Mr. UDALL of New Mexico thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. LEVIN. Mr. President, on behalf of the leader, today the Senate will resume consideration of the New START treaty. Yesterday, cloture was invoked on the treaty, which limits debate to 30 hours. He hopes some of the postcloture debate time can be yielded back so we can complete action on it early this afternoon.

In addition to the treaty, the majority leader would like the Senate to consider the Department of Defense authorization bill, the 9/11 health legislation for first responders, and a number of executive nominations, including that of James Cole to be Deputy Attorney General, before we leave for the holidays. Senators will be notified when any votes are scheduled.

IKE SKELTON NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2011

Mr. LEVIN. Mr. President, in legislative session and in morning business, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 717, H.R. 6523, the Department of Defense authorization bill, that a Levin-McCain amendment that is at the desk be agreed to, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MCCAIN. Reserving the right to object, and I will not object, a lot of people may not understand that unanimous consent request that was just made by the chairman of the Armed Services Committee.

Am I correct, I ask my friend from Michigan, that this is in order to pass the National Defense Authorization Act? We have gone, I believe, 48 years and passed one, and there are vital programs, policies, and pay raises for the men and women in the military and other policy matters that are vital to successfully carrying out the two wars we are in and providing the men and women who are serving with the best possible equipment and capabilities to win those conflicts. Am I correct in assuming that is what this agreement is about?

Mr. LEVIN. The Senator from Arizona is correct. It is the bill—slightly reduced to eliminate some of the controversial provisions, which would have prevented us from getting to this point, but this is the Defense authorization bill, and 90 to 95 percent of the bill is the bill we worked so hard on in committee on a bipartisan basis. I am very certain that our men and women in uniform, as this Christmas season comes upon us, will be very grateful indeed that we did this in the 49th year—and if the House will move swiftly today and pass this bill, as we have done in the previous 48 years—passed an authorization bill—which is so essential to their success.

Mr. MCCAIN. I will not object.

Finally, I thank the chairman of the Senate Armed Services Committee. I assure my colleagues that the controversial aspects of this legislation have been removed, and only the essential parts remain. I thank the Senator from Michigan. I hope we will move forward and get this done today so that we can again provide our men and women who are serving with the best capability to defend this Nation.

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

The amendment (No. 4921) was agreed to, as follows:

(Purpose: To strike title XVII)

Strike title XVII and the corresponding table of contents on page 18.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 6523), as amended, was passed.

KC–X TANKER COMPETITION

Ms. CANTWELL. Mr. President, I rise to enter into a colloquy with the esteemed chairman of the Senate Armed Services Committee, Senator LEVIN.

Mr. President, I recognize that there are objections to bringing up a bill dealing with the Air Force KC–X tanker competition requiring the Secretary of Defense to take into account any unfair competitive advantages given to any of the competitors for the contract. This provision has passed twice on the House side now by overwhelming majorities and I am shocked that the same language cannot be included in the Defense authorization bill or passed as a stand-alone bill. These are legitimate concerns being brushed under the rug rather than dealt with head on. I recognize that with such a short amount of time left in this Congress we will have trouble convincing our colleagues that we are allowing a terrible precedent to be set and an expensive injustice is being done to American workers and taxpayers. In the last competition, GAO found multiple instances of uneven treatment that when compiled showed a pervasive bias in support of EADS/Airbus. Unfortunately, we now are seeing a similar pattern of behavior emerging and I have concerns about the conduct of the competition by the Pentagon for this U.S. taxpayer-funded $35 billion contract. At every turn, it seems the Pentagon has gone out of its way to advantage EADS/Airbus for example, the Pentagon has structured the competition in ways that minimize the cost advantages of an American-made tanker; extended deadlines to accommodate EADS/Airbus; adjusted analytical models in the competition in ways that favor only the EADS/Airbus tanker; and, most recently decided to continue using the so-called IFARA war scenario model in the competition despite having inadvertently released proprietary information that disclosed Boeing's scores to EADS/Airbus. In recent press stories EADS/Airbus officials claimed they did not look at Boeing's proprietary information but it has now come out that in fact EADS/Airbus did look at it. This type of behavior is unacceptable.

In light of the serious national security and economic implications of the KC–X Tanker competition, I am respectfully requesting that the chairman of the Armed Services Committee initiate an investigation into these issues—in particular the inadvertent release of proprietary data—to determine whether or not laws and fair competition regulations have been appropriately followed. Further, I am seeking the chairman's assurance today that he intends to call departmental witnesses before the Armed Services Committee to ensure that the committee is fully informed on the progress, status, and conclusions regarding the aforementioned investigation and any other DOD investigations into this and related matters.

Mr. LEVIN. I am prepared to direct staff immediately to initiate an investigation into the release of proprietary data to determine if laws and fair competition regulations have been appropriately followed. I also intend to hold one or more hearings by February 1 to consider these issues and to review the propriety of the procurement process of the KC–X tanker competition as it relates to this issue.

PAY FOR NONREGULAR SERVICE

Mr. CHAMBLISS. Mr. President, I rise to comment on a provision in the fiscal year 2011 NDAA which the Senate passed today.

Section 635 of H.R. 6523, The Ike Skelton National Defense Authorization Act for fiscal year 2011, contains a sense of Congress concerning age and service requirements for retired pay for nonregular service. The sense of Congress serves to clarify a provision which I authored and which is contained in section 647 of the fiscal year 2008 National Defense Authorization Act. I appreciate the committee's desire to clarify the intent of that provision and ensure proper credit is given to members of the Reserve.

As can be inferred from the title of the provision in the fiscal year 2008 NDAA, the intent of the provision is to provide earlier retired pay to members of the Ready Reserve who serve in active Federal status or perform active

duty for significant periods. The sense of Congress in the fiscal year 2011 NDAA notes that the intent of the original provision was for reservists to begin receiving retired pay according to time spent deployed, by 3 months for every 90-day period spent on active duty over the course of a career, rather than limiting qualifying time to such periods wholly served within the same fiscal year. I agree with this sense of the Congress to the extent that reservists should receive credit for each 90-day period of continuous duty even though that duty may span 2 different fiscal years.

However, the original intent of the provision, as I authored it, was not to give credit for any 90 days of duty served anytime in one's career, regardless of whether or not that duty was served consecutively. This would not be ''active Federal status or active duty for significant periods,'' it would just be the normal accumulation of days served over the course of a reservists career.

My intent in the original provision was to reward reservists who were deploying or serving an active duty tour for a significant period of time. It was not to allow for early receipt of retired pay simply because, over the course of a reservist's career, the number of days served added up to 90.

I would like to yield to the honorable ranking member of the committee, the Senator from Arizona, and solicit his perspective on this matter.

Mr. MCCAIN. I thank the Senator from Georgia and appreciate his desire to clarify this provision.

I agree, as the title of the provision in the fiscal year 2008 NDAA makes clear, that the intent of the change to the law was to expand eligibility for earlier retired pay to members of the Ready Reserve who deploy on active duty in support of contingency operations for significant periods. It is unfortunate that some reservists who perform 90 days of deployed, consecutive duty or more that has spanned two fiscal years have not received credit under this provision. The sense of the Congress in section 635 of the fiscal year 2011 NDAA seeks to clarify this, and I agree with the Senator from Georgia that the duty needs to be ''for significant periods''—it should not simply be the accumulation of 90 days of duty over the course of a reservists' career.

Mr. CHAMBLISS. I thank the ranking member for his comments and I appreciate his willingness to clarify this issue.

LAND TRANSFER

Mr. PRYOR. Mr. President, I rise today to speak about an issue related to the fiscal year 2011 National Defense Authorization Act. Chairman LEVIN has worked incredibly hard to get this bill passed by unanimous consent, and I appreciate his efforts, the efforts of Senator MCCAIN and the efforts of rest of the Armed Services Committee members.

In the fiscal year 2010 National Defense Authorization Act, the chairman helped me to include language that would allow for a land exchange between Camp Joseph T. Robinson, which is an Army National Guard facility, and their neighbor, the city of North Little Rock, AR. This land conveyance is in the best interest of the military for a couple of reasons. First, the land that the Arkansas National Guard is giving up is so steep that it cannot be used for mounted or dismounted training. Second, the land cannot be totally secured due to extremely rugged terrain. Lastly, due to the lack of complete security, there is a possibility that a civilian could enter the property and be seriously injured. The land that would be gained by the Arkansas National Guard is well suited for mounted and dismounted training and able to be secured.

As all entities were working in good faith toward executing this land exchange, it was brought to my attention that we need one minor adjustment to this language. This adjustment would be a technical correction that would specify that the land exchange is to occur between the city of North Little Rock, AR, and the Military Department of Arkansas, rather than between the city of North Little Rock, AR, and the United States of America. This clarification is necessary since Camp Joseph T. Robinson is an entity of the State of Arkansas rather than an entity of the United States of America.

I understand that there was a timing issue this year and a need to pass the bill by unanimous consent in the Senate so we did not have a formal amendment process during consideration of the bill. However, this technical correction is important to Arkansas. I would ask for the chairman's assistance in addressing this issue at the first opportunity next year.

Mr. LEVIN. I appreciate the Senator from Arkansas bringing this issue to my attention, and I will work with him next year to find a resolution.

Mr. PRYOR. I appreciate the remarks of the chairman and thank him for his help on this matter. His leadership on military issues is invaluable in the U.S. Senate.

Mr. LEAHY. Mr. President, I am deeply disappointed that H.R. 6523, the National Defense Authorization Act for Fiscal Year 2011, includes a section to prohibit the transfer of terrorism suspects at Guantanamo Bay to the United States to face prosecution. This section takes away one of the greatest tools we have to protect our national security—our ability to prosecute terrorism defendants in Federal courts. The result is to make it more likely that terrorists will not be brought to justice.

Current law allows for the transfer of these terrorist suspects for prosecution in the Federal courts. This is a policy that I strongly support. I want to see those who have committed acts of terrorism convicted in our justice system and sentenced to long terms in prison.

Our Federal judges and Federal prosecutors have extraordinary experience dealing with complex terrorism and conspiracy cases. The record speaks for itself. Since September 11, 2001, over 425 persons have been convicted on terrorism related charges in the Federal courts—including more than 70 defendants since President Obama took office in January 2009.

And yet, despite this strong record, Congress continues to try to tie the hands of law enforcement and other security agencies. The prohibition contained in section 1032 of H.R. 6523 is a complete bar on transfers of terrorism suspects at Guantanamo Bay to the United States. There are no exceptions to this prohibition for Federal prosecutions. Rather than addressing the question of how to close the prison facility at Guantanamo Bay once and for all, Congress is obstructing efforts to bring these criminals to justice.

In a letter to the Senate leadership dated December 9, 2010, Attorney General Eric Holder warned that this provision would ''set a dangerous precedent with serious implications for the impartial administration of justice.'' The Attorney General further stated that, by restricting the discretion of the executive branch to prosecute terrorists in Article III courts, Congress would ''tie the hands of the President and his national security advisers'' and would be ''taking away one of our most potent weapons in the fight against terrorism,'' Accordingly, this provision is short-sighted and unwise.

This prohibition language also sets a dangerous political precedent. Once the Senate votes in favor of a total bar to transfers, even for criminal trial, we will see it offered again and again. This is a door that, once opened, will not easily be closed.

I can think of only two possible motivations for including this ban of all transfers to the United States. One is to ensure that the detainees being held at Guantanamo Bay, some for years without charge, can only be tried by military commissions. The other is to ensure that these suspects are simply held in military detention at Guantanamo Bay indefinitely. The very strict restrictions on transfers of suspects from Guantanamo Bay to other nations in section 1033 of H.R. 6523 suggests that indefinite detention is, in fact, the goal of these provisions.

For those who wish to see terrorism suspects tried only in military commissions, I urge them to study the record. The military commissions devised by the prior administration were plagued with problems and repeatedly overturned by the U.S. Supreme Court. The Obama administration has worked hard to revise the military commissions to make sure they meet constitutional standards. However, the new system is still largely untested, and the rules for these commissions were only just released earlier this year.

Military commissions have achieved only five convictions since the September 11, 2001, attacks. Four of the

five resulted from pleas. The sentences handed down in these five cases have been much shorter than those meted out in Federal court convictions. In contrast, our Federal courts have a long and distinguished history of successfully prosecuting even the most atrocious violent acts, and our judicial system is respected throughout the world.

The vital role of the rule of law and our judicial system in the fight against terrorism is also strongly supported by leaders of our military who served honorably to protect our nation and uphold the Constitution. On December 10, 2010, a group of retired generals and admirals voiced their opposition against restricting law enforcement's ability to try terrorists in Federal criminal courts, and wrote that, ''By trying terrorist suspects in civilian courts we deprive them of the warrior status they crave and treat them as the criminals and thugs they are. As long as Guantanamo is open it offers America's enemies a propaganda tool that is being used effectively to recruit others to their cause and undermines U.S. efforts to win support in the communities where our troops most need local cooperation to succeed.''

I believe strongly, as all Americans do, that we must do everything we can to prevent terrorism, and we must ensure severe punishment is imposed upon those who do us harm. As a former prosecutor, I have made certain that perpetrators of violent crimes receive serious punishment. I also believe strongly that we can ensure our safety and security, and bring terrorists to justice, in ways that are consistent with our laws and values. Congress should not limit law enforcement's ability to do just that.

Mr. LEVIN. Mr. President, the proud tradition our committee has maintained every year since 1961 continues with the Senate's passage of this, the 49th consecutive national defense authorization bill. We always have to work long and hard to pass this bill, but it is worth every bit of the effort we put into it because it is for our troops and their families as well as, obviously, our Nation. I thank all Senators for their roles in keeping this tradition going.

Our bipartisanship on this committee makes this moment, as late as it is, possible. I am proud to serve with Senator MCCAIN and am grateful for his partnership.

I thank all our committee staff members. With their extraordinary drive and many personal sacrifices to get this bill done—and we had to get it done twice because we had to modify the bill that was originally presented to the Senate, as everybody here knows. Our staff has given another meaning to this season of giving. Led by Rick DeBobes, our committee's staff director, and Joe Bowab, our Republican staff director, they have given everything imaginable, and some things unimaginable, to get this bill passed. So we thank all of them.

I ask that, as a tribute to the professionalism of our staff, and our gratitude, their names be printed in the RECORD.

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

Richard D. DeBobes, Staff Director; Joseph W. Bowab, Republican Staff Director; Adam J. Barker, Professional Staff Member; June M. Borawski, Printing and Documents Clerk; Leah C. Brewer, Nominations and Hearings Clerk; Christian D. Brose, Professional Staff Member; Joseph M. Bryan, Professional Staff Member; Pablo E. Carrillo, Minority Investigative Counsel; Jonathan D. Clark, Counsel; Ilona R. Cohen, Counsel; Christine E. Cowart, Chief Clerk; Madelyn R. Creedon, Counsel; Gabriella E. Fahrer, Counsel; Richard W. Fieldhouse, Professional Staff Member; Creighton Greene, Professional Staff Member; John W. Heath, Jr., Minority Investigative Counsel; Gary J. Howard, Systems Administrator; Paul C. Hutton IV, Professional Staff Member; Jessica L. Kingston, Research Assistant; Jennifer R. Knowles, Staff Assistant.

Michael V. Kostiw, Professional Staff Member; Michael J. Kuiken, Professional Staff Member; Kathleen A. Kulenkampff, Staff Assistant; Mary J. Kyle, Legislative Clerk; Christine G. Lang, Staff Assistant; Gerald J. Leeling, Counsel; Daniel A. Lerner, Professional Staff Member; Peter K. Levine, General Counsel; Gregory R. Lilly, Executive Assistant for the Minority; Hannah I. Lloyd, Staff Assistant; Jason W. Maroney, Counsel; Thomas K. McConnell, Professional Staff Member; William G.P. Monahan, Counsel; Davis M. Morriss, Minority Counsel; Lucian L. Niemeyer, Professional Staff Member; Michael J. Noblet, Professional Staff Member; Christopher J. Paul, Professional Staff Member; Cindy Pearson, Assistant Chief Clerk and Security Manager; Roy F. Phillips, Professional Staff Member; John H. Quirk V, Professional Staff Member.

Robie I. Samanta Roy, Professional Staff Member; Brian F. Sebold, Staff Assistant; Russell L. Shaffer, Counsel; Travis E. Smith, Special Assistant; Jennifer L. Stoker, Security Clerk; William K. Sutey, Professional Staff Member; Diana G. Tabler, Professional Staff Member; Mary Louise Wagner, Professional Staff Member; Richard F. Walsh, Minority Counsel; Breon N. Wells, Staff Assistant; Dana W. White, Professional Staff Member.

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

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

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following treaty, which the clerk will report.

The assistant legislative clerk read as follows:

Treaty with Russia on Measures for Further Reduction and Limitation of Strategic Offensive Arms.

Pending:

Corker modified amendment No. 4904, to provide a condition and an additional element of the understanding regarding the effectiveness and viability of the New START Treaty and United States missile defense.

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

Mr. KERRY. Mr. President, we currently have two amendments, one of which I believe we will be able to accept and one of which we are working on with the Senator from Arizona to determine whether it would need a vote. We should know shortly. We will begin debate on an amendment of the Senator from Arizona. Subsequently, the Senator from Connecticut, Mr. LIEBERMAN, and the Senator from Tennessee, Mr. CORKER, have an amendment they want to proceed on with respect to missile defense. Those are the only two at this time. We hope to be able to get to final passage on this treaty without delay. The Senator from Arizona assured me they are trying to work through what that means. So I think we will proceed without any attempt to pin that down with a unanimous consent agreement at this point. Obviously, for all Senators, we want to try to do this as soon as is practical.

I yield the floor.

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

Mr. KYL. Mr. President, would it be in order for me to call up an amendment at this time?

The ACTING PRESIDENT pro tempore. The Senator is recognized for that purpose.

AMENDMENT NO. 4892, AS MODIFIED

Mr. KYL. I call up amendment No. 4892, as modified. The modification is at the desk.

The ACTING PRESIDENT pro tempore. The amendment is so modified.

Mr. KERRY. Mr. President, if we could begin the consideration, as I mentioned, we are working on that language. I do not want to agree to the modification yet until we have had a chance to talk with the Senator about it. I am not saying we will not agree to it. I want to see if we can get that done. If we can begin on the amendment as originally filed, we can interrupt to do it with the modification. I want a chance to clear it.

Mr. KYL. I am not asking at this time there be an agreement. I am simply saying that the amendment I want to bring up is the amendment I filed.

Mr. KERRY. I have no objection to the as modified to consider it.

Mr. KYL. I will describe the modifications. They were made in an effort