

ADMINISTRATION OF OATH OF OFFICE

The VICE PRESIDENT. If the Senator-elect will now present himself at the desk, the Chair will administer the oath of office.

The Senator-elect, MARK KIRK, escorted by Mr. DURBIN and Mr. Fitzgerald, advanced to the desk of the Vice President; the oath prescribed by law was administered to him by the Vice President; and he subscribed to the oath in the Official Oath Book.

The VICE PRESIDENT. Congratulations, Senator.

(Applause, Senators rising.)

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

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

FDA FOOD SAFETY MODERNIZATION ACT—Continued

Mr. HARKIN. Mr. President, in about 35 minutes we are going to be voting on cloture on the food safety modernization bill, a bill that brings us forward almost 70 years. Seven decades it has been since we have modernized or changed our food inspection and safety system in America. So we are taking that step tonight. Hopefully, we will have a final vote on it by tomorrow.

I just want to take a few minutes now before that vote to again lay out why this bill is so important and why we need to invoke cloture tonight so we can have a final vote on this bill tomorrow.

First of all, the statistics are that Americans are getting sick and they are dying because of foodborne illnesses. You would think in this day with modernization and such we would not have this.

Madam President, 325,000 Americans every year are hospitalized and over 5,000 die. Many of these are kids. I have met them with a group called Safe Tables Our Priority. I have met some of these kids. They will be damaged for life, I say to my friend from Illinois, Senator DURBIN, who has been such a leader on this bill. In fact, I daresay we would not be here were it not for Senator DURBIN's leadership in getting this bill started, how many years ago I do not know.

Mr. DURBIN. Will the Senator yield for a question.

Mr. HARKIN. I would be glad to yield.

Mr. DURBIN. First, I thank the Senator from Iowa for his leadership on this issue. The fact is, it was almost 18 years ago when I received a letter from a woman in Chicago—written to me as a Congressman—named Nancy Donley.

Nancy had a personal tragedy. Her 6-year-old son Alex died from E. Coli from food Nancy literally prepared for him in their home. She wrote to me a handwritten letter, to me as a Congressman from Springfield, IL, 200 miles away, saying we have to do something about food safety.

Nancy lost her son, but she never lost her passion for this issue. As the Senator said, she formed the organization Safe Tables Our Priority, which has been an effective voice for so many others to bring us to this moment.

But, for the record, I have worked on this issue for a long time, and we would not be on the Senate floor tonight with this historic vote were it not for the Senator from Iowa who has led the effort. Senator TOM HARKIN has, with the help of Senator MIKE ENZI and a number on the other side of the aisle who have stepped up to make this bipartisan. This is a reasonable approach to making our food safer in America. I thank the Senator from Iowa for all of his leadership on this issue and so many others.

Mr. HARKIN. Well, I thank my friend from Illinois, but he is being way too generous. Again, I recognize the instigators of this, the ones who started this ball rolling, and Senator DURBIN is the one who got us started many years ago. And it has taken us many years to put this together. But that is why we have such a good bipartisan bill. We have worked on this. We reported this out of our committee a year ago without one dissenting vote, Republican or Democrat. Since that time, we have been working to get other people, not on the committee, obviously, onboard to get the way paved so we could have a bill that would be broadly supported.

This bill is very broadly supported, both by the industry and by the consumers. It is one of the few bills where, as a matter of fact, we have a wide range of consumer and industry support, everything from the Snack Food Association, the Grocery Manufacturers Association, Consumers Union, Center for Science in the Public Interest, the U.S. Chamber of Commerce, U.S. Public Interest Research Group. Anytime you get the Chamber of Commerce and the U.S. Public Interest Research Group on the same bill, you know you have a bill that has broad support. This bill does.

Again, I thank my colleague, Senator ENZI from Wyoming, our ranking member on our committee, for all of his help in getting this bill through and working on it diligently over the past year.

I would be remiss if I did not also thank Senator GREGG and Senator BURR for being heavily involved in this bill and working through all of the compromises a bill like this entails.

The Food Safety Modernization Act enhances our food safety system in three critical ways. It improves the prevention of food safety problems. I always think this is key. We have to get in front of this, not to just sort of

catch the food once it is contaminated and try to get it done, but to try to prevent it in the beginning. We had success in the meat and poultry industry some years ago with a preventive plan to look at where pathogens could enter the food supply and stop it there. We have applied the lessons we have learned from those last 20, almost 25 years now of that to this, so now we are going to be able to look to have a better system of preventing food safety problems and foodborne pathogens.

It improves the detection or response to foodborne illness outbreaks—detect it earlier, stop it earlier, and have a better response to what is happening. In other words, for example, in the bill we provide that retailers have to in some way notify customers if a food has been recalled. That could be a grocery store putting a sign on the shelf, for example, saying: This food has been recalled, maybe putting out a notice in their supplements that they put out in order to advise consumers they may have purchased a food that has been recalled.

Third, it enhances our Nation's food defense capabilities. Right now, how many people know that less than 2 percent—about 1.5 percent—of all of the food imported into America is ever inspected? That is 1.5 percent. Well, this is going to increase those inspections. It is also going to increase the defense capabilities in case we have a problem. For example, we have stronger traceback authority so we can get to the source of where this happened in a better way than we ever have been able to do in the past.

As I mentioned earlier, it provides the FDA with mandatory recall authority. A lot of people are surprised to know—consumers are surprised to find out that if there is a foodborne illness or outbreak, the Food and Drug Administration has no authority to even recall the food. One may say: Well, the companies have the authority to recall it—and they do because, frankly, they don't want to get sued, obviously. So why have a mandatory recall? Well, you might have bad actors. You might have a company that is located offshore. Maybe they have imported some bad food into this country, and maybe they think they can just take a few bucks and run. The FDA would not have mandatory recall authority. Now they would have that to protect our consumers. As I said, it also requires the retailer to notify consumers if they sold food that has been contaminated.

Now, again, the opponents of this bill have put a lot of rumors out there. Since I have lived with this bill for so long, I am surprised people would be saying things like this. One myth I read is that this bill would outlaw home gardens—you couldn't even have a home garden. I think that comes from Glenn Beck, if I am not mistaken, but it is factually incorrect. It said it would do away with family farms. In

fact, the bill states explicitly that the produce standards “shall not apply to produce that is produced by an individual for personal consumption.” There is also an exemption for small farmers, small facilities, as they sell their products at roadside stands, farmers markets, places such as those.

Then there is another rumor that anyone who grows any food will now come under the jurisdiction of the Department of Homeland Security. I heard this myth that Homeland Security agents now will be tromping through your farms and your pastures and your tomato plants—again, absolutely, totally, factually wrong.

I am proud to say this legislation comprehensively modernizes our food safety system and does so without injury to farms and small processors; otherwise, we wouldn’t have all of the industry groups on board if we were adding undue hardship on our processors and farmers. Our food safety system will continue to fail Americans unless we modernize our food safety laws and regulations. We should give the FDA the authority it needs to cope with the growing, varied risks that threaten today’s more abundant food supply. We need to act, and we need to act now. We need to invoke cloture on this bill in just a little over half an hour.

How much time do I have remaining?

The PRESIDING OFFICER. Eight minutes 10 seconds.

Mr. HARKIN. Madam President, I know my friend, Senator COBURN, was on the floor earlier talking about this bill. He has a substitute he is going to offer. I have worked with Senator COBURN over the months. I know we have a basic philosophical difference about the role of government in this area. Be that as it may, we have worked hard, as I said, on bill compromises between people who do have differences of opinion. Again, as with any bill, there may be some things in here that I don’t particularly like that I think we ought to do differently, but in the spirit of compromise, we don’t get our way all the time around here; we have to give and take to get something done. That is what this bill is.

So I say to my friend, Senator COBURN, I know he has some problems with it, but, quite frankly, his substitute—and I wish to say this very forthrightly—his substitute kills our bill in its entirety. It kills it in its entirety. In its place, what my friend from Oklahoma would offer would be a few studies to help improve collaboration between FDA and USDA. There is weaker language on preventive contamination, which I think is so important—to prevent in the first place. The substitute will eliminate all of our prevention control provisions. It would eliminate the provisions that enhance coordination between State and Federal laboratories.

My friend from Oklahoma—and maybe later on we will get into this and debate it a little bit—my friend

has always been saying we need better coordination. He is right. I said that earlier. He is absolutely right. We need better coordination between the FDA and USDA and other agencies, and that is being done. It is being done in this bill. But at the same time, his substitute would eliminate the provisions in our bill that enhance the coordination between State and Federal laboratories, which is exactly what we need to do—have State and Federal coordination. His substitute would eliminate the trace-back provisions that are so important to find out where the foodborne pathogen might be originating from. It would eliminate the important foreign supplier verification provisions we put in this bill—that if you are importing food from a foreign country, you have to verify that the food has met the same kinds of inspection standards we have in our own country. The substitute of my friend from Oklahoma would eliminate that provision. It would eliminate the requirement that we increase our inspection frequencies in this country, and it would eliminate the FDA’s ability to recall food—the mandatory recall provision we have—even when life-threatening contamination is detected.

So for all of those reasons, I hope the substitute will not be adopted. As I said, I know my friend has some feelings about this bill. I understand that. But many of the things Senator COBURN brought up earlier and in good faith I worked with him and his staff on—some of his ideas, we appropriated in this bill. Senator COBURN—I say this as a friend—has a keen eye a lot of times for things that are duplicative or things that maybe sound good but don’t do what you think they are going to do. He has a keen eye. I give him credit for that. So a lot of those things we have looked at that in the past he suggested, and we have adopted those things and put them in the bill.

Lastly, one of Senator COBURN’s objections is that the bill is not paid for. Again, I think that is misguided. He knows my feelings on this issue. This is an authorization bill. Any funding that would come for this would have to be appropriated in the future. There would be absolutely no deficit increase at all.

This is from the Congressional Budget Office. From our bill, we asked them what would it do to increase the deficit. As my colleagues can see, from 2010 to 2020, there is a zero increase in the deficit because of our bill.

So, again, while I understand Senator COBURN has problems with the bill, I think his substitute really wipes out everything we have done on a bipartisan basis. Senator ENZI has worked hard, as well as Senator GREGG, Senator BURR, and others. We have worked with industry and consumer groups for over a year now to make sure we had a good bill, a comprehensive bill—one that was a true compromise between competing interests but one that gets the job done. And what is the job? To

help reduce the number of foodborne illnesses in this country.

I say in closing, is this bill going to stop everybody from getting sick while eating food? No, no. It will not be 100 percent. Will it be better than what we have? You bet. It is going to prevent a lot of foodborne illnesses that otherwise would happen in this country under the present system.

Just think about this: We are operating under a food inspection safety system in this country that was adopted 70 years ago. Think of how our food supply—the growing, the processing, and the shipping—have all changed in that 70 years. We go to the grocery store in the wintertime and we buy fresh raspberries from Chile or blueberries from Argentina. We go to the store in the summertime and we buy produce made in this country from all over, commingled and shipped together. A lot of times, you don’t know where it is coming from. There are so many different things that have happened over the last 70 years. Yet our inspection system has not kept up with how our food is produced, how it is processed, how it is shipped and stored, and we have not updated what we should do with imported foods. We are getting more and more imported foods into this country.

So for all of those reasons, I hope we will have a good, strong vote, a good bipartisan vote on the cloture issue and that the other measures that are coming up—we have an amendment on taxes—if either the Johannis amendment or the Baucus amendment is adopted, it will kill this bill. It will kill the bill.

I happen to be one of those who think we have to change the 1099 provisions for small businesses but not on this bill. We will do that before the end of the year, but if it is adopted on this bill, it will kill our food safety bill because the House will blue-slip it because the Constitution says bills of revenue have to originate in the House, not in the Senate; likewise, the earmark provision Senator COBURN will be offering—we will have a good debate on that too—again, if that is adopted, it will kill the bill. There is just no doubt about it.

So we worked hard for many years to get to this point. We have a good bipartisan bill. We have a bill we believe the House will pass and send on to the President to keep our people more safe. So I hope this body will reject any extraneous amendments.

Madam President, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. MCCASKILL. Madam President, I rise to talk about an amendment we

will be voting on tomorrow concerning earmarks. Since coming to the Senate, I have decided I am not going to participate in what I think is a very flawed process. I don't think it is the right way to spend public money. I am not going to quarrel that some of the projects that have been funded are not meritorious; they are. In my State, some of the projects that have received earmarked funds are wonderful expenditures of public money. But it is the way in which the money is expended that is a problem; the way to decide it is the problem. It is the process.

There have been a number of defenses of earmarking. I am going to spend a couple minutes debunking the defenses of earmarking. I will tell you my favorite one: We are somehow abdicating the power of the purse that is delineated in the Constitution. Give me a break. We decide every dime of Federal money. Congress makes the decision on appropriations for every Federal program. How is giving up a secretive process, where nobody is sure how it is decided who gets how much money—how is getting rid of that somehow removing our constitutional authority to make spending decisions? It is like they want the American people to believe that if we quit earmarking, the appropriations process is going to go away, that we will no longer pass judgment on the President's budget, that we will not have oversight over Federal money. It is silly and absurd. In some ways, it is almost insulting.

The constitutional powers to decide how Federal money is spent will remain with the Congress long after this bad habit has been broken. Make no mistake about it, it may not be this year, it may not be next year, but the American people are on to us. They now know and understand that earmarking is about who you are. It is about what committee you sit on. It is about whom you know.

If this is such a fair process, if this is something we should be proud of, then I want someone to come to the floor and explain to me how they decide who gets the money. I ask it at home all the time, and I say: If you know, will you tell me because I am a Member of the Senate and I don't know.

In some committees, the ranking member and the chairman of the subcommittee get more money than everybody else. In other committees, they don't. Where is that decided? In what room? Is there a hearing? Can I go and watch? When the money is split, who is in the room? Who is on the phone? If we are brutally honest with the American people, we will tell them that is a process we don't want them to see. Yes, we are better because we reformed. I am proud my party led the reforms on earmarking right after I came to the Senate. Now your name is on your earmark.

I will tell you what is not public. Do you know what people at home actually believe? They believe the Senators don't pick the winners and losers. They

actually think there is some mysterious process, but what we don't know is what are all the earmarks that Senators say no to. Senators say no to these earmarks. It is not a committee that says no to these. It is not a chairman. Each individual Senator decides winners and losers. I don't think the losers know that. I think the losers think that Senator had nothing to do with them being a loser. If we can make all that public, this would be a much less popular activity because all of a sudden the people who wanted the bridge in this part of the State would realize that the Senator thought the bridge on the other side of the State was more important. So we take credit for the earmarks we get, but we are not willing to own the fact that we have chosen winners and losers.

Finally, this notion that somehow the bureaucrats are going to decide—most of the money taken for earmarks comes out of programs that are grant programs and formula programs and are decided by population or by local people. It is not Washington bureaucrats. They are supplanting the judgment of one person for the local planning process and the State planning process. That is not the way.

I hope people vote for the Coburn-McCaskill amendment. This is the wrong way to spend public money. Whether it happens tomorrow or 2 or 3 years from now, make no mistake about it, the American people are tired of it.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Pursuant to rule XXII, the Chair lays before the Senate the following cloture motion, which the clerk will report.

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 Harkin substitute amendment No. 4715 to Calendar No. 247, S. 510, the FDA Food Safety Modernization Act.

Harry Reid, Patrick J. Leahy, Claire McCaskill, Tom Harkin, Carl Levin, Daniel K. Inouye, Richard J. Durbin, Byron L. Dorgan, Jack Reed, Jeff Bingaman, Mark Begich, Blanche L. Lincoln, Robert Menendez, Daniel K. Akaka, Sherrod Brown, Sheldon Whitehouse, Patty Murray, Debbie Stabenow, Barbara Boxer.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 4715 to S. 510, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply 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 Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mr. PRYOR), and the Senator from Montana (Mr. TESTER) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from North Carolina (Mr. BURR).

The yeas and nays resulted—yeas 69, nays 26, as follows:

[Rollcall Vote No. 252 Leg.]

YEAS—69

Akaka	Franken	Merkley
Alexander	Gillibrand	Mikulski
Baucus	Grassley	Murkowski
Bayh	Gregg	Murray
Begich	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bingaman	Inouye	Reed
Boxer	Johanns	Reid
Brown (MA)	Johnson	Rockefeller
Brown (OH)	Kerry	Sanders
Cantwell	Kirk	Schumer
Cardin	Klobuchar	Shaheen
Carper	Kohl	Snowe
Casey	Landrieu	Specter
Collins	Lautenberg	Stabenow
Conrad	Leahy	Udall (CO)
Coons	LeMieux	Udall (NM)
Dodd	Levin	Vitter
Dorgan	Lincoln	Voinovich
Durbin	Lugar	Warner
Enzi	Manchin	Webb
Feingold	McCaskill	Whitehouse
Feinstein	Menendez	Wyden

NAYS—26

Barrasso	Crapo	McCain
Bennett	DeMint	McConnell
Bond	Ensign	Risch
Bunning	Graham	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Thune
Corker	Isakson	Wicker
Cornyn	Kyl	

NOT VOTING—5

Brownback	Lieberman	Tester
Burr	Pryor	

The PRESIDING OFFICER. On this vote, the yeas are 69, the nays are 26. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. BROWN of Massachusetts. Madam President, I come to the floor today to talk about a provision that was included in the Federal health care reform bill. It is a provision that adversely impacts small businesses and entrepreneurs, both an engine of job growth in Massachusetts and across the country.

I support Mr. JOHANN'S efforts and leadership to repeal this provision of the law. I am proud to be a cosponsor of his efforts to do just this.

The provision that I am referring to—section 9006 of the Federal health care reform bill—requires that every business, charity, and local and State government entity submit a 1099 form for every business transaction totaling \$600 or more in a given year. It has been estimated that this mandate would affect approximately 40 million entities across the country.

Under the law, businesses will be required to report purchases of items

such as office equipment, food and bottled water, gasoline, lumber, and plumbing supplies if payments to any vendor in the course of a year total at least \$600. They will, in many cases, also have to report payments for things such as travel and telephone and Internet service. To comply with the mandate, businesses—especially small businesses—would have to institute new, complex record-keeping data collection and reporting requirements that track every purchase by vendor and payment method. The provision will increase accounting costs, expose businesses to costly and unjustified audits by the IRS, and subject more small businesses to the challenges of electronic filing.

So what does all of this really mean? And why does this provision need to be repealed? Well, what it means is that small businesses and entrepreneurs will be busy completing paperwork, filling out forms, and complying with government mandates.

The provision needs to be repealed because when small businesses are focused on keeping the government at bay, they aren't creating jobs or making investments that spur economic growth.

This is a policy we can all agree on—from both sides of the aisle. It is a policy that I have supported from the very start and that I will continue to support and fight for.

Passing this amendment is the right thing to do—for small business owners, for entrepreneurs, and for every business that is eager to hire workers, expand its business, and grow.

I commend my colleague's leadership on this issue. My colleague, Mr. JOHANNIS has been leading this effort since the Federal health care reform passed earlier this year, and I support him fully. And I urge my fellow Senators to repeal this job-and investment-killing mandate.

The PRESIDING OFFICER. Under the previous order, the Senator from Nebraska will be recognized to offer a motion to suspend the rules.

MOTION TO SUSPEND

Mr. JOHANNIS. Madam President, I move to suspend the rule XXII, including any germaneness requirements, for the purposes of proposing and considering amendment No. 4702, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

MOTION TO SUSPEND

Mr. BAUCUS. Madam President, pursuant to the previous order, I move to suspend the rules for the consideration of my amendment, which is at the desk, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the vote will first occur on the motion of the Senator from Nebraska.

The Senator from Montana.

Mr. BAUCUS. Madam President, I understand, under the order, each side gets to speak for 1 minute.

The PRESIDING OFFICER. That is correct. The Senator from Nebraska.

Mr. JOHANNIS. Madam President, if I might take my minute to explain what is happening tonight, the first amendment we will vote on is the Johanns' amendment. It repeals the 1099 requirement in the health care law. This came before us in September. Many colleagues came to me and said: I do not like the pay-fors coming out of the health care law. This is paid for. It is paid for out of unobligated funds in the Federal system, if you will.

The second amendment, the Baucus amendment, simply is not paid for. So you will be adding to the Federal deficit if you support the Baucus amendment.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. The Senator from Nebraska and I both seek to repeal the provisions in the health care reform act referring to 1099. They are identical in that respect, but actually we go further and give more relief to small business than does the Senator from Nebraska.

The Johanns amendment would also give the unelected Director of the Office of Management and Budget the power to slash \$33 billion in appropriated spending entirely at his own discretion, taking away the responsibility of the Congress. I do not think that is a good idea.

The Johanns amendment, thus, puts at particular risk slower spending accounts that fund vital purposes. The Johanns amendment puts at risk international narcotics control, law enforcement funding, \$39 billion worth of funding solely in the discretion of the OMB Director, taking that power away from the Congress. I think that is a bad idea. I urge my colleagues to oppose the Johanns amendment.

Mr. JOHANNIS. Madam President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 24 seconds remaining.

Mr. JOHANNIS. In reference to the argument of the Senator from Montana, Congress has allowed the administration to make similar decisions on rescinding funds in 1999, 2004, and twice in 2008, while our friends on the other side of the aisle were in control of Congress. That argument simply does not hold water.

I urge my colleagues to support the paid-for amendment, the Johanns amendment.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the motion of the Senator from Nebraska.

The yeas and nays are ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Connecticut (Mr.

LIEBERMAN) and the Senator from Arkansas (Mr. PRYOR) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from North Carolina (Mr. BURR).

The yeas and nays resulted—yeas 61, nays 35, as follows:

[Rollcall Vote No. 253 Leg.]

YEAS—61

Alexander	Feingold	Menendez
Barrasso	Graham	Murkowski
Bayh	Grassley	Nelson (NE)
Bennet	Gregg	Nelson (FL)
Bennett	Hagan	Risch
Bingaman	Hatch	Roberts
Bond	Hutchison	Sessions
Brown (MA)	Inhofe	Shelby
Bunning	Isakson	Snowe
Cantwell	Johanns	Stabenow
Chambliss	Kirk	Tester
Coburn	Klobuchar	Thune
Cochran	Kohl	Udall (CO)
Collins	Kyl	Udall (NM)
Conrad	LeMieux	Vitter
Corker	Lincoln	Voinovich
Cornyn	Lugar	Warner
Crapo	Manchin	Webb
DeMint	McCain	Wicker
Ensign	McCaskill	
Enzi	McConnell	

NAYS—35

Akaka	Feinstein	Mikulski
Baucus	Franken	Murray
Begich	Gillibrand	Reed
Boxer	Harkin	Reid
Brown (OH)	Inouye	Rockefeller
Cardin	Johnson	Sanders
Carper	Kerry	Schumer
Casey	Landrieu	Shaheen
Coons	Lautenberg	Specter
Dodd	Leahy	Whitehouse
Dorgan	Levin	Wyden
Durbin	Merkley	

NOT VOTING—4

Brownback	Lieberman
Burr	Pryor

The PRESIDING OFFICER (Mr. MERKLEY). On this vote, the yeas are 61, the nays are 35. Two-thirds of the Senators voting not having voted in the affirmative, the motion is rejected.

The Senator from Montana.

MOTION TO SUSPEND

Mr. BAUCUS. Mr. President, this next vote is very simple. It repeals the 1099 provisions that we all said to small businesses that we are going to repeal. Purely and simply, it repeals 1099. I urge Members to vote to repeal, get this over with so we can move on to other business.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. JOHANNIS. Mr. President, this adds \$19 billion to the Federal deficit.

I yield the remainder of my time to Senator JUDD GREGG.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, this is not the proper way to address this issue, to add \$19 billion to our deficit. That has to be paid too by our children and by small businesses being affected by this 1099 proposal. Let's do this the right way. Let's do it the way the Senator from Nebraska has suggested—pay for it. It should be corrected that way, not by adding \$19 billion to our debt.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the motion offered by the Senator from Montana.

The yeas and nays having been ordered, the clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. LIEBERMAN) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from North Carolina (Mr. BURR).

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

The yeas and nays resulted—yeas 44, nays 53, as follows:

[Rollcall Vote No. 254 Leg.]

YEAS—44

Akaka	Hagan	Nelson (NE)
Baucus	Inouye	Reed
Bayh	Johnson	Reid
Begich	Kerry	Rockefeller
Boxer	Kirk	Sanders
Brown (MA)	Klobuchar	Schumer
Brown (OH)	Landrieu	Shaheen
Cantwell	Lautenberg	Specter
Cardin	Leahy	Stabenow
Casey	Levin	Tester
Coons	Manchin	Warner
Dorgan	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murray	

NAYS—53

Alexander	Durbin	McCain
Barrasso	Ensign	McCaskill
Bennet	Enzi	McConnell
Bennett	Feingold	Murkowski
Bingaman	Graham	Nelson (FL)
Bond	Grassley	Pryor
Bunning	Gregg	Risch
Carper	Harkin	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Snowe
Collins	Isakson	Thune
Conrad	Johanns	Udall (CO)
Corker	Kohl	Udall (NM)
Cornyn	Kyl	Vitter
Crapo	LeMieux	Voinovich
DeMint	Lincoln	Wicker
Dodd	Lugar	

NOT VOTING—3

Brownback	Burr	Lieberman
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The PRESIDING OFFICER. On this vote, the yeas are 44, the nays are 53. Two-thirds of the Senators voting not having voted in the affirmative, the motion is rejected.

VOTE EXPLANATIONS

Mr. TESTER. Mr. President, unfortunately, I was not able to be present to cast an important vote this evening due to a delayed flight. The vote was for cloture on the substitute food safety bill, which includes my amendment. After widespread foodborne illnesses have sickened millions of Americans throughout the country, including in Montana, this bill will help restore Americans' confidence in our food supply. With my amendment, it will also recognize that family-scale producers that have immediate relationships with their customers at a local level have not been at the root of our food safety problems, so they should not and cannot bear the same regulatory burden.

Had I been present, on vote No. 252, cloture on substitute amendment No.

4175 to S. 510, Food Safety Modernization Act, 60 vote threshold, I would have voted in the affirmative.

Mr. PRYOR. Mr. President, due to my airline flight delay traveling back from Arkansas, I inadvertently missed the vote on Senator JOHANN'S motion to suspend rule XXII for the purpose of proposing and considering his amendment No. 4702 to repeal the 1099 information reporting requirement. I would have voted for Senator JOHANN'S motion had I been present.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. LIEBERMAN. Mr. President, I regret having missed votes to suspend the rules and consider two amendments to the FDA Food Safety Modernization Act. I was unable to be present for these votes due to a family wedding.

Had I been present, I would have voted in favor of the motion to suspend the rules to consider Senator BAUCUS's amendment to repeal the form 1099 reporting requirement. This provision imposes an onerous compliance requirement on businesses of all sizes, and Congress should act quickly to remove that burden and allow businesses to direct their time, energy, and resources to growing their businesses and creating new jobs.

I would have voted against the motion to suspend the rules to consider the JOHANN'S amendment because it would have delegated Congress's constitutionally delegated responsibility to make spending decisions to the executive branch, also shifting accountability for making difficult and unpopular spending cuts from Congress to the President. •

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, we have just invoked cloture on the food safety bill, and I think it is important for the American people to know what that means. That means we are going to spend another \$1.4 billion of their money. No. 2, we are going to raise the cost of food over the next year, and therefore we are at about \$200 million to \$300 million. We set \$141 billion per year in unfunded mandates on the States if we pass this bill, and we didn't fix the real problem with food safety in this country, according to the Government Accountability Office.

The other point I wish to make is that we went through this process over the last week and a half with no amendments being allowed—no amendments being allowed—which really violates the spirit of the Senate. We could have finished this bill probably the week before Thanksgiving had amendments been allowed.

The thing Washington gets wrong—it is not their intent, it is not their well-meaning desire to fix problems that are in front of the country—what Washington gets wrong is they think spending more money and setting up a ton more regulations will fix problems, and it doesn't. What it does is it raises

costs. So we are going to see a lot of small food manufacturers no longer making food. We are going to raise the cost of our food and, by the way, see significant increases—if I could have my charts on the floor, I would appreciate it—this year in food, and we are going to see that extended, but we are not going to fix the real issue.

Food safety is on the minds of everybody in this country because of the recent 500 billion egg recall in this country. It is important to know what went on there. It is important to note that the head of the FDA, Dr. Margaret Hamburg, said had their rule been in existence, we wouldn't have had that problem of salmonella with eggs. They promulgated the finished rule around the time of the salmonella infection and contamination on the eggs.

The problem with that is it took 10 years to develop that rule. Nobody has asked why it took 10 years. Nobody had a hearing before we passed this rule to say: How did we allow this to happen? But we took 10 years.

Senator HARKIN has the right idea on food safety. He didn't get it proper, that bill, because he couldn't get it through, but his idea is that we need one food safety organization, not three, and we now have three, and we are going to exacerbate that problem with the bill on which we just deemed cloture.

The intent of my colleagues is great, but, as somebody trained in the art of medicine, what I see in this bill is different from what you see in this bill. You see, I see the problem is not lacking regulatory authority; the problem is not holding the regulators in their expertise and carrying out the authority they have. How do I know that for sure? Because it wasn't a week after the recall on the eggs on the salmonella scare that we had two FDA inspectors cross-contaminating farms in Iowa, not even following their own regulations. This doesn't do anything for that because the only thing that is going to fix the real problems with food safety in this country is us holding the regulators accountable, not giving them a whole bunch more regulations, and we haven't done that. We have failed to do that.

It is not just in food safety. The reason we have a \$1.3 trillion deficit is because we don't hold agencies accountable. We are going to have a debate in a minute on earmarks, and we are going to hear it put forward that the only way we can control it is to direct money ourselves. That is just absolutely an untruth. The way you can direct where money gets spent in this country is having oversight on the agencies and them knowing you are going to look every time on how they are spending the money and make them justify it. But the fact is, we are not looking because we have decided we will take ours and we will put our \$16 billion over here, and you, administration, can take your money and put

your money where you want to put it. That is the real debate on earmarks. There is nothing in our oath that says anything about our obligation to our State to bring money back to it. And the hidden little secret on earmarks is that they are used as much as a political tool as they are to claim "I am doing something good for my State."

MOTIONS TO SUSPEND

I ask unanimous consent to move to suspend the rules for the consideration of amendment No. 4696 and amendment No. 4697.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Mr. President, reserving the right to object, I wish to ask the Senator from Oklahoma if he could explain the nature of his unanimous consent request. I may not object, but I just didn't understand it.

Mr. COBURN. To the Senator from Illinois, I am just bringing these up. I have to bring them up either in the morning or this evening for votes in the morning, so I am just bringing them up to be available for consideration under a suspension of the rules.

Mr. DURBIN. So it is my understanding the votes will still be tomorrow on the two issues the Senator has pending?

Mr. COBURN. Yes, they will.

Mr. DURBIN. I do not object.

The PRESIDING OFFICER. The motions to suspend are pending rather than the amendments themselves. Is there objection?

Without objection, it is so ordered.

The Senator from Oklahoma has the floor.

Mr. COBURN. Mr. President, I just want to show my colleagues the difference. One of the motions we will vote on on suspending the rules tomorrow is, here is S. 510, 280 pages of new rules and new regulations. Here is the alternative, which is one-sixth of that. This one costs \$1.4 billion in direct costs, \$400 billion in food increased costs, and \$141 million in mandatory new spending, mandates to the States. This one does none of that.

What does this bill do? This bill uses common sense to say what really controls our food safety. Our food safety is controlled by market forces more than anything. And if you look at our history on foodborne contamination, we are by far the safest in the world, and our rates have been coming down since 1996. Over the last 14 years, our rates have come down in terms of foodborne illnesses.

I am not fighting against food safety; I am fighting for common sense. What we see in the bill we are going to vote on versus the alternative which I am going to offer is one builds and grows the government, one raises the cost of government, and ultimately we will be taxed to pay for that. One raises the price of food and one puts unfunded mandates on the States.

I am saying that we can accomplish exactly the same goal as my chairman, the Senator from Iowa, would like to

accomplish without 280 pages of new rules and regulations. So what do we do? We require the FDA and the USDA to immediately establish a comprehensive plan to share their data. They have agreements to share data, but they don't share the data, so we force them to do that. We require a strategic plan for updating their health information technology systems, which the Government Accountability Office for the last 5 years has been saying is their No. 1 problem. We require the FDA to submit a plan to expeditiously approve new food safety technologies and more effectively communicate those technologies to the industry and consumers. We leverage the free market existing food safety activities by allowing the FDA to accredit third-party inspectors, and we provide unlimited new authority without imposing new costs or additional regulatory burdens. These new authorities intend to better leverage the free markets and focus resources on preventing foodborne illness and contamination. They include emergency access to records, clarifying the HACCP authority relating to high-risk foods, and allowing the FDA to develop strategic international relationships.

What will this bill do? It will fix the real problem: ineffective government, ineffective bureaucracies. What we are going to do when we pass the food safety bill that is on the floor is we are going to grow the government. We are going to create more barriers. We are going to raise the cost, and we are still going to have foodborne illnesses.

So I will end with that and move over to earmarks. I know I have several colleagues who wish to speak about it. I am not going to spend a long time on it. We have debated it and debated it. The fact is that this country did just fine for the first 200 years without the first earmark. And when anybody in the Senate in the first 200 years in this country tried the earmark, they got shouted down in this body because they were told their responsibility was to the country as a whole, not to the privileged, well-connected, well-knowing few who helped them come up here.

We have a problem, and the problem isn't earmarks; the problem is the confidence of the American people. They see the conflicts of interest associated with earmarks. It is not wrong to want to help your State. It is not wrong to go through an authorizing process where your colleagues can actually see it. It is wrong to hide something in a bill that benefits you and the well-heeled few without it being shown in light to the American people.

If we are to solve the major problems that are in front of this country over the next 2 or 3 years—and they are the largest we have ever seen, they are the biggest problems we have ever seen in this country—we have to restore the confidence of the American people.

Utilization of an earmark is not our prerogative; it is our pleasure. We claim a power that we have in fact created. We do direct where the money

goes. But we should never do it with a conflict of interest that benefits just those we represent from our States or just those who help us become Senators. All we have to do is look at campaign contributions and earmarks, and there is a stinky little secret associated with that: the correlation is close to one. That is not something this body should embrace, tolerate, or stand for.

The American people expect us to be transparent, aboveboard, doing the best, right thing for the country as a whole. The real process is that the Appropriations Committee ignores authorizing committees; \$380 billion a year in discretionary funds are appropriated every year that are unauthorized. With that rebuff of the authorizing committees, they also put in any earmarks they want or that any other Member wants. It is time that stops. It is time we re-earn the trust of the American people.

With that, I yield to my colleague, the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I thank Senator COBURN. I also express my appreciation to Senator McCASKILL and Senator UDALL for joining in this very important amendment. As the Senator from Oklahoma mentioned, this issue has been debated many times on the floor of the Senate. There have been efforts to repeal certain most egregious earmarks. A "bridge to nowhere" in Alaska was one of those that became more famous than others.

I have to say to my colleagues that I have seen with my own eyes—and I say this with great regret—the influence of money and contributions in the shaping of legislation. I have seen that come in the form of earmarks. One of the individuals I admired a great deal, a former Member of the House of Representatives, now resides in Federal prison because of earmarking. Another Member of Congress recently got out of prison. It was earmarking. We just saw that the former majority leader of the U.S. House of Representatives was convicted in court in Texas, and earmarking played a major role. The system of rewards for campaign contributions was an important factor in that conviction.

So for many years I have been coming to this floor to express my frustration with this corrupt practice. It has been a lonely fight and hasn't won me many friends in this body. I understand that. But I also want to point out that my criticisms have not been directed just from the other side of the aisle. Earmarking is a bipartisan disease, and it requires a bipartisan cure. After so many years in the trenches to eliminate this practice, I am pleased the American people are demanding that they stop this practice.

As my colleagues know, earlier this month the Senate Republican caucus unanimously adopted a nonbinding resolution to put into place a 2-year earmark moratorium. I applaud my fellow

Republicans in the Senate for joining our Republican colleagues in the House in sending a message to the American people that we heard them loud and clear in the election on November 2 that we will get spending under control and we will start by eliminating the corrupt practice of earmarking.

Mr. President, I have had a lot of communications and relations with and even attended tea party rallies across my State. There is very little doubt that a real revolt is going on out there. I can't call it a revolution because I don't know how long it is going to last. I don't know how it is going to be channeled. I don't know exactly where this movement will go. But I do know it involved millions of Americans who had never been involved in the political process before because of their anger and frustration over our practices here, and they believe earmarking is a corrupt practice. They believe their tax dollars should not be earmarked in the middle of the night, without any authorization, without hearings.

The Senator from Oklahoma just pointed out \$380 billion in earmarks. Some of those earmarks are worthy. If they are worthy, then they should be authorized. So what has happened? What we have seen in the last 30 years or so is an incredible shift from the hands of many to the decisions of a few. We don't do authorization bills anymore. We don't do an authorization bill for foreign operations. We don't do an authorization bill for all of these other functions of government for which there are requirements because, what do we do? We stuff them all into the appropriations bills. Then the members of the Appropriations Committee make decisions that are far-reaching in their consequences, with incredibly billions of dollars, without the authorizing committees carrying out their proper role of examination, scrutiny, and approval.

The way the system is supposed to work—and did for a couple hundred years—is that projects, programs, whatever they are, are authorized, and then the appropriators appropriate the certain dollars they feel necessary to make this authorization most effective and efficient. So we don't authorize anymore. We only appropriate. That is wrong. That really puts so much power in the hands of a very few Members of this body and, inevitably, it leads to corruption—inevitably.

The Heritage Foundation wrote a report I urge my colleagues to read. It is entitled "Why Earmarks Matter." The first point they make is this:

They invite corruption. Congress does have a proper role in determining the rules, eligibility and benefit criteria for federal grant programs. However, allowing lawmakers to select exactly who receives government grants invites corruption. Instead of entering a competitive application process within a federal agency, grant-seekers now often have to hire a lobbyist to win the earmark auction. Encouraged by lobbyists who saw a growth industry in the making, local govern-

ments have become hooked on the earmark process for funding improvement projects.

There are small towns in my State that feel obligated to hire a lobbyist to get an earmark here through the Appropriations Committee. They should not have to do that. They should not be spending thousands and thousands or tens of thousands of dollars for a lobbyist to come here to get an earmark. They should have their desires and their needs and their requirements considered on an equal basis with everybody else's, not only in their State but in this country. But now they believe the only way they will get their pork or their project done is through the hiring of a lobbyist.

The Heritage Foundation goes on:

They encourage spending. While there may not be a causal relationship between the two, the number of earmarks approved each year tracks closely with growth in federal spending.

Then the Heritage Foundation says:

They distort priorities. Many earmarks do not add new spending by themselves, but instead redirect funds already slated to be spent through competitive grant programs or by states into specific projects favored by an individual member. So, for example, if a member of the Nevada delegation succeeded in getting a \$2 million earmark to build a bicycle trail in Elko in 2005, then that \$2 million would be taken out of the \$254 million allocated to the Nevada Department of Transportation for that year. So if Nevada had wanted to spend that money fixing a highway in rapidly expanding Las Vegas, thanks to the earmark, they would now be out of luck.

So what we do is deprive the Governors and the legislators from setting the priorities they feel are the priorities for their States. And all too often, the earmark is not what the State or the local citizenry or town or county needs as their priorities because they are decided with the influence of lobbyists in Washington. I say, with all due respect to the appropriators, they don't know the needs of my State like I know the needs of my State, and not nearly as much as the mayor, the city council, the Governor, and the legislature. Let them make the decision where these moneys should be spent, and not on a bike path instead of improving a highway.

Mr. President, I could go on and on. I come down here year after year and look at the porkbarrel projects and earmarks, and we discuss the ones that are the most egregious and then I am amused and entertained by Members who come down and defend many of these absolutely unneeded and unnecessary projects. I will not go into many of my favorites at this time. I know my colleagues are waiting to speak.

I ask my colleagues to understand the voice of the people of this country. I just read today that more seats were gained by the Republican Party than in any election since 1938. Since 1938, there has not been such a political upheaval in this country. That is not because our constituents have now fallen in love with Republicans. That is not

the case. The message is that all of our constituents are tired of the way both Republicans and Democrats conduct their business in Washington, frivolously and outrageously spending their hard-earned tax dollars. They believe we are not doing right by them, that we are not careful stewards of their tax dollars, that we are engaging in practices that need to stop which has disconnected us from the American people. We need to connect again with the American people.

I am going to hear the arguments that it is only a few dollars, not much money, and we don't trust the Federal Government to do it. I have heard all of those arguments year after year. I have watched year after year the earmarks go up and up. I have seen the corruption. Senator DORGAN and I had hearings in the Indian Affairs Committee about a guy named Jack Abramoff. We saw firsthand the effects of unscrupulous lobbyists and the millions and millions of dollars they got in earmarks as a result of their corrupt influence. There are many Jack Abramoffs in this town; they just haven't gotten famous.

Mr. President, again, I thank Senators COBURN, UDALL, MCCASKILL, and others who support this amendment. As I said 20-some years ago, we will keep coming back and back and back to the floor of this body until we clean up this practice and restore the confidence and faith of the American people—the people who send us here to do their work, not our work.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, I rise this evening—

Mr. COBURN. Would the Senator yield for a unanimous consent request?

Mr. INOUE. I yield.

Mr. COBURN. Mr. President, I ask unanimous consent that after the chairman of the Appropriations Committee speaks we alternate back and forth. We are planning to turn in a bunch of our time—to yield back a bunch of our time—and I would suggest that Senator UDALL be given 8 minutes after the chairman of the Appropriations Committee, and following him Senator LEMIEUX, with an intervening statement from the other side, followed by Senator MCCASKILL for 10 and Senator INHOFE for 15 minutes, alternating back and forth.

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

Mr. COBURN. I thank the chairman for yielding.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, I rise this evening to speak against the Coburn amendment which imposes a moratorium on congressional initiatives for the next 3 years.

Mr. President, our Founding Fathers bestowed upon the Congress the authority to ensure that the people's representatives would make the final decision upon spending, not the executive

branch. They had lived under a monarchy in which the power of the purse resided with the Executive, and they had no desire to repeat that experience. In short, our Founding Fathers did not want another King, they wanted a President but a President whose power would be held firmly in check by a co-equal Congress.

None of us should be surprised that President Obama is expressing his opposition to earmarks. A ban on earmarks would serve to strengthen the executive branch of government by empowering the President to make decisions that the Constitution wisely places in the hands of Congress. This is the exact same reason Presidents Clinton and Bush sought the line-item veto during their Presidencies.

As I have said many times before, the people of Hawaii did not elect me to serve as a rubberstamp for any administration. Handing over the power of the purse to the executive branch would turn the Constitution on its head.

So I must admit, Mr. President, I find it puzzling that some Republicans would want to grant all authority over spending to any President but especially a Democratic President. Make no mistake, that is exactly what this amendment will do.

We have heard numerous misleading arguments from opponents of earmarks, but several in particular seem to be repeated again and again. I cannot allow the misinformation or misrepresentation to go unanswered.

First and foremost, opponents falsely claim that earmarks contribute to the deficit. Perhaps the strongest proponent of this argument is the junior Senator from South Carolina who stated the following in a fundraising letter he sent out in October:

I am not willing to bankrupt my country for earmarks.

It is a fine statement. This is but one example of the many times over the past year in which so-called deficit hawks have falsely asserted that earmarks are the root cause of our Nation's fiscal problems. This is especially galling when you consider that many of these same individuals supported the policies that led directly to the current budget crisis.

In the interest of setting the record straight, and as chairman of the Senate Appropriations Committee, I feel compelled to point out to my colleagues that eliminating earmarks would do virtually nothing to balance the Federal budget. This is a cynical attempt to distract the American people from the serious challenges before us and nothing more.

The numbers clearly demonstrate just how misleading the arguments of earmark opponents are. According to the most recent Congressional Budget Office estimate, Federal spending for fiscal year 2010 totals about \$3.5 trillion, and revenues for that year total about \$2.2 trillion, resulting in a deficit of \$1.3 trillion. Congressional initia-

tives make up less than 1/2 of 1 percent of the total Federal spending. If we accept this proposal to eliminate all earmarks and take the second necessary step of actually applying the savings to deficit reduction, the total deficit for the United States would still be \$1.3 trillion.

If opponents were serious about eliminating the deficit and paying down the national debt, they would offer a specific plan for cutting the \$1.2 trillion in spending or for increasing revenues. Instead, they choose to mislead the American people by implying that we can balance the budget by cutting a tiny fraction of Federal spending.

Calling for the elimination of congressional earmarks is a legitimate philosophical position to take, although not one with which I agree. However, to suggest that earmarks are the cause of our deficit of \$1.3 trillion is irresponsible.

Adding to this misleading rhetoric are allegations that congressionally directed spending is an inherently corrupt practice that is hidden from the public eye. That allegation is simply false. We all recognize that the practices of the previous majorities led to significant abuses of the system. However, since we recaptured the Congress in 2006, Democrats have instituted a series of major reforms that now hold Members accountable and have made earmarking more transparent than ever. That is the law.

I would ask any of my colleagues: Can anyone name another part of the Federal budget—and let me remind my colleagues we are talking about less than 1/2 of 1 percent of the budget—that is subject to more scrutiny than earmarks?

The Appropriations Committee requires every Member to post his or her request 30 days prior to the committee's consideration of the relevant appropriations bill. The committee requires every Member to submit a letter that he or she does not have a pecuniary interest in the projects for which the funding is being requested. The committee's Web site provides a link to every single Member's request. These are all reforms that were implemented when the Democrats took control of the Senate and the House.

To pretend and suggest that earmarks are being doled out in a business-as-usual manner reflective of previous Congresses is flatout misleading. Reforms have been made that allow great projects that provide benefits to the Nation and to individual States and districts to be funded while ensuring that the abuses of the early and mid-2000s are a thing of the past. There can be no doubt that we have entered an age of real transparency when it comes to earmarks.

Moreover, each and every earmark that comes before the Senate today is listed in the committee report so that all Members are able to identify them and know exactly what they are voting

on. Of course, the Internet makes all earmark requests available to the press and to the public. The Internet also makes all campaign contributions over \$200 equally accessible. So where is the so-called corruption? Where are the secret deals? I would like to know about them.

Further, I remind my colleagues that in 2010, funding for earmarks is less than half of the \$32 billion in earmarks provided in 2006.

I have spent considerable time refuting the misinformation being spread by those who are opposed to congressionally directed spending initiatives. If I may, I would like to highlight a few examples of why the practice of earmarking is indeed necessary.

As chairman of the Defense Appropriations Subcommittee, I have witnessed the benefits of earmarks firsthand over many years. I have previously discussed the benefits to our troops and our Nation of the Predator drone—the pilotless drone that is able to pick up enemy sites without endangering our troops. I have pointed to the new bandages that quickly stop bleeding in serious wounds that have saved countless lives of our soldiers fighting in Iraq and Afghanistan. Mr. President, these are earmarks.

Let me now turn to other areas of the Federal budget. I will start by reminding my colleagues that one of the most successful programs for low-income women and infants started out as an earmark. In the 1969 Agriculture appropriations bill, Congress earmarked funds for a new program called WIC to provide critical nutrition to low-income women, infants, and children.

Over the past 41 years, this program has provided nutritional assistance to over 150 million women, infants, and children, making a critical contribution to the health of the Nation. This vital program has provided much needed assistance to millions, and it came into existence as an earmark.

In 1969 and 1970, Congress earmarked \$25 million for a children's hospital in Washington, DC, despite the objections to and the veto by the President. That funding resulted in what we know today as the Children's National Medical Center. Children's Hospital has become a national and international leader in neonatal and pediatric care, providing health care to over 5 million children since its doors opened. Again, I note this was an idea—an earmark—directed by Congress and vetoed by the President.

In 1987, Congress earmarked funds at the request of Senator Domenici for mapping the human gene. This project became known as the human genome project. This research has led to completely new strategies for disease prevention and treatment, including the discoveries of dramatic new methods of identifying and treating breast, ovarian, and colon cancers. No one disputes that these advances will save many lives, and it all began with an earmark.

This was a project that was not supported by unelected agency bureaucrats in the executive branch, and thus would never have made it into the budget without congressional intervention.

In the early 1990s, I pursued, along with my dear friend, the Senator from Alaska, the late Ted Stevens, an earmark through NOAA to fund a tsunami warning system. This earmark came under attack in the late 1990s and early 2000 by a few Members as wasteful spending. Of course, in this particular case, as in many others, time and events would prove this to be a wise investment of tax dollars.

We all remember that on December 26, 2004, the Indian Ocean tsunami occurred, killing over 200,000 people in 14 countries. Two years later, the Republican Congress passed and the Bush administration signed into law the Tsunami Warning and Education Act. This legislation was based on the foundation established by the 14 years of earmarking for the Tsunami Hazard Mitigation Program.

A congressional initiative that began in 1998 at the behest of Senator GREGG would lead to the creation of the National Domestic Preparedness Consortium, which is now the principal vehicle through which FEMA identifies, develops, tests, and delivers training to State and local emergency responders. The program began as a series of earmarks for several nationally recognized organizations which focused on counterterrorism preparedness and response needs of the Nation's Federal, State, and local emergency first responders and emergency management agencies. As a result of the training and expertise providing by NDPC members, thousands of New York City first responders had been through counterterrorism preparedness and response training at the centers prior to the 9/11 terrorist attacks.

There are thousands of other earmarks just like these that, over the years, have made a difference in the lives of Americans, projects the bureaucrats in downtown Washington never hear about because they do not communicate with constituents on a regular basis, programs such as the Predator and the Human Genome Project that are so innovative that an unelected, unaccountable government official is reluctant to include them in the budget out of fear that he or she will be accused of wasting taxpayer funds on an unproven technology.

Other Members will be speaking against this amendment and will have examples of why simply stopping all earmarking is wrong and detrimental for government and our citizens. The Founding Fathers bestowed upon Congress the responsibility to determine how our taxes should be spent, rather than leaving those decisions to unelected bureaucrats in the administration, and obviously with good reason. Certainly we can all agree that Members of Congress who return home

nearly every weekend to meet with constituents have a much better understanding of what is needed in our cities and towns across rural America than do the bureaucrats sitting in Washington.

For all these reasons, I will continue to defend the right of Congress to direct spending to worthy projects as long as I am privileged to serve in the Senate and call attention to those who distort the facts of the subject.

I urge my colleagues to vote against the Coburn amendment. We have already taken significant and forceful steps to ensure the abuses of the past are not repeated. This amendment ignores those steps while at the same time deprives the Congress of essential constitutional prerogatives. It does nothing to decrease the debt and is designed to give political cover to those who lack a serious commitment to deficit reduction.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL OF Colorado. Mr. President, I will take a few minutes, if I can, to speak in favor of the bipartisan earmark moratorium amendment before us. This is the amendment that Senator COBURN, Senator MCCASKILL, Senator MCCAIN, and I have introduced.

I wish to specifically start by talking about what I have heard in Colorado. There is an old saying—I know it is widespread; you hear it all over our great country—that if you are in a hole, you stop digging. That sums up what I have heard from many Coloradans who are justifiably worried about our Federal deficit. I believe we cannot climb out of that hole we have dug for ourselves unless each one of us here in the Senate—and, frankly, across the Rotunda in the U.S. House of Representatives—takes ownership of this problem and agrees to pitch in to solve it.

I have long pushed for the President to have line-item veto authority, and we ought to restate pay-as-you-go spending which served us so well in the 1990s, among other measures. But we can't just continue to talk about these reforms; we need to take action. That is why I have joined a chorus, a growing chorus of legislators on both sides of the aisle to end the practice known as earmarking.

I know many people will argue that earmarking does not significantly contribute to the budget deficit. But, with all due respect, I disagree with that argument, and I believe it misses the point. It is true that earmarks are a tiny fraction of money we spend each year—less than 1 percent of the Federal budget or \$16 billion last year, according to numerous watchdogs. It is also true that some earmarks may be worthwhile, even necessary projects. But because earmarks are inserted in spending bills by lawmakers, thereby circumventing the budget process, they are both a symptom and a source of the spending problem in Congress and are

emblematic of how poor our budgeting habits have become. Members of Congress have become so focused on protecting their pet projects that they feel pressure to not speak up about Congress's spending habits. In fact, I suggest that earmarks lure Members into habitually voting for increased spending so as not to jeopardize their own earmarks.

In addition, from a practical standpoint, I believe Congress spends its limited time and resources shuffling earmarks when we could be conducting much needed oversight, making our Federal Government leaner and more responsive to the people. This diversion means earmarks are partly to blame for the lack of oversight necessary to ensure that the remaining 99 percent of the Federal budget is well spent. If we had extra money to spend, that would be one thing, but we are truly in a deep fiscal hole, and we need to stop digging. Earmarks are only a small part of why we are in that spending hole, but banning them now, in my view, will be a small but important step toward fiscal discipline.

Ultimately, I believe that all Colorado families, and Americans, are the ones who will be hurt if we do not begin to reform spending and control our debt. We will have many more opportunities to address our crushing deficits in the coming months and years, but banning earmarks is the right place to begin down this path of fiscal responsibility.

I urge my colleagues to support this important small step to fiscal responsibility. It is a bipartisan amendment. I look forward to the vote tomorrow, and I know many of my colleagues are going to join me and this bipartisan group of Senators who believe it is now time to reform this earmarking projects.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa. Just a moment.

The understanding was to alternate between those who are opposed and those who are supporting.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I ask if I could have 15 minutes.

Mr. INOUE. I yield 15 minutes.

Mr. HARKIN. Mr. President, I thank the Senator from Hawaii for yielding me 15 minutes of our time.

I challenge anyone—even my friend from Colorado who just spoke, a new Member of this body—I challenge anyone to identify any other part of the Federal budget that is more transparent, more open, more subject to scrutiny, more accessible to the media and the public than congressionally directed funding or earmarks. Every Member who requests an earmark in an appropriations bill must post his or her request online at least 30 days before the Appropriations Committee considers the bill. Every Member who requests an earmark must certify that he or she does not have a pecuniary interest in those requests. Each and every

earmark that comes before the Senate is listed in the committee report for all to see, and if you log on to the committee Web site, you can find a link to every single request any Member has made. It is all out there in the open.

I remind people of this because one of the misleading arguments against congressionally directed earmarks is that they are supposedly done in secret, hidden from the public eye. At one time, that may have been true to some extent but today, thanks to reforms that were implemented by Democrats, by a Democratic House and a Democratic Senate in 2007, there is more sunshine on congressionally directed spending than on any other spending decisions in the entire Federal Government.

There is more sunshine on congressionally directed funding than on any other Federal spending in the entire Federal Government. Why do I emphasize that? Let's consider how the executive branch—the President—directs spending to States and local communities. Make no mistake about it, the executive branch earmarks funding, but there is very little sunshine when it comes to those decisions. They are very hidden.

When a Federal agency announces that a facility should be built in Nebraska rather than Texas or Alabama or whether a defense contract should go to a company in Colorado or Arizona rather than Rhode Island or Ohio, there may be no accountability to voters for those decisions. The employees of Federal agencies are civil servants. They are good people, but they are not elected. They do not meet with constituents. They cannot possibly understand the needs of local communities as well as those who stand for election.

Most important, no one knows when those civil servants get a phone call from their bosses, higher up, telling them, for example, to jiggle, to rig a grant competition for political reasons. Does anyone doubt that is done? Every single year it is done.

Frankly, Senators and Congressmen do it. What Senator worth his or her salt or any Member of the House fighting for their constituency doesn't call up the Secretary of Transportation, Secretary of Housing and Urban Development, Secretary of Defense? We all do it. We all do it to protect our own constituents. And if you happen to be on the right committee—for public works, maybe, or for education or for the myriad of things the Federal Government does—those Secretaries tend to pay attention, and they especially pay attention if they are in the same party you are or they may pay attention if they want your vote for something else.

An example: A few years ago during the Bush administration, I asked the inspector general to examine a program in the Employment and Training Administration called High-Growth Jobs Initiative. It sounds great, doesn't it—High-Growth Jobs Initiative. This was an executive branch program. The

IG reported that, of the 157 grants awarded under the program, 134 had been awarded without any competition.

Noncompetitive awards accounted for 87 percent of the total funding, and the inspector general found many serious lapses in the award process. For example, a failure to explain why there was no competition; the lack of any documentation regarding potential conflicts of interest.

So was it any surprise when we found out that some of these noncompetitive grants went to organizations that supported President Bush's reelection campaign or was this just a coincidence? Let's not be naive. This happens. I may have pointed out President Bush because it happened to be an investigation I asked for. It happens under Democratic Presidents too.

If this amendment passes, if the Coburn amendment passes, there will still be earmarks. There will be earmarks, but only the executive branch will be able to do it. They will have the power to designate where those earmarks go, and that flies in the face of the clear intent of the Constitution. Article I of the Constitution expressly gives the power of the purse to the Congress. We are all familiar with the principle of checks and balances.

One way the Constitution puts a check on the executive branch is by giving this branch, the legislative branch, the final say on spending. I have said so many times that the President of the United States cannot spend one dime that we do not authorize him to, and we can take it all back if we want. Oh, they have set up an executive branch but only because Congress gives that power to the President.

The Constitution gives Congress the final say on spending. I realize the Constitution may seem like ancient history to some people. I am sorry to say it may seem like ancient history to some Members of this body. So let me paint a picture of a world where only the executive branch can decide to direct Federal spending. Let me paint this picture. Let's imagine the Coburn amendment passes and a future President wants Congress to pass a bill. It can be a Democratic President or it can be a Republican President. It does not matter.

The vote on the bill is going to be close. The President calls Senator Jones and says: Senator, I would like your support on this bill. Senator Jones says: I am sorry, Mr. President, I have thought hard about it. I am not going to be able to support that bill.

Oh, there is probably a little pause on the phone, and the President says: You know, Senator, I know that replacing that bridge in your capital city is real important to you. It would be a real shame if your State missed out when the executive branch is setting its priorities for next year. Now, Senator Jones, would you like to reconsider how you are going to vote on that bill?

That is executive branch earmarking. Again, as I said, it makes no difference whether the President is a Republican or Democrat. It is a matter of respecting the Constitution and preserving the constitutional prerogatives of the legislative branch. Some people say: Well, HARKIN, why do you fight so hard for these earmarks? As Senator UDALL says, it is ½ percent of total Federal spending. I fight so hard because the Constitution gives that power to the legislative branch. We should protect the constitutional prerogatives of the legislative branch, not just willy-nilly give them to any President of the United States, which is what the Coburn amendment does.

Read the amendment carefully. See how it defines "earmarks." It applies only to "a provision or report language included primarily at the request of a Senator or Member of the House of Representatives."

There is nothing in the Coburn amendment to prohibit any earmarks by the President. They can earmark anything, and they will because they always do. They will earmark, and guess what. Senators—Senators—will start going to the President and saying: Mr. President, can you, please, I need that bridge. I need that flood control project. We just had a disaster, Mr. President.

Well, Senator, I will think about it when we set our priorities next year. Well, now, Senator, how are you going to vote on my priorities?

Do you want to be in that position? I do not want to be in that position. I want to be in the position where Congress fulfills its Constitutional prerogative. So under the Coburn amendment, if Congress requests, it is an earmark; if the President requests, it is not an earmark. How does that make sense? How does that make sense?

Well, here is an example again of the double standard. The fiscal year 2011 Labor, Health and Human Services, Education appropriations bill that the Senate will probably vote on in December includes funding for national education groups such as Teach for America, Reading is Fundamental, Reach Out and Read, the National Writing Project, and many others. These are successful, proven programs with significant bipartisan support.

But under the definition of the Coburn amendment, all are earmarks and none would be funded. They would all be eliminated. But under the terms of the Coburn amendment, if the President wanted to fund those programs, no problem. They would not be considered earmarks at all and they could receive funding, as long as the President wanted to do it. Again, I ask, what sense does that make?

My State of Iowa had terrible floods in 2008—a lot of damage. Louisiana and Texas have had destructive hurricanes on a regular basis. In the wake of these disasters, typically the Corps of Engineers comes up with a plan to mitigate the damage from future possible disasters. For example, the Corps is now

working to improve a flood prevention program in Cedar Rapids, IA, which was devastated by the worst flood in the history of Iowa in 2008.

If the Coburn amendment passes, whatever the Corps plan comes up with will be final, even if local officials strongly disagree with that. Under the terms of the Coburn amendment, a strong case may be made that any legislative action by Members of Congress to modify the Corps plan would be an earmark—an earmark. Representing my constituents, it would take an extraordinary two-thirds vote in the Senate to change the Corps of Engineers plan—not a majority, not 60 percent but two-thirds of the Senate. Again, I again ask you, what sense does that make? How are we fighting for our constituents when the President decides it; we cannot.

We have local constituents who say: We have better ideas and plans on what to do. The Corps says no. Well, that is the end of it, unless the President tells the Corps what to do. I do not want to lose my ability to intervene effectively for local or State officials when this kind of issue arises, and I do not think Senators from Texas, Louisiana or any other State want to lose their ability to stand for the best interests of their State. I cannot imagine any Senator who would forfeit this important constitutional prerogative, give up, give up your constitutional prerogative to the President, so you would not be able to fight for your State and your constituents. Is that what you are going to tell them?

Proponents of this amendment say: Forget about article 1 of the Constitution. We have to do whatever it takes to cut the deficit. The only way to do that is to ban earmarks.

This is grossly misleading. Yes, we do need to cut the deficit. Banning earmarks will not do anything to help.

Congressionally funded mandates, as I said, are less than one-half of 1 percent of total Federal spending. As one observer noted: The best way to lose weight is to shave. My friend, Senator UDALL, said reforms circumvent the budget process. No, it does not. Nothing we do on appropriations at all circumvents the budget process.

He said: When you are in a hole, stop digging. Well, sure, we can stop digging. We can stop the earmarks here. We are just going to shift them to the President. That is all. That is all that is going to happen.

Lastly, I had to laugh when I read this quote from Representative MICHELE BACHMANN in the House. This was in Congressional Quarterly Today. She is founder of the House Tea Party Caucus, one of several lawmakers who have pledged not to seek earmarks. But she told the Minneapolis Star Tribune she thinks the word "earmark" should not apply to infrastructure projects. "I don't believe that building roads and bridges and interchanges should be considered an earmark."

Oh, so she gets to decide what is an earmark. She wants no earmarks ex-

cept for what she wants as an earmark. That is it. Congressman MICA of Florida said: "There are some bills that require some legislative language to direct the funds, otherwise you're just writing a blank check to the administration." That is a Republican Congressman from Florida.

Congressionally directed spending is congressionally directed spending whether it is a highway or a hospital, whether it is in Wyoming or Tennessee. I, for one, am proud of the directed funding that I have been able to secure on behalf of my State and for other States that I have worked hard for or other entities such as Teach for America. It does not necessarily help Iowa but it helps a lot of States.

These fundings have created jobs, trained nurses, built roads, and, as the distinguished chairman said, one time I remember when Pete Domenici put that money in there for the Human Genome Project, it led to the establishment of the Human Genome Institute and a complete mapping and sequencing of the human gene. Had that money not been directed, it never would have happened, I say to my chairman.

So a lot of times Congressmen, Senators have good ideas on what to do to direct some of this funding. I think we ought to be proud of that. As long as the sunshine is on it, it is out in the open, everybody knows where it goes, everybody knows who has requested it, to me, this is the constitutional prerogative of the Senate and the House, and we should not—should not—give it up to any President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I ask unanimous consent, to get an order so we know what we are doing after we hear from the Senator from Florida, Mr. LEMIEUX, and then the words from the Senator from New Jersey, Mr. LAUTENBERG, that I then would get my 15 minutes from this side to run consecutively from the 15 minutes I would get from the distinguished Senator from Hawaii.

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

The Senator from Florida.

Mr. LEMIEUX. Before I start my remarks, I ask unanimous consent to be added as a cosponsor to Senator COBURN's amendment.

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

Mr. LEMIEUX. Mr. President, it occurs to me that when I address this august Chamber tonight—and I follow my colleagues who have served here for a very long time and with distinction; I am new to this Chamber—I have a different perspective.

But my comments tonight are not meant without respect because I have a great deal of respect for those who have spoken in opposition to this amendment, but I have a differing view. I am new to the Senate, as you know. I came here last year, in 2009. I did not have a specific position on ear-

marks before I got here. I knew that there was a problem with Federal spending. But I had not yet made a decision as to whether I would support earmarks.

When you hear about a project for your home State, whether it be for a hospital or for a road or for a bridge or for a sewage treatment plant—and for the folks who are at home who are watching this, if they have not yet found Monday Night Football on their television and may have stumbled across C-SPAN, these projects all sound very good, and a lot of them are very good.

I hear from a lot of people in my State wanting me to support a particular project via an earmark. An earmark is a Member-driven appropriation, where a Member of Congress says: I want this specific spending for my home State or for an issue or project that I think is important.

They come to me and they say: We need this project. We need this funding. We need this research. It all sounds good. I think in a world where our financial house was more in order, there could be a role for those earmarks, if transparent.

But I cannot support them in the situation we are in. The chairman of the Appropriations Committee, just a few moments ago in his speech, raised the point that this Congress in last year's budget was \$1.3 trillion in deficit.

It is our constitutional responsibility to appropriate. That is what article 1 says. The power of the purse lies in the Congress. Congress has not been doing a very good job—\$1.3 trillion in debt, in deficit, in just 1 year. It took 200 years for this country to go \$1 trillion in debt. We just incurred a \$1.3 trillion deficit.

Those who are in favor of continuing earmarks and who are against this prohibition say: Look, it is just a small percentage; it is \$16 billion. In light of a \$1.3 trillion deficit, what is a mere \$16 billion? Frankly, that argument doesn't ring true with the people of Florida. When one talks to a Floridian and says there is \$16 billion in spending, that is still a lot of money to regular people.

But it is more than that. When I came here and started to vote on appropriations bills, in the first few months of 2009, I noticed those appropriations bills were 5, 10, 15, 20 percent more than the last year's appropriations bills. No wonder the country is so far in debt, nearly \$14 trillion. It is estimated that by the end of the decade, it will be 26. We spend \$200 billion a year on interest now, the debt service on programs we couldn't afford in the past. It will be \$900 billion by the end of the decade because the appropriations bills go up and up and up.

I believe, sitting here, with all due respect, and listening to my colleagues, part of the reason those appropriations bills get support is because there are Member projects in them. You can't vote against the bill once your hometown project is in it. It is the engine

that drives the train. So it is not losing weight by shaving, as my distinguished colleague analogized. It is, as Senator McCAIN said, the gateway drug. It enables the spending we can't afford.

We have to solve these spending problems. The future is in jeopardy. We can't afford \$900 billion in interest payments. What will this Congress do when the interest payment alone is \$900 billion? This is not 20 years from now. This is not 40 years from now. This is 10 years—really 9 years from now. I contend this government will not function with a \$900 billion interest payment.

Maybe this is emblematic, but I believe it is more than that. If we can't do the easy things, how is this Congress going to do the hard things? How is it going to cap spending? How is it going to cut spending?

The President announced today a moratorium on pay increases for Federal employees. That is a good start. But there are 270,000 new Federal employees since this administration took over, according to the Cato Institute, 270,000 new employees with average salaries of about \$70,000 a year. We can't nibble around the edges, not with a \$1.3 trillion deficit this year alone, and not with \$26 trillion staring us in the face by the end of the decade.

The future of the country is at stake. Our Founding Fathers gave this Congress the power of the purse, but with that power comes a responsibility not to run the country into the ground with deficit spending.

This is an important step. It is a first step. It needs to be done. What needs to be tackled next is much more difficult—the across-the-board spending cuts that will have to come, tackling Social Security, tackling Medicare and making sure those programs are there for our seniors now but are reformed in a way that will save them for the future and not run this country into a financial hole it can't get out of. My friend from Colorado, who was courageous to talk on this issue tonight, said: When you are in a hole, stop digging. This is the first step. If we can't take this easy step, I don't know how in the world Congress is going to take the harder steps that must happen if we are going to save this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, it is my understanding that I have 15 minutes to make my presentation. I thank Senator INOUE for enabling that.

I oppose the Coburn motion to place a 3-year moratorium on earmarks. I thank Chairman INOUE for his leadership on this issue. It seems, as has been said over the years, that we have heard this song before. If Members really believe these programs are responsible for our terrible fiscal condition, they are wrong. It is make believe. The deficit we are wrestling with had its biggest boost during the Bush years when

8 years of tax cuts for the wealthiest among us brought a \$2 trillion increase in the national debt. But we never hear about that.

Earmarks are a vital investment for our communities. They help build levees, dams that protect coastal towns from flooding. Look at the water shortages across the country. A lot of these are helped by earmarks, by congressionally designated programs. We earmark funds for waste and drinking water problems, very serious problems. These are not frivolous ideas. They help police departments, first responders, hospital upgrades, and the purchase of new equipment. Look at transportation. It is falling apart. These earmarks, congressionally designated, build roads, bridges, and rail stations that strengthen our transportation infrastructure. One wouldn't know any of this by listening to the critics of designated funding from those sent here by our States to represent them with a special knowledge of their needs and requirements. These critics have dismissed earmarks as an example of wasteful, runaway government spending. We hear them called dirty programs, et cetera, mocking them.

To these critics I say: I would like you to see what happened in Jersey City, NJ, where an earmark enabled the Metropolitan Family Health Clinic to now screen women for breast cancer for the first time, thanks to new equipment funded by an earmark. Or tell it to the millions of people whose livelihoods are connected to the ports of New York and New Jersey. Earmarks permit us to deepen the harbor at our port so ever larger vessels can bring the cargo to our ports and help stimulate the economy. That means 230,000 jobs and is a critical component of our region's economy. Local communities rely upon this kind of funding in times like these when so many State and community budgets are stretched thin and revenues shrink and even philanthropy is drying up all over the country.

The fact is, hundreds of communities and nonprofit organizations across the country are expecting to receive congressionally earmarked funds for the unfinished fiscal 2011 appropriations bills. The Coburn amendment would pull the rug from underneath these communities, snatching away the Federal support they are counting on us to deliver.

One has only to see the reception of an organization such as Campus Kitchen, a nonprofit project that recently launched in Atlantic City to feed needy families who flock there over Thanksgiving and at the same time help unemployed workers upgrade their job skills. Campus Kitchen is counting on \$100,000 worth of congressionally directed funds. If this amendment passes, they will close their doors, and those who need the food and can only get it there will go hungry.

What about the resources needed to protect our residents from terrorism.

Hudson County sits just across the river from New York City, right in the heart of one of the most vulnerable areas in the country for terrorism.

This year's Homeland Security appropriations bill includes funding for an emergency operations center so that the county can prepare and respond to emergencies and potential terrorist threats. One of the most serious problems we saw on 9/11, when 3,000 people perished that day, was because the police departments could not talk to one another, because first responders could not talk to one another, because firemen could not talk to their leadership and died that day. Thousands more are now sick from the dust and the atmosphere that was created as a result of the demolition resulting from the attack. This amendment would eliminate funding for this vital program. Yet those who criticize these projects are the very same ones who were all too happy to provide earmarks when they were in charge.

I don't want to fool the public. Let them understand what is going on here. We are seeing raw politics at work. Earmarks make up just one-half of 1 percent of the Homeland Security bill for fiscal year 2011 that was passed by the Senate Appropriations Committee. I was proud to author that bill as the chairman of the subcommittee, building on the work begun by our recently departed Senator Byrd.

Compare this to the fiscal year 2006 bill which was written when our colleagues on the other side controlled the Congress. Under Republican control, earmarks in the Homeland Security appropriations bill were 60 percent higher than the fiscal year 2011 bill.

In addition to funding emergency operations centers, the Homeland Security bill funds important research that helps our Nation discover new ways to prevent potential terrorist attacks and respond when they happen. Earmarks also help to strengthen the Coast Guard whose mission and value continually increase. It is not wasteful spending. Over the years many people have recognized the value of these programs. Democrats and Republicans alike proudly included earmarks for worthwhile projects in their States. In fact, earmarks flourished when the Republicans controlled the Senate. In fiscal year 2006, total funding for earmarks was twice the amount included in last year's bills when Democrats were in charge, and it was Democrats who implemented the ethics reforms and earmark transparency that has significantly improved congressionally designated programs.

Since becoming Appropriations Committee chairman, Senator INOUE has been a great leader in this office. He has instituted important changes that have made the earmarking process stronger and more transparent. It was an essential factor in our review. At Chairman INOUE's request, Senators are now required to post their earmark requests on the Internet in advance so

the public can see them. He has brought this entire process further into the light of day, allowing constituents, the news media, and outside watchdog organizations to track how taxpayer dollars are spent.

But a funny thing has occurred. Some of our Republican friends who have used earmarks to serve their constituents for years suddenly have had a change of heart and jumped on the anti-earmark bandwagon. In fact, the Republican leader, who in the past brought home hundreds of millions of dollars to his State of Kentucky, has done an about-face in calling for an earmark ban.

The hypocrisy of these new earmark critics is outrageous. Here is what the critics never mention: Earmarks do not add one cent to the deficit, not a single cent. We heard that from our leader here, from Senator INOUE.

When Congress includes an earmark in an agency's budget, it is not increasing that budget. It is specifying how a portion of the funding should be spent based on their understanding of their State's needs. After hearing many requests all of us do, they can evaluate which ones they see as the most important. It is a voice of reason and understanding.

The fact is the Founding Fathers gave Congress the power of the purse when they wrote the Constitution. Directing funding to specific projects is one way Congress exercises this power.

If we eliminate earmarks, we will transfer our funding powers to the President, and that is not the way the Constitution is structured. It undermines the authority the Founders placed on us two centuries ago.

The people who work in the Federal agencies here in Washington include some of America's best and brightest, but they simply do not necessarily know the needs of our States as well as we do. This debate over earmarks is nothing more than a distraction from the pressing issues on which we should be focused.

I call on my colleagues to consider the facts and not the rhetoric. Do not be misled. Do not allow the truth to be mangled, misconstrued, and misrepresented. Earmarks help create jobs and help millions of Americans through their lives, especially now in this stressful period where we have people who are afraid they are going to lose their jobs after many years of loyal support or, still, lose their homes because they cannot afford the mortgages they were sold.

So I urge my colleagues to oppose the Coburn amendment because it will not solve a single problem we face. I hope we will use our time for more constructive debate. I would suggest that everybody who talks in opposition to earmarks, congressionally designated programs, say now on this floor—take an oath that you will in your own State announce the fact you are opposing the earmarks that were proposed for it. Tell the people back home that you are

going to deny their right to accept these things because it is dirty, because it is unclear, and they say that it goes only to those who contribute large sums of money.

If you want to look at those who contribute large sums of money, look at that side of the aisle. They dwarf what we do in our debate about where funding goes and where funding stops.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. LAUTENBERG. Will the Senator yield?

Mr. INHOFE. Let me ask if I could extend my time by 5 minutes. Is there objection?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

NOTICE OF INTENT TO OBJECT

Mr. WYDEN. Mr. President, consistent with Senate Standing Orders and my policy of publishing in the RECORD a statement whenever I place a hold on legislation, I am announcing my intention to object to any unanimous consent request to proceed to S. 3804, the Combating Online Infringement and Counterfeits Act, COICA.

Promoting American innovation, and securing its protection, is vital to creating new, good-paying jobs. But it is important that the government reach an appropriate balance between protecting intellectual property and promoting innovation on the one hand and the freedom to innovate, share expression, and promote ideas over the Internet. I am concerned that the current version of COICA has this balance wrong; it attempts to protect intellectual property in the digital arena in a way that could trample free speech and stifle competition and important new innovations in the digital economy.

Of perhaps greater concern, the sweeping new powers offered to the U.S. Department of Justice under COICA are granted without giving due consideration to the consequences. COICA may not only be ineffective at combating copyright infringement and the distribution of counterfeit goods, it gives license to foreign regimes to further censor and filter online content to serve protectionist commercial motives and repressive political aims. Until these issues are thoroughly considered and properly addressed, I will object to a unanimous consent request to proceed to the legislation.

COMBATING MILITARY COUNTERFEITS ACT

Mr. WHITEHOUSE. Mr. President, I rise to speak about a bill I recently introduced: S. 3941, the Combating Military Counterfeits Act of 2010. This bill will help protect America's Armed Forces from the risk of defective equipment by enhancing the ability of prosecutors to keep counterfeit goods out of the military supply chain.

The safety of our servicemembers and the success of their missions depend upon the proper performance of weapon systems, body armor, aircraft parts, and countless other mission-critical products. Unfortunately, America's military faces a significant and growing threat: the infiltration of the military supply chain by counterfeit products. These counterfeit products do not meet military standards, putting troops' lives at risk, compromising military readiness, and costing taxpayers millions in replacement costs. In the case of microelectronics, counterfeit parts also provide an avenue for cybersecurity threats to enter military systems, possibly enabling hackers to disable or track crucial national security applications.

Let me give you a few examples from a recent report by the Government Accountability Office:

The Defense Department discovered in testing that it had procured body armor that was misrepresented as being "Kevlar." Think about that: a criminal sold fake body armor to the military, putting our troops' lives at risk just to make a buck. The law must provide strong deterrence and harsh sanctions for such conduct.

And in another example, a supplier sold the Defense Department a personal computer part that it falsely claimed was a \$7,000 circuit that met the specifications of a missile guidance system. As my colleagues may know, military grade chips are required to withstand extreme temperature, force, and vibration. Chips that don't meet those specifications are prone to fail—for example, when a jet is at high altitude, when a missile is launching, or when a GPS unit is out in the field. The possible tragic consequences of such equipment failing are unthinkable.

And the increasing number of counterfeits has broad ramifications for our national security. A January 2010 study by the Commerce Department, for example, quoted a Defense Department official as estimating that counterfeit aircraft parts were "leading to a 5 to 15 percent annual decrease in weapons systems reliability." And the risk is growing. The Commerce Department study, which surveyed military manufacturers, contractors, and distributors, reported approximately two and a half times as many incidents of counterfeit electronics in 2008 as in 2005. It is only going to get worse as the high prices of military grade products attract more and more counterfeits. Consider, for example, that before fleeing the country, the supplier that sold a counterfeit \$7,000 circuit for a missile guidance system had been paid \$3 million as part of contracts worth a total of \$8 million.

We should also evaluate this bill in the context of the relentless cyber attacks America weathers every day. The chip might not only be counterfeit, it might be the carrier for dangerous viruses and malware that may create