequences in the nuclear disarmament, especially taking into consideration the significant strategic nuclear advantage of Russia.

In my view, it will also put at risk the future cooperation with Russia and will impede the negotiations on priorities, such as conventional forces and tactical nuclear weapons in Europe. It is of utmost importance that Russia be kept at the negotiating table beyond the scope of the New START Treaty, in particular on issues like Iran, Afghanistan and other global security challenges.

I ask unanimous consent that her letter be printed in the RECORD.

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

EMBASSY OF THE
REPUBLIC OF BULGARIA,
Washington DC, December 6, 2010.

DEAR SENATOR VOINOVICH: I am writing to you on an urgent note regarding the pending ratification of the New START.

Firstly, I would like to reiterate the strong support of the Bulgarian government for the treaty. As you may know, already on the margins of the NATO Summit, the Bulgarian Foreign Minister Nickolay Mladenov, together with his colleagues from Denmark, Latvia, Lithuania, Hungary and Norway, explicitly pointed out that the treaty is in the interest of European and global security. I firmly believe that it is indeed key to the national security interest of each country as well as to the stability of the transatlantic alliance.

Secondly, Bulgaria shares the assessment that the treaty allows the United States to maintain an effective and robust nuclear deterrent and to keep modernizing its nuclear weapons complex. It is crucial that it does not put any constraints on the US missile defense programs and allows for the deployment of effective missile systems.

Furthermore, a failure to swiftly ratify the treaty would mean discontinuation of the verification regime that could result in negative consequences in the nuclear disarmament especially taking into consideration the significant strategic nuclear advantage of Russia. In my view, it will also put at risk the future cooperation with Russia and will impede the negotiations on priorities such as conventional forces and tactical nuclear weapons in Europe. It is of utmost importance that Russia be kept at the negotiating table beyond the scope of the New START, in particular on issues like Iran, Afghanistan and other global security challenges.

I strongly urge you, dear Senator, to consider the arguments above and act in favor of a swift ratification of the New START. The new treaty is yet another step toward guaranteeing our common security and the United States leadership is absolutely essential in this respect.

I trust I will be taken in good faith.

Sincerely,

ELENA POPTODOROVA,
Ambassador.

Mr. VOINOVICH. Mr. President, I also bring to my colleagues' attention a July 14, 2010, letter to Senators LEVIN, KERRY, MCCAIN, and LUGAR, from former commanders of the Strategic Air Command and U.S. Strategic Command. Again, I hope my colleagues will read that letter. They list three reasons for support of the treaty. I quote from their second and third reasons:

The New START Treaty contains verification and transparency measures—such as data exchanges, periodic dated updates, notification, unique identifiers on strategic systems, some access to telemetry and onsite inspections—that will give us important insights into Russian strategic nuclear forces and how they operate those forces.

We will understand Russian strategic nuclear forces much better with the treaty that would be the case without it.

These former military commanders go on to state that the U.S. nuclear armaments—again, I think this is for all of us as American people to realize—''will continue to be a formidable force that will ensure deterrence and give the President, should it be necessary, a broad range of military options.''

I ask unanimous consent that letter sent to the Foreign Relations Committee be printed in the RECORD.

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

July 14, 2010.

Senator CARL LEVIN,
Chairman,
Senate Armed Services Committee.
Senator JOHN F. KERRY,
Chairman,
Senate Foreign Relations Committee.
Senator JOHN MCCAIN,
Ranking Member,
Senate Armed Services Committee.
Senator RICHARD G. LUGAR,
Ranking Member,
Senate Foreign Relations Committee.

GENTLEMEN: As former commanders of Strategic Air Command and U.S. Strategic Command, we collectively spent many years providing oversight, direction and maintenance of U.S. strategic nuclear forces and advising presidents from Ronald Reagan to George W. Bush on strategic nuclear policy. We are writing to express our support for ratification of the New START Treaty. The treaty will enhance American national security in several important ways.

First, while it was not possible at this time to address the important issues of non-strategic weapons and total strategic nuclear stockpiles, the New START Treaty sustains limits on deployed Russian strategic nuclear weapons that will allow the United States to continue to reduce its own deployed strategic nuclear weapons. Given the end of the Cold War, there is little concern today about the probability of a Russian nuclear attack. But continuing the formal strategic arms reduction process will contribute to a more productive and safer relationship with Russia.

Second, the New START Treaty contains verification and transparency measures—such as data exchanges, periodic data updates, notifications, unique identifiers on strategic systems, some access to telemetry and on-site inspections—that will give us important insights into Russian strategic nuclear forces and how they operate those forces. We will understand Russian strategic forces much better with the treaty than

would be the case without it. For example, the treaty permits on-site inspections that will allow us to observe and confirm the number of warheads on individual Russian missiles; we cannot do that with just national technical means of verification. That kind of transparency will contribute to a more stable relationship between our two countries. It will also give us greater predictability about Russian strategic forces, so that we can make better-informed decisions about how we shape and operate our own forces.

Third, although the New START Treaty will require U.S. reductions, we believe that the post-treaty force will represent a survivable, robust and effective deterrent, one fully capable of deterring attack on both the United States and America's allies and partners. The Department of Defense has said that it will, under the treaty, maintain 14 Trident ballistic missile submarines, each equipped to carry 20 Trident D–5 submarine-launched ballistic missiles (SLBMs). As two of the 14 submarines are normally in long-term maintenance without missiles on board, the U.S. Navy will deploy 240 Trident SLBMs. Under the treaty's terms, the United States will also be able to deploy up to 420 Minuteman III intercontinental ballistic missiles (ICBMs) and up to 60 heavy bombers equipped for nuclear armaments. That will continue to be a formidable force that will ensure deterrence and give the President, should it be necessary, a broad range of military options.

We understand that one major concern about the treaty is whether or not it will affect U.S. missile defense plans. The treaty preamble notes the interrelationship between offense and defense; this is a simple and long-accepted reality. The size of one side's missile defenses can affect the strategic offensive forces of the other. But the treaty provides no meaningful constraint on U.S. missile defense plans. The prohibition on placing missile defense interceptors in ICBM or SLBM launchers does not constrain us from planned deployments.

The New START Treaty will contribute to a more stable U.S.-Russian relationship. We strongly endorse its early ratification and entry into force.

Sincerely,

GENERAL LARRY WELCH, *USAF, Ret.*
GENERAL JOHN CHAIN, *USAF, Ret.*
GENERAL LEE BUTLER, *USAF, Ret.*
ADMIRAL HENRY CHILES, *USN, Ret.*
GENERAL EUGENE HABIGER, *USAF, Ret.*
ADMIRAL JAMES ELLIS, *USN, Ret.*
GENERAL BENNIE DAVIS, *USAF, Ret.*

Mr. VOINOVICH. Mr. President, I also ask unanimous consent to have printed in the RECORD a September 7, 2010, opinion piece from the Wall Street Journal by former Secretary of State George Shultz, who served under President Reagan. I think all of us who are familiar with George Shultz's record have high respect and regard for him.

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

[From the Wall Street Journal, Sept. 7, 2010]

LEARNING FROM EXPERIENCE ON ARMS CONTROL

(By George P. Shultz)

The New Start treaty provides an instructive example of how, when everyone works at it, an important element of arms control treaties can be improved by building on past treaties and their execution.

I remember well the treaty on Intermediate-Range Nuclear Forces (INF), as I had a hand in negotiating the treaty and in getting implementation started. Our mantra was stated almost endlessly by President Ronald Reagan, to the point that Soviet leader Mikhail Gorbachev would join in: ''Trust but verify.''

Reagan insisted on, and we obtained, on-site inspection of the critical elements in the treaty: the destruction of all missiles and a method of ensuring that new ones were not produced. This critical element in the treaty built on an earlier one. The Stockholm Agreement of 1986 was the first U.S.-Soviet agreement to call for on-site observation of military maneuvers. Although not as intrusive as a close look at nuclear facilities, it was, nevertheless an important conceptual breakthrough. The idea of on-site inspection had been accepted and put in practice.

When the Strategic Arms Reduction Treaty (Start) was negotiated and finally signed in 1991, a different problem presented itself. On-site inspection of missile destruction is one thing; on-site inspection of an active inventory is something else again. You are looking at an ongoing operation. Nevertheless, the challenge was met in part by counting delivery vehicles, clearly building on the successful experience of both sides with the INF treaty.

However, the political relations between the United States and the then Soviet Union had not yet reached the level of cooperation required to count the number of actual warheads directly without concern about compromising secret design information. The result was a process of attribution derived from access to telemetry—that is, the data transmitted from flight tests of missiles. This allowed for a cap on the maximum number of warheads that could be delivered, which was the number attributed in Start.

Periodic on-site inspections of the missile sites were provided for under Start, but the experience of both sides was that this process, conducted in a fragmented way, disrupted normal operations and so was unnecessarily burdensome to both sides.

The Strategic Offensive Reduction Treaty (SORT), negotiated in 2002 under the George W. Bush administration, simply relied on the Start verification regime. In a joint declaration, President Bush and President Vladimir Putin agreed on the desirability of greater transparency, but they left it at that.

Along came the New Start treaty, signed by President Barack Obama and Russian President Dmitry Medvedev on April 8, 2010. People responsible for monitoring the original Start treaty were included in the negotiations, so operating experience was present at the table. The result was a further advance, building on the transparency measures already in place under the Start treaty. On-site inspection now allows the total number of warheads on deployed missiles literally to be counted directly.

Thus, up-close observation is substituted for the telemetry that was essential in the original Start treaty. But some cooperation in sharing telemetry information was included in the New Start treaty. This provides some additional transparency and can serve, over time, as a confidence-building measure. It is well that some telemetry cooperation will occur so that the principle is retained.

The New Start treaty, like others before it, was built on previous experience. And, like earlier treaties, it provides a building block for the future. As lower levels of warheads are negotiated, the importance of accurate verification increases and the precedent and experience derived from New Start will ensure that a literal counting process will be available. The New Start treaty also sets a precedent for the future in its provision for on-site observation of nondeployed nuclear systems—important since limits on nondeployed warheads will be a likely next step.

The problem of interruptions in operations posed by the original Start treaty and identified by the executors of the treaty on both sides is addressed in the New Start treaty in a way that gives more information but is less disruptive. First of all, a running account in the form of regular data exchanges is provided every six months on a wide range of information about their strategic forces, and numerous inspection procedures have been consolidated.

The United States will have the right to select, for purposes of inspection, from all of Russia's treaty-limited deployed and nondeployed delivery vehicles and launchers at the rate of 18 inspections per year over the life of New Start. It is also important that each deployed and nondeployed intercontinental ballistic missile (ICBM) or submarine-launched ballistic missile (SLBM) or heavy bomber will have assigned to it a unique code identifier that will be included in notifications any time the ICBM or SLBM or heavy bomber is moved or changes status. The treaty establishes procedures to allow inspectors to confirm the unique identifier during the inspection process.

The notification of changes in weapon systems—for example, movement in and out of deployed status—will provide more information on the status of Russian strategic forces under this treaty than was available under Start. Information provided in notifications will complement and be checked by on-site inspection as well as by imagery from satellites and other assets which collectively make up each side's national technical means of verification.

Having been involved in the Stockholm Treaty when a breakthrough in on-site inspection was made and when intrusive on-site inspection of key events was a main element of the INF Treaty, I am pleased to see that the building process is continuing, especially since the New Start treaty includes some improved formulations that bode well for the future. Seeing is not quite believing, but it helps. Learning is not limited to what you get from experience, but it helps.

The original Start treaty expired last December. The time has come to start seeing again, with penetrating eyes, and to start learning from the new experience.

Mr. VOINOVICH. In his piece, the Secretary discusses the importance of verification and closes with this thought:

The original START Treaty expired last December. The time has come to start seeing again, with penetrating eyes, and to start learning from the new experience.

In other words, the provisions in terms of verification are new compared to the old START treaty.

Finally, I ask my colleagues to take note of Secretary Rice's statement that ''the treaty helpfully reinstates onsite verification of Russian nuclear forces, which lapsed with the expiration of the original START treaty last year. Meaningful verification was a significant achievement of Presidents

Reagan and George H.W. Bush, and its reinstatement is crucial.''

I ask unanimous consent that her article in the Wall Street Journal be printed in the RECORD.

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

[From the Wall Street Journal, Dec. 7, 2010]

NEW START: RATIFY, WITH CAVEATS

(By Condoleezza Rice)

When U.S. President Bush and Russian President Putin signed the Moscow Treaty in 2002, they addressed the nuclear threat by reducing offensive weapons, as their predecessors had. But the Moscow Treaty was different. It came in the wake of America's 2001 withdrawal from the Anti-Ballistic Missile Treaty of 1972, and for the first time the United States and Russia reduced their offensive nuclear weapons with no agreement in place that constrained missile defenses.

Breaking the link between offensive force reductions and limits on defense marked a key moment in the establishment of a new nuclear agenda no longer focused on the Cold War face-off between the Warsaw Pact and NATO. The real threat was that the world's most dangerous weapons could end up in the hands of the world's most dangerous regimes—or of terrorists who would launch attacks more devastating than 9/11. And since those very rogue states also pursued ballistic missiles, defenses would (alongside offensive weapons) be integral to the security of the United States and our allies.

It is in this context that we should consider the potential contribution of the New Start treaty to U.S. national security. The treaty is modest, reducing offensive nuclear weapons to 1,550 on each side—more than enough for deterrence. While the treaty puts limits on launchers, U.S. military commanders have testified that we will be able to maintain a triad of bombers, submarine-based delivery vehicles and land-based delivery vehicles. Moreover, the treaty helpfully reinstates on-site verification of Russian nuclear forces, which lapsed with the expiration of the original Start treaty last year. Meaningful verification was a significant achievement of Presidents Reagan and George H.W. Bush, and its reinstatement is crucial.

Still, there are legitimate concerns about New Start that must and can be addressed in the ratification process and, if the treaty is ratified, in future monitoring of the Obama administration's commitments.

First, smaller forces make the modernization of our nuclear infrastructure even more urgent. Sen. Jon Kyl of Arizona has led a valiant effort in this regard. Thanks to his efforts, roughly $84 billion is being allocated to the Department of Energy's nuclear weapons complex. Ratifying the treaty will help cement these commitments, and Congress should fully fund the president's program. Congress should also support the Defense Department in modernizing our launchers as suggested in the recent defense strategy study coauthored by former Secretary of Defense Bill Perry and former National Security Adviser Stephen Hadley.

Second, the Senate must make absolutely clear that in ratifying this treaty, the U.S. is not re-establishing the Cold War link between offensive forces and missile defenses. New Start's preamble is worrying in this regard, as it recognizes the ''interrelationship'' of the two. Administration officials have testified that there is no link, and that the treaty will not limit U.S. missile defenses. But Congress should ensure that future Defense Department budgets reflect this.

Moscow contends that only current U.S. missile-defense plans are acceptable under the treaty. But the U.S. must remain fully free to explore and then deploy the best defenses—not just those imagined today. That includes pursuing both potential qualitative breakthroughs and quantitative increases.

I have personally witnessed Moscow's tendency to interpret every utterance as a binding commitment. The Russians need to understand that the U.S. will use the full-range of American technology and talent to improve our ability to intercept and destroy the ballistic missiles of hostile countries.

Russia should be reassured by the fact that its nuclear arsenal is far too sophisticated and large to be degraded by our missile defenses. In addition, the welcome agreements on missile-defense cooperation reached in Lisbon recently between NATO and Russia can improve transparency and allow Moscow and Washington to work together in this field. After all, a North Korean or Iranian missile is not a threat only to the United States, but to international stability broadly.

Ratification of the treaty also should not be sold as a way to buy Moscow's cooperation on other issues. The men in the Kremlin know that loose nukes in the hands of terrorists—some who operate in Russia's unstable south—are dangerous. That alone should give our governments a reason to work together beyond New Start and address the threat from tactical nuclear weapons, which are smaller and more dispersed, and therefore harder to monitor and control. Russia knows too that a nuclear Iran in the volatile Middle East or the further development of North Korea's arsenal is not in its interest. Russia lives in those neighborhoods. That helps explain Moscow's toughening stance toward Tehran and its longstanding concern about Pyongyang.

The issue before the Senate is the place of New Start in America's future security. Nuclear weapons will be with us for a long time. After this treaty, our focus must be on stopping dangerous proliferators—not on further reductions in the U.S. and Russian strategic arsenals, which are really no threat to each other or to international stability.

A modern but smaller nuclear arsenal and increasingly sophisticated defenses are the right bases for U.S. nuclear security (and that of our allies) going forward. With the right commitments and understandings, ratification of the New Start treaty can contribute to this goal. If the Senate enters those commitments and understandings into the record of ratification, New Start deserves bipartisan support, whether in the lame-duck session or next year.

Mr. VOINOVICH. Mr. President, in my opinion, the jury has returned its verdict, and the overwhelming evidence is that the Senate should ratify the treaty. Support for the treaty should not be viewed through the lens of being liberal or conservative, Republican or Democrat, but rather what is in the best interest of our national security, the best interest of the United States of America, the best interest of our relationships with those countries who share our values and understand that nuclear proliferation is the greatest international threat to our children and grandchildren.

Mr. President, I urge my colleagues to support this treaty. I am prayerful that we have a good vote for it to demonstrate that we have come together on a bipartisan basis to do something that needs to be done, and something that liberals, conservatives, Republicans and Democrats, can come together on to make a difference for the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, very shortly, the Senate will be voting on the continuing resolution that will fund the operations of our Federal Government through March—I think, if I am not mistaken, through March 4. I want to take this time to take a look at what happened recently with our appropriations bill, the so-called omnibus bill, that was defeated by our colleagues on the other side of the aisle.

Again, without getting into who caused what and did what to whom first, which is a game we play a lot around here, the fact remains that none of our appropriations bills were passed this year, even though our subcommittees on appropriations passed out all of our bills. We passed them through the Appropriations Committee and brought them to the Senate for consideration, but they were not taken up on the floor. Again, we can go into all the reasons why yes, why no. But that is water over the dam. The fact is, they weren't; therefore, they weren't passed.

At the end of the year, a week ago, Leader REID wanted to put together all the bills that had been passed out of committee with both Republican and Democratic support. Of the 13 bills—and I could be a little mistaken—only 1 or 2 had any minor changes or votes against them in committee. They were almost all unanimous by Republicans and Democrats.

So to keep the government going, we had this omnibus—in other words, putting all the bills together in one package and passing that. My friends objected to that. Because that was objected to, we now face having a continuing resolution to continue the funding from last year on into fiscal year 2011 until March.

When the Republicans killed this Omnibus appropriations bill last week, certain things happened. For example, they chose to close Head Start classrooms that serve 65,000 low-income children. By killing the omnibus, my friends on the other side of the aisle decided to cut childcare subsidies for 100,000 low-income working families. They rejected the opportunity to provide lifesaving drugs to people living with AIDS, who are on waiting lists for lifesaving medication. They passed on the chance to provide 4½ million more meals to seniors in need.

All of these programs would have received badly needed increases in the appropriations bill, but my friends on the other side of the aisle said no. They insisted on just keeping the present funding until March.

Here is another result of killing the omnibus: Millions of American students who receive Pell grants—low-income students—to go to college no

longer know if they will be able to afford college next year.

We cannot let that happen. The continuing resolution we will vote for in a few minutes includes a provision that would close the so-called Pell grant shortfall and ensure there is no cut to the Pell grants to our poor students.

The Pell Grant Program is the backbone of our Nation's financial aid system. More than 9 million low-income students and middle-income students use these grants toward a postsecondary education or vocational training.

People might say: Why has the Pell grant grown so much over the last few months? When the economy is bad, more people tend to go to college and more people in lower income brackets tend to go to college and try to better themselves. That means the cost of providing Pell grants goes up, even when the maximum Pell grant award a person can receive stays the same.

Right now, the maximum Pell grant award is $5,550 a year. Nearly 90 percent of the students who receive that level come from families whose annual income is less than $40,000 for a family of four. Without Pell, most of them would have no chance of receiving a postsecondary education. This is truly a program for low-income students and families seeking to better themselves.

The omnibus bill that was killed last week would have provided the additional funding to close that shortfall, to keep the maximum grant at $5,550. That was $5.7 billion. Again, that money did not just fall from the sky. Other programs across the Federal Government were cut to offset that spending. We appropriators decided that maintaining Pell was so important that it was worth reducing or eliminating other programs, which we did.

When my friends on the other side killed the omnibus, they put the Pell Grant Program in jeopardy and endangered the future of millions of disadvantaged students. According to the recent estimates from OMB, if we do not close the Pell shortfall before February, the maximum award will drop by $1,840, and the Pell grants of all those students with a family income of less than $40,000 will fall by 33 percent—from $5,550 to $3,710 next school year. An estimated 435,000 students who currently receive Pell grants would get nothing, zero. Their entire grant would be cut off. Why do I say that? Because if the award drops by $1,840, if your Pell grant was $1,800, you get nothing. So 435,000 students will get no Pell grants whatsoever. That is the situation facing students all over the country today.

We are 4 days away from Christmas. More than 9 million students who depend on Pell grants do not know if their financial aid will be drastically cut or if they will get any financial aid at all. Hopefully, in about 10 minutes, we are going to change that because I am hopeful we will all join together today in supporting this continuing resolution because as a part of the continuing resolution, we close that Pell grant shortfall so we can undo or redo what was undone by not taking up the omnibus bill.

We can keep the government running, but we can also make this fix. It is so important to do that now because of certain rules and regulations that go into effect after the first of the year that will drastically impinge on the Pell Grant Program unless we take this action today.

I hope all Republicans and Democrats will join in supporting the continuing resolution and so do more than 9 million American students who depend on Pell grants for their college education.

Again, I point out that other appropriations will not be settled even if we pass the continuing resolution today. Those decisions are kicked down the street until March 4 when the continuing resolution expires.

We are going to face a tough situation on March 4. My friends on the other side of the aisle have said that their plan is to cut nonsecurity-related appropriations, to cut everything except defense, homeland security, military construction, and VA by $100 billion. When you exclude all that and you want to cut $100 billion, that is a 21-percent cut from everything else.

Do Republicans really want to cut 21 percent from childcare subsidies for working families in this economy—a 21-percent cut? Do you really want to cut 21 percent from job training programs in this economy? Do you really want to cut 21 percent from programs that educate disadvantaged children, title I programs, in this economy? Do our friends on the other side of the aisle want to cut 21 percent from the AIDS drug assistance program? Do you want to cut 21 percent from senior meals programs? Do we want to cut 21 percent from the Social Security Administration in this economy?

That is what is coming down the pike on March 4. We kick the ball down the field a little bit, but on March 4, the battle will be joined again.

If my friends on the other side of the aisle try to decimate these programs that are so critical to the well-being of so many families in this country—children, working parents who need childcare, the elderly who rely on a lot of these meals—I had it happen in my own family. Meals on Wheels keeps people from going to the hospital, lets them stay at home and get a decent diet, senior meals programs; job training programs so people can train for new jobs—all part of getting our country back up again. If they are going to cut 21 percent from all this, I want to say there is going to be a battle. We are not going to sit back and let these programs be decimated, these programs that mean so much to so many families.

In the meantime, we have to keep the government running, and that is what the continuing resolution is all about. As I said, what is so important is to make sure the Pell grant shortfall is closed, which it is on this continuing resolution.

I urge all my colleagues to support the continuing resolution and hopefully when March 4 comes, again we can agree on a bipartisan basis not to decimate so many programs that help so many people in our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

NOMINATION OF BENITA Y. PEARSON

Mr. COBURN. Mr. President, I ask unanimous consent to have printed in the RECORD two letters that have been received by the Senate in regard to the nomination of Judge Benita Pearson—one from the National Cattlemen's Beef Association; the other from the Farm Animal Welfare Coalition.

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

NATIONAL CATTLEMEN'S BEEF ASSOCIATION,
Washington, DC, December 21, 2010.

Hon. HARRY REID,
Senate Majority Leader, Capitol Building, Washington, DC.

Hon. MITCH MCCONNELL,
Senate Republican Leader, Capitol Building, Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: The National Cattlemen's Beef Association (NCBA) opposes the nomination of Judge Benita Pearson to the United States District Court for the Northern District of Ohio. After reviewing answers she gave to the Senate Judiciary Committee earlier this year, we believe that Judge Pearson's connections to the Animal Legal Defense Fund (ALDF) would make it hard for her to be an impartial judge in cases regarding actions by animal activists. ALDF is an activist organization involved in numerous federal lawsuits and advocates giving animals the same legal rights as humans.

NCBA expects the Senate to confirm judges who can hear cases and make decisions based on facts and law, rather than judges with strong biases that could lead to legislating from the bench. While we continue to discover more about Judge Pearson's animal activist work, we think her connection to ALDF alone is enough to block her nomination in order for Senators to do more research into her background and character.

NCBA is the nation's oldest and largest national trade association representing U.S. cattle producers with more than 140,000 direct and affiliated members. On behalf of our producers, we urge you to oppose the nomination of Judge Benita Y. Pearson to the United States District Court for the Northern District of Ohio.

Sincerely,

STEVE FOGLESONG,
President.

DECEMBER 20, 2010.

Re Nomination of Benita Y. Pearson to the U.S. District Court for the Northern District of Ohio.

To: The U.S. Senate.

From: The Farm Animal Welfare Coalition: American Farm Bureau Federation, American Feed Industry Association, American Sheep Industry Association, Biotechnology Industry Organization, Farm Credit System, Livestock Marketing Association, National Milk Producers Federation, National Pork Producers Council, National Renderers Association, United Egg Producers.

The Farm Animal Welfare Coalition (FAWC), an ad hoc coalition of America's largest farm/ranch, input and related organizations seeks to ensure all federal policy decisions regarding the welfare of food animals are based upon sound science, producer expertise and the rule of law. We write to express our concerns related to the nomination of Benita Y. Pearson to be a judge on the U.S. District Court for the Northern District of Ohio.

Our concerns stem from Ms. Pearson's membership and participation in the Animal Legal Defense Fund (ALDF), an animal rights organization which uses the courts to impose upon farmers, ranchers, biomedical researchers, animal breeders and other legitimate users of animals its parochial view of animal welfare. ALDF also provides legal support for political organizations dedicated to furthering animal rights in the U.S. ALDF's website is rife with references to ''factory farming,'' and other pejorative descriptions of U.S. farm animal husbandry, as well as touting its current and past lawsuits brought against agriculture interests. Its political positions affecting contemporary American agriculture are well known to us.

ALDF works to secure ''standing'' for animals in the courts, a legal evolution with multiple potential negative consequences for food production and the survivability of farmers and ranchers in the U.S. Consider the following from ALDF's Executive Director Steven Wells:

''One day, hopefully, animals will have more opportunities to be represented in courts so that we can more effectively fight the many injustices they face—perhaps as another kind of recognized 'legal person.' In the meantime we must be resourceful and creative in bringing lawsuits to win justice for animals.''

Ms. Pearson's membership in ALDF demonstrates the willingness of a prospective jurist to go beyond the academic or philosophical contemplation of the legal and political issues of animal rights. Her membership in ALDF translates her personal philosophy into implicit action in support of the goals of the animal rights movement.

We are encouraged by Ms. Pearson's written statement it is never appropriate for judges to ''indulge their own values in determining the meaning of statutes and the U.S. Constitution;'' however, her responses remain exceedingly vague when it comes to animal rights issues.

Given one of the ALDF's long-standing priorities is the legal adoption of its so-called ''animal bill of rights''—which calls for the undefined ''right of farm animals to an environment that satisfies their basic and psychological needs''—it seems disingenuous of Ms. Pearson to say she is unaware of this priority or even the existence of the ''bill of rights'' given she is a self-described member of the ALDF. She also teaches animal law courses at Ohio's Cleveland-Marshall College of Law—including a section on constitutional standing—which, we assume, must touch at some point on the ALDF's 30-year-old political philosophy and history of legal actions.

Ms. Pearson stated she does not use the term ''animal rights'' and is ''not an advocate for animal rights'' but ''an advocate for doing what is in the best interest of animals.'' However, she does not explain on what sources of information she relies when determining what is ''the best interest of animals,'' but simply her belief the law ''is intended to do what is in the best interest of animals and humans.''

While it is not a judge's role to legislate from the bench—and we are gratified Ms. Pearson appears to concur—judicial decisions set precedent and can precipitate legislation and regulations. It is unsettling that in Ms. Pearson's written responses to direct questions posed by Senate Judiciary Committee members Sens. Charles Grassley, Jeff Sessions and Tom Coburn, she simply restates existing law as relates to animal rights, animal standing, etc. Hence, we do not get a clear picture of her views regarding animal rights and legal standing.

We would welcome a meeting with Ms. Pearson to discuss these concerns.

Thank you for consideration of our views. Please feel free to contact any of the organizations listed on this letter or FAWC's coordinator, Steve Kopperud, at 202–776–0071 or skopperud@poldir.com.

Mr. COBURN. Mr. President, I wish to spend a short time addressing the remarks of my friend from Iowa.

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

Mr. COBURN. Mr. President, the situation we find ourself in is that no appropriations bills came to the floor. We did not control that. If that had been under our control, I assure you they would have come to the floor—and they should. No matter who is in charge, they should come. I think he agrees with that. But I will address the greater issue we have in front of us.

Our Nation has a very short time with which to reassess and reprioritize what is important in our fiscal matters. That period of time, I believe, is shorter than many of my colleagues believe. But I have not been wrong in the past 6 years as to where we are coming. I have been saying it for 6 years. We are now there.

The fact is everything is going to have to be looked at—everything—every project, for every Senator, every position, every program—if we are to solve the major problems that are facing this country.

We all want to help everybody we can, but the one thing that has to be borne in mind as we try to help within the framework of our supposed limited powers is there has to be a future for the country. The things that are coming upon us in the very near future will limit our ability to act if we do not act first.

I take to heart my colleague's very real concern for those who are disadvantaged in our country. It is genuine. It is real. We are going to have a choice to help them or we are going to have a choice to make a whole lot more people disadvantaged. What we have to do is try to figure out how compassionately we can do the most we can do and still have a country left. That is the question that is going to come before us.

I have no doubt we will have great discussions over the next few years on what those priorities are. But we cannot wait to make those priorities. We are going to have to squeeze wasteful spending from the Pentagon. We have no choice. We have no choice with which to make the hard choices in front of us. And it does not matter what happened in the past. What is going to matter is what happens in the future and whether we have the courage to meet the test that is getting ready to face this country.

There is a lot of bipartisan work going on right now behind the scenes in the Senate planning for next year to address those issues.

I say to my colleague from Iowa, the way to have the greatest impact on that issue is to join with us to, No. 1, agree with the severity of the problem and the urgency of the problem, and then let's build a framework on how we solve it, knowing nobody is going to get what they want.

TRIBUTES TO RETIRING SENATORS

RUSS FEINGOLD

Mr. President, I wish to take 2 more minutes to pay a compliment to one of my colleagues.

When I came to the Senate, I visited almost every Member of the Senate on the other side of the aisle. I had a wonderful visit with the Senator from Wisconsin. We actually—although we are totally opposite in our philosophical leanings—had a wonderful time visiting together.

Senator FEINGOLD is my idea of a great Senator. I want to tell you why.

I left that meeting, and about a week later, I got a note from him first of all thanking me for taking the initiative to come and meet with him, but also a commitment that he would always be straight with me, that when he gave me his word and handshake, it would always be that way, and that I could count on him standing for what he believed in but knowing he would do the things we needed to do to get things done.

My observation in the last 6 years in this Chamber is I have watched one man of great integrity keep his word and hold to his values through every crisis and every vote. And every time it was taken where we had to come together to do something, this gentleman kept his character. He kept his word. He fulfilled the best aspects of the tradition of the Senate.

Although I often—most of the time—am on the opposite side of issues from Senator RUSS FEINGOLD, I want to tell you, he has my utmost admiration and my hope that more would follow his principled stand and his wonderful comity as he deals with those on the other side of the aisle.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I understand the UC has us voting at 2 o'clock; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. Mr. President, I support the continuing resolution. One of the many reasons is that the Navy's urgent request for authority for the littoral combat ship, (LCS),—program is included.

The original LCS acquisition plan in 2005 would have had the Navy buying both types of LCS vessels for some time while the Navy evaluated the capabilities of each vessel. At some time in the future, the Navy would have had the option to down select to building one type of vessel. But in any case, the Navy would have been operating some number of each type of LCS vessel in the fleet, which means that the Navy would have been dealing with two shipyards, two supply chains, two training pipelines, etc. Last year, after the bids came in too high, the Navy decided upon a winner-take-all acquisition strategy to procure the fiscal year 2010 vessels under a fixed-price contract, with fixed-price options for two ships per year for the next 4 years. This revised strategy included obtaining the data rights for the winning ship design and competing for a second source for the winning design starting in fiscal year 2012. Again, the Navy made this course correction because the Navy leadership determined that the original acquisition strategy was unaffordable.

Earlier this year, the Navy released the solicitation under that revised strategy and has been in discussion with the two contractor teams and evaluating those proposals since that time. The bids came in, the competition worked, and the prices were lower than the Navy had expected. Both teams have made offers that are much more attractive than had been expected, and both are priced well below the original, noncompetitive offers.

The Navy has now requested that we approve a different LCS acquisition strategy, taking advantage of the low bids and keeping the industrial base strong. The Armed Services Committee held a hearing on the subject of the change in the Navy's acquisition strategy. We heard testimony from the Navy that, after having reviewed the bids from the two contractor teams, they should change their LCS acquisition strategy.

The Navy testified that continuing the winner-take-all down select would save roughly $1.9 billion, compared with what had been budgeted for the LCS program in the Future-Years Defense Program, or FYDP.

The Navy further testified that revising the acquisition strategy to accept the offers from both LCS contractor teams, rather than down selecting to one design and starting a second source building the winning design, would save $2.9 billion, or $1 billion more than the program of record, and would allow the Navy to purchase an additional LCS vessel during the same period of the FYDP—20 ships rather than 19 ships.

The Navy also testified that additional operation and support costs for maintaining two separate designs in the fleet for their service life over 40 to 50 years, using net present value calculations, would be much less than the additional saving that could be achieved through buying both the ships during the FYDP period—approximately $250 million of additional operating and support costs vs. approximately $900 million in savings.

Those are the facts of the case as we heard from the Navy. Let me relay a few quotes from the Navy witnesses at the hearing to amplify on these points.

Secretary of the Navy Raymond E. Mabus, Jr., referring the authority to revise the acquisition strategy, said the following:

> This authority, which I emphasize, requires no additional funding, will enable us to purchase more high-quality ships for less money and get them into service in less time. It will help preserve jobs in our industrial shipbuilding base and will create new employment opportunities in an economic sector that is critical to our Nation's military and economic security.

ADM Gary Roughead, the Chief of Naval Operations, said:

> The dual award also allows us to reduce costs by further locking in a price for 20 ships, enabling us to acquire LCS at a significant savings to American taxpayers and permitting the use of shipbuilding funds for other shipbuilding programs.

From a broad policy perspective, I believe that the Navy approach of a competitive, dual source alternative could help ensure maximum competition throughout the lifecycle of the program, meeting the spirit and intent of the Weapon Systems Acquisition Reform Act of 2009, MSARA. Specifically, it calls for two shipbuilders in continuous competition to build the ships for the life of the program. The Navy plans to build a total of 55 of these ships, so that could take a number of years.

Some have raised concerns because the Navy has been unable to reveal the specific bid information from the two contractors. Unfortunately, the Navy has been prevented from sharing specific bid information because that would violate the competitive source selection process by revealing proprietary information about the two contactors' bids. Because of these constraints, I do not know what is in the bids. But I take comfort from knowing that these bids are for fixed- price contracts and not for cost-type contracts where a contractor has little to lose from underbidding a contract.

As far as the capability of the two vessels, we heard from Admiral Roughead at the hearing that each of the two vessels would meet his requirements for the LCS program. I asked Admiral Roughead: ''Do both of these vessels in their current configuration meet the Navy's requirements?'' Admiral Roughead replied: ''Yes, Senator, they do. Both ships do.''

Some have raised the possibility that development of the mission packages could cause problems in the shipbuilding program and lead to unexpected cost growth, and thereby fail to achieve the extra savings the Navy is projecting. In some other shipbuilding programs that might be a concern, but I believe that the Navy's fundamental architecture of the LCS program divorces changes in the mission package from changes that perturb the ship design and ship construction. In the past, when there were problems with developing the right combat capability on a ship, this almost inevitably caused problems in the construction program. In the case of the LCS, the combat capability largely resides in the mission packages that connect to either LCS vessel through defined interfaces. What that means is that changes inside the mission packages should not translate into changes during the ship construction schedule—i.e., they are interchangeable. And whatever is happening in the mission package development program would apply equally to either the down select strategy or the dual source strategy.

In terms of the proposal's effects on the industrial base and on competition, I believe that there would be a net positive. The Navy would have the opportunity to compete throughout the life of the program, and any erosion in contractor performance could be corrected by competitive pressures. For the industrial base, there would be more stability in the shipbuilding program. Countless Navy witnesses have testified to the Armed Services Committee and the other defense committees that achieving stability in our shipbuilding programs is one of the best things we in the government can do to help the Navy support the shipbuilding industry.

The Navy's proposal to change to a dual source selection strategy would promote that goal of stability, while effectively continuing competition throughout the program, and at the same time reducing acquisition costs and buying an additional ship over the FYDP.

Why don't we just wait until sometime after the new Congress convenes to deliberate this changed acquisition strategy? Senator JACK REED asked the Navy about this very issue at the hearing. He asked, ''What is lost or what do you gain or lose by waiting?'' Assistant Navy Secretary Sean Stackley answered that question as follows: ''Workforce is leaving, hiring freezes are in effect, vendors are stressed in terms of their ability to keep faith with the proposals, the fixed price proposals that they have put in place. They will need to have to then go back with any further delay and reprice their proposals.''

What that means is, if we were to let the bids expire at the end of December, we would lose the full benefits of the competition and our savings will likely be reduced.

Mr. President, I support including the authority for the Navy to make this change in the continuing resolution before us.

Mr. McCAIN. Mr. President, I rise to oppose the littoral combat ships, LCS,

provision in the continuing resolution, CR. That provision—which, according to the Congressional Budget Office, CBO, and the Congressional Research Service, CRS, could cost taxpayers as much as $2.9 billion more than the current acquisition strategy—simply does not belong in the CR. But once again we are looking at a cloture vote on a piece of ''must-pass'' legislation where the majority leader has filled the amendment tree and no amendments will be allowed.

The LCS program has a long, documented history of cost overruns and production slippages and yet we now find ourselves inserting an authorization provision at the 11th hour to yet again change the acquisition strategy of a program that has been plagued by instability since its inception.

Let's look at its track record over the past 5 years:

1st LCS funded in 2005—LCS 1 Commissioned in Nov 2008 at cost of $637 million;

2nd LCS funded in 2006—LCS 2 Commissioned in Jan 2010 at cost of $704 million;

3rd LCS funded in 2006—Canceled by Navy in April 2007, because of cost, and schedule growth;

4th LCS funded in 2006—Canceled by Navy in Nov 2007, because of cost and schedule growth;

5th LCS funded in 2007—Canceled by Navy in Mar 2007, because of cost and schedule growth;

6th LCS funded in 2007—Canceled by Navy in Mar 2007, because projected costs too high;

7th LCS funded in 2008—Canceled by Navy in Sep 2008, because projected costs too high;

8th LCS funded in 2009—Christened in Dec 2010 is about 80 percent complete; ''New LCS 3'';

9th LCS funded in 2009—Under construction is about 40 percent complete; ''New LCS 4.''

When the Navy first made its proposal to Congress just over 6 weeks ago, it failed to provide Congress with basic information we need to decide whether it should approve the Navy's request—including the actual bid prices, which would tell us how realistic and sustainable they are, and specific information about how capable each of the yards are of delivering the ships as needed, on time and on budget. Why don't we have that information? Because it's sensitive to the on-going competition.

Last week, in testimony before the Senate Armed Services Committee, the General Accountability Office, GAO, the Congressional Research Service, CRS, and the Congressional Budget Office, CBO, raised important questions that Congress should have answers to before it considers approving the proposal.

Those questions included not only ''how much more (or less) would it cost for the Navy to buy LCS ships under its proposal'' but also ''how much would the cost be to operate and maintain two versions of LCS, under the proposal''. They also asked ''how confident can we be that the Navy will be able to stay within budgeted limits and deliver promised capability on schedule—given that all of the deficiencies affecting LCS' lead ships have not been identified and fully resolved'' and ''has the combined capability of the LCS seaframes with their mission modules been sufficiently demonstrated so that increasing the Navy's commitment to seaframes at this time would be appropriate?''

Those questions, and others, that GAO, CRS and CBO raised last week, are salient and should be answered definitively before we approve of the Navy's proposal. Every one of those witnesses conceded that more time would help Congress get those answers. And, considering this provision in connection with a Continuing Resolution, brought up at the 11th hour; during a lame-duck session; outside of the congressional budget-review period; and without specific information or the opportunity for full and open debate by all interested Members, does not give us that time. Buying into this process would be an abrogation of our constitutional oversight responsibility.

From 2005 to date, we have sunk $8 billion into the LCS program. And, what do we have to show for it? Only two boats commissioned and one boat christened—none of which have been shown to be operationally effective or reliable—and a trail of blown cost-caps and schedule slips. I suggest that, having made key decisions on the program hastily and ill-informed, we in Congress are partly to blame for that record. But, with the cost of the program from 2010 to 2015 projected to be about $11 billion, we can start to fix that—by not including this ill-advised provision in the CR.

I ask unanimous consent that my December 10, 2010, letter to the chairman and ranking member of the Appropriations Committee, asking them not to include the LCS provision in any funding measure, a letter from the Project on Government Oversight to Senator LEVIN and me, and the exchange of letters between me and the Chief of Naval Operations, CNO, be printed in today's RECORD.

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

CHIEF OF NAVAL OPERATIONS,
NAVY PENTAGON,
Washington, DC, November 22, 2010.

Hon. JOHN S. MCCAIN,
Ranking Member, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: Thank you for affording me the opportunity to discuss the Littoral Combat Ship (LCS) program. This program is vital to the future force structure of the United States Navy, and I am committed to its success. The Navy tackled aggressively and overcame the program's past cost and schedule challenges, ensuring affordability of this new critical warfighting capability.

The Department has taken action on all four of the recommendations of the August 2010 General Accountability Office (GAO) LCS report.

The Navy has been operating both LCS designs and collecting design performance data. There are mechanisms in place to ensure design corrections identified in building and testing the first four ships are incorporated in the operating ships, ships under construction, and ships yet to be awarded.

The Navy will update the Test and Evaluation Master Plan (TEMP) for the LCS, to reflect the Program of Record following the Milestone B (MS B) decision.

The Navy will update test and evaluation and production of LCS seaframes and mission modules following the MS B decision.

The Navy has completed a robust independent cost analysis of the LCS lifecycle using estimating best practices and submitted this estimate to the Office of the Secretary of Defense (OSD) for comparison with the Cost Assessment and Program Evaluation (CAPE) group independent estimate.

These recommendations and the Department's responses apply for either the down-select or the dual block-buy approach and the Department's concurrence and related actions with the recommendations (included in Appendix III of the August GAO report) will not change in either case.

As you know, Navy has taken delivery of the first two ships and the third and fourth ships are under construction. The performance of the USS FREEDOM (LCS 1) and USS INDEPENDENCE (LCS 2) and their crews are extraordinary and affirm the value and urgent need for these ships. For the Fiscal Years (FYs) 2010–2014 ships, Navy has been pursuing the congressionally authorized down-select to a ten ship block-buy. Competition for the down-select has succeeded in achieving very affordable prices for each of the ten ship bids which reflect mature designs, investments made to improve performance, stable production, and continuous labor learning at their respective shipyards.

The result of this competition affords the Navy an opportunity to award a dual block-buy award (for up to 20 ships between FYs 2010–2015) with fixed-price type contracts, which achieves significant savings for the taxpayer, while getting more ships to the Fleet sooner and providing greater operational flexibility. The dual block-buy provides much needed stability to the shipbuilding industrial base; from vendors, to systems providers to the shipyards. This will pay important dividends to the Department, and to potential Foreign Military Sales customers, in way of current and future program affordability. The fixed-price type contract limits the government's liability and incentivizes both the government and the shipbuilder to aggressively pursue further efficiencies and tightly suppress any appetite for change. Navy will routinely report on the program's progress and Congress retains control over future ship awards through the annual budget process.

The agility, innovation and willingness to seize opportunities displayed in this LCS competition reflect exactly the improvements to the way we do business that the Department requires in order to deliver better value to the taxpayer and greater capability to the warfighter.

I greatly appreciate your support for the LCS Program. As always, if I can be of further assistance, please let me know.

Sincerely,

G. ROUGHEAD,
Admiral, U.S. Navy.

PROJECT ON GOVERNMENT OVERSIGHT,
Washington, DC, December 9, 2010.

Senate Armed Services Committee,
Senate Russell Office Building,
Washington, DC.

DEAR CHAIRMAN LEVIN AND RANKING MEMBER MCCAIN, The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable,

open, and ethical federal government. We are troubled by a rushed proposal to change the Navy Littoral Combat Ship (LCS) sea frame acquisition strategy.

The Navy notified Congress of its proposal to change its acquisition strategy for LCS on November 3, 2010. The proposed strategy, under which the Navy intends to buy up to 20 sea frames from two separate shipyards, is a substantial change from the current strategy. Currently, the Navy's strategy is to ''down select'' (i.e. choose a winner) to one yard and (with the winning design in hand) hold another competition later to build a total of 19 ships—only 10 of which are now authorized under law. To implement the new strategy, the Navy needs Congress to sign off on it and wants Congress to do so by mid-December.

Congress should require that the Navy give it more time to get answers to the serious questions raised by, among others, the Congressional Research Service (CRS) in its November 29, 2010, report (attached) and the Government Accountability Office (GAO) in reports issued in August and December 2010. As CRS asked:

''Does the timing of the Navy's proposal provide Congress with enough time to adequately assess the relative merits of the down select strategy and the dual-award strategy? . . . Should the Navy ask the contractors to extend their bid prices for another, say, 30 or 60 or 90 days beyond December 14, so as to provide more time for congressional review of the Navy's proposal?''

Congress needs time to consider whether the Navy's new plan is fiscally responsible or whether it increases risks that already exist in the program. Congress should require that the Navy to ask the two contractor teams to extend their bid prices up to 90 days beyond December 14. The two contractor teams are led by, respectively, Lockheed Martin and Austal USA.

The Navy's justification for its new strategy is the purportedly low prices that both bidders have submitted in the current competition. But it is not clear if these low bids are reasonable. The use of fixed-price contracts won't necessarily prevent an underperforming shipyard from simply rolling its losses into its prices for follow-on ships.

There can be no doubt that the LCS program has already had significant problems. For example, the sea frames were originally intended to cost about $220 million each. But the ones built and under construction have ballooned up to over $600 million each. Yet without any real data indicating that the program is likely to perform adequately in the future (the Navy has failed to meaningfully implement many of GAO's recommendations in its August report), the Navy wants Congress's help to lock the program into 20 ships over the next five years.

The Navy has not demonstrated the combined capabilities of the LCS sea frame(s) with its mission packages. It's important to bear in mind that the LCS sea frame is effectively a ''truck.'' The LCS's combat effectiveness derives from its modular ''plug-and-play'' mission packages (e.g., anti-submarine, mine-countermeasures, and surface warfare). The LCS program has been struggling with developmental challenges with these mission packages that have led to postponed testing. As the GAO states, ''Until mission packages are proven, the Navy risks investing in a fleet of ships that does not deliver promised capability.'' Without effective mission capabilities, the LCS will be ''largely constrained to self-defense as opposed to mission-related tasks.''

Furthermore, it is likely that other shipyards that may be just as capable of building LCS sea frames as the two that would be awarded contracts under the dual-award strategy. Some, including CRS, have asked whether other shipyards will be frozen out of the LCS program—even after the first 20 ships have been built. For that reason, we believe that, before approving the Navy's proposal, Congress should carefully evaluate whether it may in fact stifle, rather than encourage, competition throughout the program's lifecycle, as is required under the recently enacted weapon systems acquisition reform law.

This is not the first time the Navy has given Congress insufficient time to evaluate its LCS acquisition strategy. The last time the Navy asked Congress to approve its LCS acquisition strategy—just last year—there was short notice. In 2002, the Navy gave ''little or no opportunity for formal congressional review and consideration'' of the Navy's proposed LCS acquisition strategy, according to CRS. This is deja vu all over again. The taxpayers deserve the careful consideration of Congress.

In sum, Congress should not approve the Navy's acquisition strategy without a clear picture of the likely costs and risks. Furthermore, Congress should not allow the Navy to continue to skirt oversight. We appreciate your review of this letter and your time, and look forward to working with you on the Littoral Combat Ship Program. If you have any questions, please do not hesitate to contact Nick Schwellenbach.

Sincerely,

DANIELLE BRIAN,
Executive Director.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, December 10, 2010.

Hon. DANIEL INOUYE,
Chairman, Senate Committee on Appropriations, Washington, DC.

Hon. THAD COCHRAN,
Vice Chairman, Senate Committee on Appropriations, Washington, DC.

DEAR CHAIRMAN INOUYE AND VICE CHAIRMAN COCHRAN: The House-passed Full-Year Continuing Appropriations Act, 2011 (H.R. 3082) contains a provision that would authorize the Department of the Navy to acquire 20 Littoral Combat Ships (LCS) in lieu of the 10 that were authorized under the National Defense Authorization Act, 2010. As you finalize your Omnibus Appropriations Bill, I wanted to express my opposition to including this provision in the Omnibus Appropriations Bill or any other stop-gap funding measure that you may be considering.

As you know, the Navy first conveyed to the Senate its proposal that gave rise to this provision just a few weeks ago, and the competition for the LCS ship construction contract is still open. As such, not only has the Senate been given an unusually short time to review such an important proposal but it also has been unable to obtain basic information (on cost and capability, for example) it needs to consider the proposal carefully because they remain source-selection sensitive.

Moreover, recent reviews of the proposal released by the General Accountability Office (GAO) and the Congressional Research Service (CRS) just yesterday raise a number of salient concerns about it. In the aggregate, those concerns indicate the proposal needs more careful and open deliberation than would be afforded by including it in a late cycle Omnibus or continuing resolution.

In particular, the GAO identified a full range of uncertainties (relating to, for example, design changes, operations and support costs, mission-package development) that would determine whether the proposal will realize estimated savings—savings that, in its own report release just today, the Congressional Budget Office (CBO) suggests that the Navy may have overstated. GAO also negatively assessed the Navy's implementation of some of the recommendations it made in its August 2010 report—recommendations with which the Department of Defense concurred. Against that backdrop, GAO observed that ''decisionmakers do not have a clear picture of the various options available to them related to choosing between the down-select and dual award strategies''.

Similarly posing a number of important questions (on, for example, the potential relative costs and risks of the two strategies, the proposal's impact on the industrial base, and its effect on competition) in its recent review of the proposal, CRS too noted that this is the third time that the Navy has presented Congress with a difficult choice about how to buy LCS ships late in Congress' budget-review cycle—after budget hearings and often after defense bills have been written.

Given the foregoing, without the basic information and the time necessary for the Senate to discharge its oversight responsibilities with respect to the Navy's proposal responsibly and transparently, I oppose including this provision in the any funding measure now under consideration. With the LCS' program's troubled history, I suggest that such measures would serve as inappropriate vehicles to make dramatic changes to the program.

Thank you for your consideration.

Sincerely,

JOHN MCCAIN,
Ranking Member.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, December 8, 2010.

Admiral GARY ROUGHEAD, USN,
Chief of Naval Operations,
Navy Pentagon, Washington, DC.

DEAR ADMIRAL ROUGHEAD: About a month ago, the Navy first proposed that Congress let it fundamentally change how it buys seaframes under the Littoral Combat Ships (LCS) program—a program that has had serious difficulty on cost, schedule and performance.

However, in August 2010 and again just today, the General Accountability Office (GAO) issued a report raising serious concerns about the program. In today's report, it also conveyed criticism about the Navy's implementation of its recommendations.

When you and I met, on November 18, 2010. I asked that you describe how the Navy has implemented GAO's recommendations. In that regard, your letter of November 22, 2010, was unhelpful. Not only did it cite what the Navy will do to implement GAO's recommendations as examples of action it had already taken, most of the action items it described didn't even correspond to GAO's actual recommendations. Indeed, the whole thrust of the Navy's proposal appears basically inconsistent with the recommendation that the Navy not buy excess quantities of ships and mission packages before their combined capabilities have been sufficiently demonstrated.

Until deficiencies affecting the lead ships have been fully identified and resolved, I simply cannot share your optimism that the LCS program will stay within budgeted limits and deliver required capability on time—an assumption that underpins the Navy's proposal. And, without basic information needed to consider the proposal responsibly (because, with the competition still open, they remain sensitive), I cannot support it at this time.

Finally, I would like to comment on how undesirable the process by which the Navy has made this proposal has been—outside of ''regular order''; during an open competition; in a way that precludes full and open debate

by all interested Members; and without full information. I respectfully suggest that neither this program nor the Navy's shipbuilding enterprise have been served well by Congress' making decisions in this way in the past. I, therefore, respectfully ask that this process not be repeated.

Thank you for your visit. I look forward to continuing to work with you in support of our sailors.

Sincerely,

JOHN MCCAIN,
Ranking Member.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 10, 2010.

Hon. JOHN MCCAIN,
Ranking Member, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SENATOR: As you know, the Navy is planning to acquire a fleet of 55 littoral combat ships (LCSs), which are designed to counter submarines, mines, and small surface craft in the world's coastal regions. Two of those ships have already been built, one each of two types: a semiplaning steel monohull built jointly by Lockheed Martin and Marinette Marine in Wisconsin and an all-aluminum trimaran built by Austal in Alabama. The Navy also has two more ships (one of each type) under construction. The remaining 51 ships would be purchased from 2010 through 2031. In response to your request, the Congressional Budget Office (CBO) analyzed the cost implications of the Navy's existing plan for acquiring new LCSs and a new plan that it is currently proposing:

Existing ''Down-Select'' Plan: In September 2009, the Navy asked the two builders to submit fixed-price-plus-incentive bids to build 10 ships, 2 per year from 2010 to 2014, beginning with funds appropriated for 2010. The Navy planned to select one of the two versions of the LCS, awarding a contract for those 10 ships to the winning bidder, and then, through another competition, to introduce a second yard to build 5 more ships of that same design from 2012 to 2014. In 2015, the Navy would purchase 4 more ships; the acquisition strategy for those vessels has not been specified. A total of 19 ships of one design would be purchased by 2015 (see Table 1). Any shipyard could bid in that second competition except the winner of the contract for the first 10 ships.

TABLE 1—LCS PROCUREMENT UNDER DIFFERENT ACQUISITION PLANS, 2010 TO 2015

[Number of ships procured]

	2010	2011	2012	2013	2014	2015	Total
Existing Down-Select Plan							
Winner	2	2	2	2	2	4	19
Second Builder	.....	.....	1	2	2	.....	.....
Proposed Dual-Award Plan							
Lockheed Martin/Marinette Marine	1	1	2	2	2	2	20
Austal	1	1	2	2	2	2	.....

Source: Congressional Budget Office based on data from the Navy.
Note: The Navy also purchased two ships from each builder between 2005 and 2009. Under the down-select plan, the Navy proposes to procure four ships in 2015. How the Navy would purchase those ships has not been determined.

Proposed ''Dual-Award'' Plan: In November of this year, the Navy proposed to accept the fixed-price-plus-incentive bids from both teams, purchasing 10 of each type of LCS (a total of 20 ships) by 2015, beginning with funds appropriated for fiscal year 2010.

According to the Navy, the bid prices received under the existing down-select plan were lower than expected, which would allow the service, under the dual-award plan, to purchase 20 ships from 2010 through 2015 for less than it had expected to pay for 19. (The total number of LCSs ultimately purchased would be the same under both plans.)

CBO has estimated the cost for the LCS program between 2010 and 2015 under both plans, using its standard cost-estimating model. By CBO's estimates, either plan would cost substantially more than the Navy's current estimates—but CBO did not have enough information to incorporate in its estimates the bids from both contractors for the 10-ship contract.

CBO's analysis suggests the following conclusions:

Whether one considers the Navy's estimates or CBO's, under either plan, costs for the first 19 ships are likely to be less than the amounts included in the Navy's 2011 budget proposal and the Future Years Defense Program (FYDP).

CBO's estimates show per-ship construction costs that are about the same for the two plans, but those estimates do not take into account the actual bids that have been received.

Adopting the dual-award plan might yield savings in construction costs, both from avoiding the need for a new contractor to develop the infrastructure and expertise to build a new kind of ship and from the possibility that bids now are lower than they would be in a subsequent competition, when the economic environment would probably be different.

Operating and maintaining two types of ships would probably be more expensive, however. The Navy has stated that the differences in costs are small (and more than offset by procurement savings), but there is considerable uncertainty about how to estimate those differences because the Navy does not yet have much experience in operating such ships. In addition, if the Navy later decided to use a common combat system for all LCSs (rather than the different ones that would initially be installed on the two different types of vessels), the costs for developing, procuring, and installing that system could be significant.

THE NAVY'S ESTIMATES OF COSTS BETWEEN 2010 AND 2015

In the fiscal year 2011 FYDP, the Navy proposed spending almost $12 billion in current dollars to procure 19 littoral combat ships between 2010 and 2015 under the down-select plan. (The Navy's budget estimate was submitted in February 2010, well before it received the two contractors' bids in the summer of 2010.) The Navy now estimates the cost under that plan to be $10.4 billion, about $1.5 billion (or 13 percent) less than its previous estimate.

Now that the Navy has the two bids in hand, it has formulated a new plan for purchasing LCSs. It estimates that it could purchase 20 ships—10 from each contractor—for about $9.8 billion through 2015, or $0.6 billion less than it currently estimates for the down-select plan and $2.1 billion less than the cost it had estimated for 19 ships in its 2011 FYDP. The Navy's projected cost per ship under this plan is 21 percent less than its estimate in the 2011 FYDP.

The Navy's block-buy contracts under either plan would be structured as fixed price plus incentive. Under the terms of the two contractors' bids, the ceiling price is 125 percent of the target cost, and that price represents the maximum liability to the government. The Navy and the contractor would share costs equally over the target price up to the ceiling price. If costs rose to the ceiling price, the result would be a 12.5 percent increase in price to the government compared with the target price at the time the contract was awarded. The Navy has stated that its budget estimates include additional funding above the target price to address some, but not all, of the potential cost increases during contract execution. There is also the potential for cost growth in other parts of the program, such as in the government's purchasing of equipment that it provides to the shipyard, that are not part of the shipyard contract. But the cost of government-furnished equipment is small; it is less than 5 percent of the total cost in the case of the third and fourth ships currently under construction.

The Navy indicates that its estimates reflect the experience the shipyards gained from building two previous ships and the benefits of competition. Under the down-select plan, the second shipyard that would begin building LCSs in 2012 would be inexperienced with whichever ship design was awarded, and the investments required in infrastructure and expertise would make the first ships it produced more expensive than those from a shipyard with an existing contract for LCS construction. Conversely, under the dual-award plan, each shipyard would benefit from its experience with building two of the first four LCSs. CBO cannot quantify the benefits of competition, although they undoubtedly exist. In light of the results of the competition for the 10-ship block, it is possible that the competition the Navy would hold in 2012 for the second source in the down-select plan might also yield costs that are below those the Navy (or CBO) estimates, in which case the current estimate of the costs for that plan would be overstated.

The Navy briefed CBO on some aspects of those estimates but did not provide CBO with the detailed contractor data or with the Navy's detailed analysis of those data. If the contractors' proposals for the 10-ship award are robust and do not change, the Navy's estimates would be plausible although not guaranteed. CBO has no independent data or means to verify the Navy's savings estimate, and costs could grow by several hundred million dollars if the shipbuilders or developers of the combat systems carried by those ships experience cost overruns.

COMPARISON OF CBO'S AND THE NAVY'S ESTIMATES

CBO's estimates of costs are higher and indicate little difference in the per-ship costs of the two plans. They reflect information about the ships currently being built, but they do not incorporate information about the contractors' bids because CBO does not

have access to that information. Thus, CBO's estimates do not incorporate any benefits of competition that may have arisen as a result of the Navy's existing down-select acquisition strategy—benefits the Navy argues would be locked in by the fixed-price-plus-incentive contracts.

CBO estimates that the down-select plan would cost the Navy about $583 million per ship—compared with an estimated cost of $591 million per ship under the dual-award plan (see table 2). Contributing to that difference is the loss of efficiency that would result from having two yards produce one ship per year in 2010 and 2011, rather than having one yard produce two ships per year. Given the uncertainties that surround such estimates, that difference, of less than 2 percent, is not significant.

CBO's estimates of the cost for the down-select and dual-award strategies are higher than the Navy's, by $680 million and $2.0 billion, respectively, because the contractors' prices are apparently much lower than the amounts CBO's cost-estimating model would have predicted and even lower than the Navy predicted in its 2011 budget. (CBO's model is based on well-established cost-estimating relationships, and it incorporates the Navy's experience with the first four LCSs.) For example, the Navy's estimate of the average cost for one ship in each of the two yards in 2010 and 2011 is lower than CBO's estimate of what the average cost would be to build (presumably, more efficiently) two ships in one yard. And those lower costs carry through to the years when each yard would be building two ships per year. In addition, again according to the Navy, the contractors were willing to accept a change in the number of ships purchased per year in 2010 and 2011 without increasing the total cost of the ships. The Navy stated that the contractors achieved a substantial savings in the cost of materials because, under the block buy, the Navy would be committing to purchase 10 ships from one or both shipyards. With the dual-award strategy, the Navy is attempting to capture the lower prices offered by both builders for 20 ships, rather than just for 10 ships under the down-select strategy.

TABLE 2—CBO'S AND THE NAVY'S ESTIMATES OF THE COSTS OF THE LCS PROGRAM UNDER DIFFERENT ACQUISITION PLANS, 2010 TO 2015

[Millions of current dollars]

	2010[a]	2011	2012	2013	2014	2015	Total	Average ship cost
CBO's Estimates								
19-Ship Down-Select Plan	1,080	1,150[b]	1,790	2,330	2,350	2,380	11,080	583
20-Ship Dual-Award Plan	1,080	1,450[b]	2,290	2,300	2,330	2,370	11,820	591
Navy's Estimates								
19-Ship Down-Select Plan	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	10,400	547
20-Ship Dual-Award Plan	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	9,800	490
Memorandum:								
2011 President's Budget and FYDP (19-ship plan)	1,080	1,509	1,808	2,334	2,417	2,748	11,893	626

Source: Congressional Budget Office.
Note: n.a. = not available; FYDP = Future Years Defense Program.
a. The amount for 2010 is the funding level provided in the Defense Appropriations Act, 2010.
b. The amounts for 2011 include additional funds CBO estimates would be needed to complete the 2010 ships.

With the Navy in possession of contract bids, it is not clear that CBO's cost-estimating model is a better predictor of LCS costs through 2015 than the Navy's estimates. Still, the savings compared with the 2011 FYDP might not be realized if the Navy changes the number of ships that are purchased after the contract has been let or makes design changes to address technical problems, regardless of which acquisition strategy the Navy pursues. Inflation or other escalation clauses in the contract also could add to costs.

Although CBO estimates that the dual-award plan would be slightly more costly, that approach might also provide some benefits. In materials delivered to the Congress about that strategy, the Navy stated, ''There are numerous benefits to this approach including stabilizing the LCS program and the industrial base with award of 20 ships; increasing ship procurement rate to support operational requirements; sustaining competition through the program; and enhancing Foreign Military Sales opportunities.'' CBO did not evaluate those potential benefits.

IMPLICATIONS OF THE TWO ACQUISITION PLANS FOR COSTS BEYOND 2015

A Navy decision to buy both types of ships through 2015 would have cost implications after 2015. But whether those long-term costs will be higher or lower would depend on at least three aspects of the Navy's decision:

Which of the two ship designs the Navy would have selected if it had kept to its original down-select plan;

Whether the Navy will buy one or both types of ships after 2015; and

Whether the Navy decides eventually to develop a common combat system for both types of ships or to keep the two combat systems (one for each type of ship) that it would purchase under the dual-award approach.

CBO cannot estimate those costs beyond 2015 because it does not know what the Navy is likely to decide in any of those areas. For example, if the Navy pursued its original down-select strategy and chose the ship with lower total ownership costs (the costs of purchasing and operating the ships), switching to the dual-award strategy would increase the overall cost of the program because the Navy would then be buying at least 10 more ships that have higher total ownership costs. Conversely, if the Navy were to choose the ship with higher total ownership costs under the down-select strategy, the dual-award strategy might produce an overall savings. However, some of those savings would be offset by the extra overhead costs of employing a second shipyard and by other types of additional costs described below. Added costs would also arise if the Navy selected the dual-award strategy through 2015 and then decided to build both types of ships after 2015 to complete the 55–ship fleet rather than selecting only one type, in keeping with its current plans.

The dual-award strategy might entail higher costs to support two full training and maintenance programs for the two ship designs. Under the down-select strategy, the Navy would need training, maintenance, and support facilities to sustain a fleet of 53 LCSs of the winning design. Facilities would be required for both the Pacific Fleet and the Atlantic Fleet—essentially one on each coast of the continental United States. A more modest set of facilities would be required to support the two ships of the losing LCS design, which the Navy could presumably concentrate at a single location. Under a dual-award strategy, the Navy would buy at least 12 ships of each type, with an additional 31 ships of either or both designs purchased after 2015. Thus, a more robust training, maintenance, and support program would be required for the version of the LCS that would have lost under the down-select strategy. The Navy has said that those costs are relatively small and more than offset by the savings generated by the shipyards' bids, but CBO did not have the data to independently estimate those additional costs.

Finally, another, potentially large, cost would hinge on whether the Navy decides in 2016 or later to select a common combat system for all LCSs. Currently, the two versions of the ship use different combat systems. If the Navy decided to have both versions of the LCS operate with the same combat system, it would incur research, development, and procurement costs, as well as costs to install the new system on 12 of the LCSs already equipped with an incompatible system. Combat systems for the LCS today cost about $70 million each, not including the cost to remove the old system and install the new one. At a minimum, the Navy would lose some efficiency in the production of the combat system under the dual-award plan because neither producer of the combat system would have provided more than 12 systems for installation on LCSs by 2015; under the down-select strategy, by contrast, one producer would have provided 19 systems by that year. Thus, the production costs of the combat system are likely to be higher for ships purchased after 2016 under the dual-award strategy than under the existing down-select approach because the manufacturers of those later ships would have had less experience building ships of the same type and thus fewer opportunities to identify cost-saving practices. Furthermore, the costs to operate two combat systems (or to switch to a single combat system later) would probably exceed the cost to operate a single system from the outset.

I hope you find this information helpful. If you have any more questions, please contact me or CBO staff. The CBO staff contact is Eric Labs.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Mr. LEAHY. Mr. President, I strongly support the alternate engine for the F–35 Joint Strike Fighter. The evidence and the logic for an alternate engine easily overwhelm the flawed arguments that have been used to attack it. Investments in fighter engine competition will reduce costs over the life of the F–35 program. Not only will competition cost less than a single engine monopoly; competition also forces contractors to be more responsive and reliable. And the F–35 will comprise a vast percentage of the U.S. strike aircraft fleet. With just one engine, our national security would rest on a single point of failure. Sole-sourcing the F–35 Joint Strike Fighter engine is simply

the wrong decision for our country, and I am glad that the continuing resolution will preserve funding for this program through March.

Though misinformation has been spread about the costs of the alternate engine, multiple nonpartisan reports suggest that it is highly likely to save taxpayer dollars. According to Government Accountability Office testimony, the Congress can reasonably expect to recoup investment costs over the life of the program. If the so-called ''Great Engine War'' of the F–16 program is any example, the F–35 alternate engine might even yield 30 percent cumulative savings for acquisition, 16 percent savings in operations and support, and 21 percent savings over the life cycle of the aircraft. Not only would we sacrifice these potential savings by killing the F–35 alternate engine program, but that decision would waste the investment we have already made in a competitive second engine. Ending fighter engine competition for the F–35 is pound foolish without even being penny wise.

GAO also points to several possible nonfinancial benefits of engine competition, including better system performance, increased reliability and improved contractor responsiveness. News reports about the broader F–35 program reveal what happens when we sole-source crucial large, multiyear defense programs. The F–35 faces a range of unanticipated problems, delays and cost overruns. Even the independent panel on the 2010 Quadrennial Defense Review—led by President Clinton's Defense Secretary, William Perry, and President Bush's National Security Adviser, Stephen Hadley—strongly advocated dual-source competition in major defense programs. Without competition, the American people will keep paying more and more to buy less and less.

Without competition, our country's strike aircraft would be one engine problem away from fleet-wide grounding. Putting all of our eggs in the single engine basket would elevate risks to our troops and their missions. Imagine our soldiers in Afghanistan stranded without air support simply because we were not wise enough to diversify the program to avoid engine-based groundings. With their lives on the line, we cannot afford to be irresponsible with this program.

The continuing resolution appropriately maintains funding for the alternate engine program. It does not allow for so-called new starts, but neither does it bring programs to a premature end without the debate and full consideration here in the Congress that they deserve. The alternate engine program will rightly continue, and I expect that when programs receive scrutiny during budget consideration next spring, the same will also be the case.

Ensuring engine competition is the right thing to do because it is the smart thing to do. Although some have stressed the up-front costs, taxpayers stand to save more money over the life of the F–35 program by maintaining competitive alternatives. Most importantly, we will purchase a better and more reliable product for the people who risk their lives to defend our country. I will continue to support engine competition that ensures the best product for the troops at the best price for the taxpayer.

Ms. MIKULSKI. Mr. President, I rise to speak about the appropriations process and the need to return it to regular order. I come to the floor very bitter that we have to pass this continuing resolution, CR. The power of the purse is our constitutional prerogative. I am for regular order. Regular order is the most important reform to avoid continuing resolutions and omnibus bills.

Regular order starts with the Appropriations subcommittees and then full committee marking up 12 individual bills. Chairman INOUYE has led these bills out of Committee for the last 2 years, as Chairman Byrd did before him. Then the full Senate considers 12 bills on the floor and all Senators have a chance to amend and vote on the bills. This, however, has not happened since the 2006 spending bills. Lack of regular order means trillion dollar omnibuses or continuing resolutions. If a bill costs a trillion dollars, then opponents ask why can't we cut it by 20 percent—what will it matter? But we are dealing with actual money; it is not authorizing, which is advisory. There are real consequences. If we are really going to tackle the debt, the Appropriations Committee must be at the table. Tackling the debt can't be done just through Budget and Finance Committees alone.

What are the real life consequences of this CR? Well, this CR means that it will be harder to keep America safe. Under this CR the FBI cannot hire 126 new agents and 32 intelligence analysts it needs to strengthen national security and counter terrorist threats. The FBI's cyber security efforts will also be stalled, even while our Nation faces a growing and pervasive threat overseas from hackers, cyber spies and cyber terrorists. Cyber security is a critical component to our Nation's infrastructure, but this CR doesn't allow the FBI to hire 63 new agents, 46 new intelligence analysts and 54 new professional staff to fight cyber crime. The DEA, ATF and FBI cannot hire 57 new agents and 64 new prosecutors to reduce the flow of drugs and fight violence and strengthen immigration enforcement along the Southwest border. Under this CR, we leave immigration courts struggling to keep pace with over 400,000 immigration court cases expected in 2011 because they cannot add Immigration Judge Teams who decide deportation and asylum cases. We cannot hire 143 new FBI agents and 157 new prosecutors for U.S. attorneys to target mortgage and financial fraud scammers and schemers who prey on America's hard working, middle class families and destroy our communities and economy. We miss the chance to add at least 75 new U.S. deputy marshals to track down and arrest the roughly 135,000 fugitive, unregistered child sexual predators hiding from the law and targeting children.

This CR stifles innovation and workforce development. In September, Norm Augustine and the National Academy of Sciences updated the 2005 ''Rising Above the Gathering Storm'' report, sounding the alarm that the U.S. is still losing ground in science that fuels innovations, and brings us new products and new companies. Everyone says they are for science, but it appears that no one wants to pay for it. So, under this CR, our science agencies, like the National Institute of Standards and Technology, NIST, and the National Science Foundation, NSF, will be flat funded. For NSF, this would mean 800 fewer research grants, and 7,000 fewer scientists and technicians working in labs across the country on promising research in emerging fields like cyber security and nanotechnology. Under a CR, we will let the world catch up by not making new investments in science education. We won't just lose the Ph.D.s who open avenues of discovery and win the Nobel Prize. We will also lose the technicians who are going from making steel and building ships to the new, innovation-based manufacturing economy, creating the next high tech product. We will also lose the chance to build up technical education in key fields like cyber security. Under this CR, we cannot expand the supply of cyber security specialists who are responsible for protecting U.S. Government computers and information. We miss the opportunity to triple funding for the NSF program to train cyber professionals for Federal careers, which has brought us more than 1,100 cyber warriors since 2002 and of whom more than 90 percent take jobs with Federal agencies.

I am also disappointed we will be passing this CR because I believe in the separation of powers established by the Constitution. Congress should not cede power to the Executive Branch, regardless of which party is in the White House. The Constitution gives the power of the purse to Congress. I will not cede the power to meet compelling human or community needs or create jobs for America and for Maryland. I don't want to leave all funding decisions to bureaucracy.

On the Appropriations Committee, we did our work by reporting 12 separate bills to the full Senate, but none came to the Senate floor. My Commerce, Justice, Science—or CJS—Subcommittee held 6 hearings with 14 witnesses to examine agencies' budget requests and policies. We heard from 4 inspectors general, IGs, from our major departments and agencies: Todd Zinser at Commerce, Glenn Fine at Justice, Paul Martin at NASA and Allison Lerner at NSF. We listened to agencies' officials, representatives of organizations from sheriffs to scientists

and interested Senators. My CJS Subcommittee worked in a bipartisan way to craft a bill that makes America safer, invests in the American workforce of the future and is frugal and gets value for taxpayer dollars. Under this CR, all of that work is wasted. Instead of fulfilling our constitutional duty of the power of the purse, we are leaving it to the Executive Branch to make key funding decisions with minimal direction from Congress.

As I travel around Maryland, people tell me that they are mad at Washington. Families are stretched and stressed. They want a government that's on their side, working for a strong economy and a safer country. They want a government that is as frugal and thrifty as they are. They want to return to a more constitutionally based government. This CR is not the solution.

Some Members might say that a CR is OK, it will save money, it doesn't matter. Well, even though the CR provides less funding for CJS, it doesn't do it smarter because the CR is essentially a blank check for the executive branch. Regular order provides direction, telling the government to be smarter and more frugal, making thoughtful and targeted cuts and modest increases where justified—not government on autopilot.

For example, my CJS appropriations bill tells agencies to cut reception and representation funds by 25 percent; eliminate excessive banquets and conferences; cut overhead by at least 10 percent—by reducing non-essential travel, supply, rent and utility costs; increase funding to IGs, the taxpayers' watchdogs at the agencies, and have those IGs do random audits of grant funding to find and stop waste and fraud; and notify the committee when project costs grow by more than 10 percent so that we have an early warning system on cost overruns. These reforms are lost in any CR.

We should refocus on the Appropriations Committee. Many Senators have only been elected for the first time in the last 6 years, so most have never seen regular order and don't know what Appropriations Committee is supposed to be. The Appropriations Committee is ''the guardian of the purse,'' which puts real funds in the Federal checkbook for the day-to-day operations of Federal agencies in Washington, and around the Nation and the world. It performs oversight of spending by Federal agencies. And it serves as Congress's main tool to influence how agencies spend money on a daily basis. Why does this matter? It matters because the Appropriations Committee is the tool for aggressive oversight and meeting the needs of our constituents. Agencies must respond to Appropriations—their budgets depend on it.

We must preserve the separation of powers, oversight of Federal agencies and advocacy for our States and our constituents. I urge my colleagues to return to the regular order, and look forward to consideration of all 12 appropriations bills on the floor next year.

Mr. LAUTENBERG. Mr. President, when our colleagues from across the aisle blocked the Omnibus appropriations bill they decided to leave our Nation less safe and less prepared to thwart the next terrorist attack. They chose to put our homeland security on autopilot for the next few months—and that is just too risky.

We had before us an Omnibus bill that addressed the evolving threats to our homeland security. As chairman of the Homeland Security Appropriations Subcommittee, I can attest to the diligent, bipartisan work that went into crafting this legislation, which met our security challenges in a fiscally responsible manner. But our colleagues across the aisle chose instead to fund our homeland security at the status quo levels under a continuing resolution. The terrorists aren't operating under the status quo and neither should we.

The terrorists are constantly searching for new ways to threaten our way of life. We are approaching the 1-year anniversary of the Christmas Day bombing attempt, when a terrorist boarded a flight to Detroit with explosives sewn into his underwear. And just in October, printer cartridges being shipped from Yemen were found to contain explosives that were meant to blow up on cargo planes flying over the east coast of the U.S.

Homegrown terrorism is also a growing threat, as evidenced by the Fort Hood shooting, the Times Square bombing attempt and the New York City subway plot. Earlier this month, the FBI arrested a suspect who was planning to blow up a military recruitment center in Baltimore. And last month, the FBI stopped a U.S. citizen who planned a terrorist bombing at a Christmas tree-lighting ceremony in Portland, OR.

Because of the opposition to the Omnibus, our Department of Homeland Security and first responders across the country will not have the resources they need to anticipate, thwart, and respond to these threats: The Transportation Security Administration will not be able to purchase new explosive-tracing equipment or hire more intelligence officers and canine teams. We won't be able to hire more Federal air marshals, who have been stretched thin since the Christmas Day bomb plot was foiled. Our airports and seaports won't get new equipment to detect radiation and nuclear material. We will have fewer resources to secure air cargo and eliminate threats like the package bombs from Yemen. We will have less funding to secure our rail and transit systems, which are prime targets for terrorists—as we've seen everywhere from Madrid and Russia to DC and New York City. The Coast Guard won't be able to hire 100 new maritime inspectors or improve their capacity to respond to an oil spill. Immigration and Customs Enforcement may have to cut back investigations into human trafficking, drug smuggling and identity theft. There will be fewer Customs officers on duty to keep dangerous cargo and terrorists out of our country. Our ability to prepare for natural disasters and other emergencies will suffer. Fewer local fire departments will receive needed assistance to pay for equipment and training.

In short, the Republicans' decision to kill the Omnibus will shortchange our safety and take chances with our security—and that is wrong for our country.

Beyond homeland security, the Republicans' actions will leave our troops worse prepared and our children without the education they deserve.

The Omnibus crafted by Senator INOUYE, on the other hand, responsibly met all of these needs. And it did so at the exact same funding level proposed by the Republican leader in the Appropriations Committee earlier this year. In June, 40 Republicans voted to support funding the government at this level. Moreover, the Omnibus was crafted on a bipartisan basis—and included earmarks and other spending requested by Republicans.

So it is the height of hypocrisy and cynicism for our Republican colleagues to attack this bill as wasteful or bloated. Adding to the hypocrisy, just two days after killing the Omnibus, which included a quarter billion dollars more for border security than the CR, Republicans killed the DREAM Act—on the alleged basis that we should secure the border first. They are clearly more concerned with handing a defeat to our President and to congressional Democrats than with governing in a responsible way. Republicans have put politics first and it is our troops, our security and our children that will pay the price.

In the aftermath of the wreckage caused by the Republicans' opposition to the Omnibus, Senator INOUYE was faced with the challenge of drafting a slimmed-down continuing resolution that would not leave the country vulnerable. This was an extremely difficult task, but Senator INOUYE was able to craft a bill that provides the most vital resources our government needs to function over the next few months. This was no small feat and I commend the chairman for his tireless work on this bill and throughout this year's appropriations process.

The PRESIDING OFFICER. The Senator from Colorado.

NOMINATION OF BILL MARTINEZ

Mr. UDALL of Colorado. Mr. President, I rise in response to Senator SESSIONS' comments about a nominee we are going to consider shortly, Bill Martinez.

Senator SESSIONS just spoke about the ACLU for 30 minutes, trying to define Bill Martinez—a district court nominee, not the appeals court as SESSIONS noted—as an ACLU-like nominee and then criticizing his hearing responses on the death penalty and the

empathy standard. I wanted to clarify for the record three points of misinformation.

Bill Martinez did not work for the ACLU. He served on an advisory board regarding cases in Denver. Several Bush nominees were members of the Federalist Society and contributors to other conservative litigation centers and were confirmed just a few years ago. Bill Martinez is not the ACLU, and we ought to be careful to avoid setting false standards.

From the Martinez Hearing:

Senator Sessions: Have you ever acted as counsel in a matter on behalf of the ACLU? If so, please provide the Committee with a citation for each case, a description of the matter, and a description of your participation in that matter.

Martinez Response: No.

Senator SESSIONS claimed he was dissatisfied with Bill Martinez's response regarding the death penalty, stating that he was not clear in his beliefs. This is misleading and the record states otherwise.

From the Martinez Hearing:

Senator Sessions: Please answer whether you personally believe that the death penalty violates the Constitution.

Martinez Response: It is clear under current Supreme Court jurisprudence that, with very limited exceptions, the death penalty does not violate the Eighth Amendment to the U.S. Constitution. *Gregg* v. *Georgia*, 428 U.S. 153 (1976); *Roper* v. *Simmons*, 543 U.S. 551 (2005); *Kennedy* v. *Louisiana*, 129 S.Ct. 1 (2008). Consistent with this precedent, I do not believe the death penalty is unconstitutional.

Senator SESSIONS also claimed that Bill Martinez stated empathy can be taken into consideration with legal decisions. This is misleading and the record states otherwise.

From the Martinez Hearing:

Senator Sessions: Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Martinez Response: No.

Let me end on this note. Bill Martinez is a man of high character, he is a good man, and he will make an excellent Federal judge. Let us vote to confirm Bill Martinez to the Colorado U.S. District Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). Under the previous order, the second-degree amendment is withdrawn. The question is on agreeing to the motion to concur.

Mr. UDALL of Colorado. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Missouri (Mr. BOND).

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

The result was announced—yeas 79, nays 16, as follows:

[Rollcall Vote No. 289 Leg.]

YEAS—79

Akaka	Franken	Murkowski
Alexander	Gillibrand	Murray
Barrasso	Grassley	Nelson (FL)
Baucus	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Hutchison	Reid
Bennett	Inouye	Roberts
Bingaman	Johanns	Rockefeller
Boxer	Johnson	Sanders
Brown (MA)	Kerry	Schumer
Brown (OH)	Kirk	Sessions
Bunning	Klobuchar	Shaheen
Cantwell	Kohl	Shelby
Cardin	Kyl	Snowe
Carper	Landrieu	Specter
Casey	Lautenberg	Stabenow
Cochran	Leahy	Tester
Collins	Levin	Thune
Conrad	Lieberman	Udall (CO)
Coons	Lincoln	Udall (NM)
Corker	Lugar	Voinovich
Dodd	Manchin	Warner
Dorgan	McCaskill	Webb
Durbin	McConnell	Whitehouse
Ensign	Menendez	Wicker
Enzi	Merkley	
Feinstein	Mikulski	

NAYS—16

Burr	Feingold	McCain
Chambliss	Graham	Nelson (NE)
Coburn	Hatch	Risch
Cornyn	Inhofe	Vitter
Crapo	Isakson	
DeMint	LeMieux	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The motion was agreed to.

EXECUTIVE SESSION

NOMINATION OF BENITA Y. PEARSON TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

NOMINATION OF WILLIAM JOSEPH MARTINEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to consider the following two nominations, which the clerk will report.

The legislative clerk read the nomination of Benita Y. Pearson, of Ohio, to be United States District Judge for the Northern District of Ohio.

The legislative clerk read the nomination of William Joseph Martinez, of Colorado, to be United States District Judge for the District of Colorado.

Who yields time? The Senator from Alabama.

Mr. SESSIONS. Mr. President, is there an agreement as to the time?

The PRESIDING OFFICER. There is 8 minutes total, 4 minutes on each side on both nominations in combination.

Mr. SESSIONS. Mr. President, I would assume the chairman, who will be speaking in favor, would want to go first, and I yield to Senator LEAHY.

Mr. LEAHY. No, go ahead.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, the two nominees today are nominees who came out of the Judiciary Committee with substantial negative votes. Mr. Martinez is a long-time member of the American Civil Liberties Union. He has refused, when asked at the hearing, by myself and in written questions, to state whether he believes the Constitution of the United States prohibits the death penalty—not whether he believed in it. That is his prerogative. He hid behind the answer that the Supreme Court says it is. But the ACLU holds to the view that the cruel and unusual punishment provision of the Constitution prohibits the imposition of the death penalty and, therefore, it is unconstitutional.

He refused to answer that question, and I believe that is an untenable view. There are four references, at least, in the Constitution to the death penalty, and I do not know how somebody could take the cruel and unusual clause to override specific references to the death penalty which was provided for in every Colony and the Federal Government when the Constitution passed.

With regard to the other nominee, Mrs. Benita Pearson, she has some very extreme views on animal rights. When asked by Senator COBURN whether it would be in the best interests of a steer to be slaughtered—she was asked that in the committee—she said probably not in the best interests of the steer, sir. But then you have to look beyond that. I mean, the steer is going to lose its life. It is a painful situation. And steers, evidence has shown, may have some idea or apprehension about the slaughter that is impending. But the next step is, is it necessary to slaughter the steer in order to provide food for those who might otherwise go hungry or perhaps be malnourished without the sustenance that this steer's flesh and hide could provide in terms of clothing and matters necessary for the well-being of animals.

Basically, what I understand this to be is that she is suggesting a court should enter into some sort of balancing test on whether it is legitimate to slaughter a steer, and also she is a member of the ALDF, the defense of animals group, that is very extreme in its views.

For that reason, the National Cattleman's Beef Association and the Farm Animal Welfare Coalition strongly oppose the nomination. I think her views on this issue are out of the mainstream.

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

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, President Obama nominated William J. Martinez to fill a judicial emergency vacancy on the District of Colorado last February. Mr. Martinez is a well-respected legal practitioner in Denver who has the strong support of both of his home State Senators. The statements earlier today from Senator UDALL and Senator