

do this, we can get to where I want to go. It takes three votes. We can do it with three votes or one vote. Upon reconsideration, cloture is invoked on the motion to proceed. Then the Senate can proceed to the bill and would be able to enter into an orderly process for consideration of the bill, allowing different amendments. We have already been through that. There is no need to go through that number. But we have talked about 15—5 from us, the Democrats.

So I make my request. I ask unanimous consent that the motion to proceed to the motion to reconsider the vote by which cloture was not invoked on the motion to proceed to S. 3454 be agreed to, the motion to reconsider be agreed to, and the Senate now vote on the motion to invoke cloture on the motion to proceed to S. 3454, upon reconsideration.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, did the Chair rule on my request?

The PRESIDING OFFICER. Is there objection to the request?

Hearing no objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 414, S. 3454, the National Defense Authorization Act for Fiscal Year 2011.

Harry Reid, Carl Levin, Tom Udall, Jack Reed, Barbara A. Mikulski, Jon Tester, Al Franken, Richard J. Durbin, Byron L. Dorgan, Jeanne Shaheen, Frank R. Lautenberg, Sheldon Whitehouse, Benjamin L. Cardin, Roland W. Burris, Jim Webb, Daniel K. Akaka, Bill Nelson.

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 3454, the Department of Defense authorization bill, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Arkansas (Mrs. LINCOLN) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from Texas (Mr. CORNYN).

Further, if present and voting, the Senator from Texas (Mr. CORNYN) would have voted "nay."

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

The yeas and nays resulted—yeas 57, nays 40, as follows:

[Rollcall Vote No. 270 Leg.]

YEAS—57

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

NAYS—40

Alexander	Enzi	McCain
Barrasso	Graham	McConnell
Bennett	Grassley	Murkowski
Bond	Gregg	Risch
Brown (MA)	Hatch	Roberts
Bunning	Hutchison	Sessions
Burr	Inhofe	Shelby
Chambliss	Isakson	Snowe
Coburn	Johanns	Thune
Cochran	Kirk	Vitter
Corker	Kyl	Voinovich
Crapo	LeMieux	Wicker
DeMint	Lugar	
Ensign	Manchin	

NOT VOTING—3

Brownback      Cornyn      Lincoln

The PRESIDING OFFICER. On this vote the yeas are 57, the nays are 40. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

VOTE EXPLANATION

Mrs. LINCOLN. Madam President, I wish to note that on the last vote, vote No. 270, due to circumstances way beyond my control, I was unable to be here and wish to be recorded or considered as having voted on the reconsideration of the motion to proceed to S. 3454. I wish to be considered—I wish to have been recorded as voting "yes."

Apparently, I cannot be recorded, and I understand that. I just wanted to make note that had I been here I would have voted "yes."

The PRESIDING OFFICER. The RECORD will so note.

Mrs. LINCOLN. Great. Thank you, Madam President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

UNANIMOUS CONSENT REQUEST—  
S. 3463

Mr. LEAHY. Madam President, I have alerted the other side I am about to make a unanimous consent request on an important piece of legislation. Unfortunately, in the last couple of years we have gotten into this habit of: Nobody wants to vote yes or no, they want to vote maybe. It is easier to block things from even being considered.

Frankly, in my State of Vermont people expect if they elect you to the Senate that you have the courage to vote yes or no, but not maybe.

We just saw another example of this. We cannot even get a yes-or-no vote on Defense authorization at a time when our Nation is in two wars. We cannot get a yes-or-no vote; we get a maybe.

I find it frustrating. Over and over we have done it today. People are prepared to vote yes or no, but the other side says, no; it is easier to vote maybe. Then you never have to explain anything.

We all know what has happened in the Deepwater Horizon BP spill. A number of brave families' members were lost. I would note for the sake of the Senate, if they had been building the Deepwater Horizon drilling platform, and they were assembling it on land and something was negligently done and someone lost their life, they could recover for the value of the life. Because of a quirk in the law, because it happened at sea, even though it may have been caused by the same thing, these people—their lives are almost valueless. There is a way to fix them. We have drawn, after months of negotiation, a very tightly put together piece of legislation that will only affect the families of the 11 hard-working men who died when the Deepwater Horizon was destroyed. I am going to make this so we can vote yes or no and not maybe.

I ask unanimous consent that the Senate Committee on Commerce, Science and Transportation be discharged from further consideration of the Survivors Equality Act, S. 3463; that the Senate proceed to its immediate consideration; the Rockefeller-Leahy amendment that is at the desk be adopted; the bill, as amended, then be read a third time and passed; the motions to reconsider be laid upon the table; and all statements and the text of the amendment that has been hotlined for more than a week be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. DEMINT. Reserving the right to object, this is a nation of laws not of men. It destroys that whole foundation of our legal system when we make retroactive law. This bill has not been vetted properly by a committee. Again, it undermines our whole system of the rule of law. So I am compelled to object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Vermont.

Mr. LEAHY. Madam President, of course, this bill has been given an enormous amount of scrutiny by both Republicans and Democrats. Six months ago, I introduced the Survivors Equality Act, S. 3463, with Senator DURBIN and Senator WHITEHOUSE, to help the families of those who die on the high seas. In fact, the day of the hearing, we had Michelle Jones, pictured here, in our mind when we held that hearing.

That same day, June 8, the Judiciary Committee held a hearing on the liability cap that harms victims' families. We heard testimony from Michelle Jones's brother-in-law, Chris Jones. He is the brother of Gordon Jones, one of those who died aboard the Deepwater Horizon. It was very moving testimony. I think everybody, both parties, felt the emotion in that room.

A few weeks later, the Commerce Committee also held a hearing on the same matter. I think it is unfortunate and a slam to the families to say that this matter has not been vetted. The Commerce Committee also had a hearing. Then we had months and months of work, Republicans and Democrats meeting, trying to make as tightly drawn piece of legislation as possible.

After these months and months of work, I hope the Senate is finally going to do justice to the families of the men who died when the Deepwater Horizon exploded in the Gulf of Mexico. At least stand up and say yes or no. Vote either to give them justice or vote not to give them justice. Do not do this unfortunate habit we are getting into of voting maybe. Let's not vote on this bill. Let's not take a position one way or the other. We will object to the bill coming up.

It allows everybody to be a maybe. It allows people to go and say: Well, we are so sympathetic for your family. We wish we could help your family. Certainly, if the bill comes up, I may vote.

Well, we have a whole lot of people ready to vote for the bill. Vote yes; vote no. That is what I have been trying to do since that catastrophic event. We did have a lot of negotiations, and we did have to whittle it back at the request of people on the other side of the aisle. The proposal has been so narrow that it will help only the families of the 11 hard-working men who died when the Deepwater Horizon oil rig exploded last April.

So by saying there are a lot of things that can be done for them if one second before that oil rig left land when it was being constructed, if it exploded there and they lost their lives, but it is a different rule if you have gone 100 yards further, a few seconds later, and you are at sea.

That is why I came to the floor today to seek the Senate's consent to pass this legislation without further delay. It is designed to provide a more equitable remedy under the Death on the High Seas Act, the Jones Act, for the survivors of those killed on Deepwater Horizon. When I refer to it as the difference between when it is on land or on sea, as the law is now, the families will be given far less protection simply because their loved ones died on the open seas rather than if they had died in a well, for example, if they are working at a well and there is an explosion, but the well is on land.

That is not fair. It reminds me of an earlier era in our history. The law should be modernized for those families without further delay. Of course, I

would like the modernization to be broader, to cover victims on cruise ships, for instance. Some here in this body have objected to covering victims on cruise ships.

That is why I said: OK. You might not be willing to cover victims in other accidents on the high seas, but at least the U.S. Senate should not turn its back on the families of these 11 men.

I am also concerned about timeliness. These victims' families' claims have been unnecessarily delayed because they are thoughtlessly lumped in with thousands of other claims for economic damage. It should be pretty easy to spot the 11 where the people died. This legislative proposal, on which I have worked with Senators ROCKEFELLER, WHITEHOUSE, and others, would ensure fairness and timeliness for these families. We have had strong bipartisan support. We have a number of Republicans who support this legislation. Senators on both sides of the aisle have heard from these families. They understand the inequities they face. The proposal has been circulating through the Senate for more than a week. It should not be stopped. Let us vote yes or no. If you don't like this legislation, vote against it. But don't vote maybe. Don't have the Senate give that kind of procedural slap in the face to these families by saying: We don't have the courage to vote yes or no so we are going to vote maybe.

Time is running out for these 11 families to know they are going to be treated fairly and not be forced to wait for years to see if their losses are addressed. The legislation only applies to the Deepwater Horizon disaster, the largest oil spill in our Nation's history. Let us act for the widows and children of these men before we head home to be with our own families during the holiday season. They need our help now. We should at least be able to agree to this limited fix. Again, vote yes or vote no. Don't vote maybe. Stop the months of delay. There is no justification for the failure to act on this deeply personal tragic issue. It has been pending for months. Both sides have been running hot lines on it for more than a week. It is a 5-page proposal. It is easy to understand.

I will never forget the testimony of Chris Jones before the Judiciary Committee. His father was sitting there. He talked about his brother losing his life and meeting his brother's widow Michelle Jones. Michelle has lost the love of her life, but her two young sons have lost their father.

This is not about politics. This should not be partisan. This is about justice for these kids who are facing a Christmas without their fathers, justice for widows who want closure, who are bravely fighting for their families.

Can we not at least once in this body not vote maybe but have the courage to vote yes or no, not hide behind an objection to a bill coming up that many Republicans and Democrats support, at least allow people to be on record?

Look at this family, say: I am going to vote yes or no, not, gee, I don't have time. We just voted maybe. I think it is unfortunate. It shows disdain for these families. I regret the objection.

I ask unanimous consent that the draft of the Rockefeller, Leahy, and Schumer amendment be printed in the RECORD.

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

Strike out all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Fairness in Admiralty and Maritime Law Act".

**SEC. 2. AMENDMENT OF SHIPOWNERS' LIABILITY ACT OF 1851.**

(a) GENERAL LIMIT OF LIABILITY.—Section 30505(c) of title 46, United States Code, is amended to read as follows:

"(c) CLAIMS NOT SUBJECT TO LIMITATION.—Subsection (a) does not apply—

"(1) to a claim for wages; or

"(2) to a claim for personal injury or wrongful death arising from the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010."

(b) CONFORMING AMENDMENT.—Section 30511(c) of title 46, United States Code, is amended by inserting "that are subject to limitation under section 30505" after "question".

**SEC. 3. AMENDMENT OF THE DEATH ON THE HIGH SEAS ACT.**

(a) CAUSE OF ACTION.—Section 30302 of title 46, United States Code, is amended by inserting after the first sentence the following: "If the death was attributable to the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, the action may be brought in law or in admiralty."

(b) AMOUNT AND APPORTIONMENT OF RECOVERY.—Section 30303 of title 46, United States Code, is amended by adding at the end the following: "If the action under this chapter arises from the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, the recovery may include fair compensation for nonpecuniary loss, plus a fair compensation for the decedent's pain and suffering. In this section, the term 'nonpecuniary loss' means the loss of care, comfort, companionship, and society."

(c) DEATH OF PLAINTIFF IN PENDING ACTION.—Section 30305 of title 46, United States Code, is amended by adding at the end the following: "If a civil action in law is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in the second sentence of section 30302 of this title and the individual dies during the action as a result of that wrongful act, neglect, or default, the personal representative of the decedent may be substituted as the plaintiff and the action may proceed under this chapter for the recovery authorized by this chapter."

**SEC. 4. AMENDMENT OF JONES ACT.**

Section 30104(a) of title 46, United States Code, is amended by adding at the end the following: "If the action under this chapter arises from the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, the recovery for a seaman who dies may include fair compensation for nonpecuniary loss, plus a fair compensation for the decedent's pain and suffering. In this section, the term 'nonpecuniary loss' means the loss of care, comfort, companionship, and society."

**SEC. 5. MULTIDISTRICT LITIGATION FOR CERTAIN CIVIL ACTIONS.**

(a) IN GENERAL.—Chapter 303 of title 46, United States Code, is amended—

(1) by redesignating section 30308 as section 30309; and

(2) by inserting after section 30307 the following:

**“§ 30308. Multidistrict litigation for certain civil actions**

“(a) IN GENERAL.—A plaintiff in a covered civil action brought under chapter 301 or this chapter may elect to have the claims of that plaintiff—

“(1) severed from all other claims in the covered civil action; and

“(2) not be subject to section 1407 of title 28 or any similar provision of State law.

“(b) COVERED CIVIL ACTION DEFINED.—In this section, the term ‘covered civil action’ means a civil action for damages for personal injury or wrongful death arising from the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010.”

(b) CONFORMING AMENDMENT.—The table of contents for chapter 303 of title 46, United States Code, is amended by striking the item relating to section 30308 and inserting the following:

“30308. Multidistrict litigation for certain civil actions.

“30309. Nonapplication.”

**SEC. 6. EFFECTIVE DATE.**

The amendments made by this Act shall apply to—

(1) causes of action and claims arising after April 19, 2010; and

(2) actions commenced before the date of enactment of this Act that have not been finally adjudicated, including appellate review, as of that date.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I ask unanimous consent to engage the chairman in a brief colloquy regarding this legislation.

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

Mr. WHITEHOUSE. I thank him for his leadership, for his compassion. I was proud to join him as a cosponsor of his legislation. It is disturbing to me that his effort to speak for these families who have lost their loved ones has fallen on deaf ears and on a procedural objection that could just as easily have not stood. As we stand here in this empty room, where right now we could be voting on help for these 11 families, instead, we are milling about, killing time and waiting for something to happen.

I want to ask the chairman: If this oil rig that exploded and burned had been on land and these same 11 workers had been killed, would they be treated differently and far more generously, and would their families be treated differently and far more generously than in this actual case just because it happened to be out in the ocean as a deep-water drilling rig?

Mr. LEAHY. Madam President, the Senator is absolutely correct. When we held these hearings, he was an indispensable part. This is an inexplicable anomaly of the law that reflects a different era. Had they been assembling, for example, this oil rig, had they had it on land and it exploded, they would

be able to recover as anybody could. If it was an onshore oil rig—of course, we have many in this country and throughout the world—if they had been working on that and there had been an explosion and they lost their lives, there would have been remedies available. But because it was at sea and even if it is just barely at sea, the remedies are entirely different. To put it in laymen’s terms, they are basically limited to the value of what is left. Of course, there is nothing left.

Mr. WHITEHOUSE. Under the circumstances of this case, I know the objection was founded upon concern that this would defeat the expectations of potential defendants who might otherwise have to pay this verdict. As I understand it, the two most likely responsible parties—indeed, the one already decreed by the government for pollution purposes to be the responsible party—are BP and Halliburton, two enormous multinational corporations. If I am not mistaken, what we have done today is to send 11 American families, whose father, brother, or husband was lost through no fault of that individual from a tragic accident that has been described as being the result of real ineptitude and very poor safety practices out on that rig by big corporations, we are now taking the side of BP and Halliburton against those 11 families here on the eve of the Christmas holidays, taking away rights they would have if this accident had happened on the land.

My question is, don’t we think that BP and Halliburton could afford this? It is not as though it is the little Sisters of Mercy whom we are going to put out of business if we allow this to go forward.

Mr. LEAHY. The Senator is correct. Basically what the Senate has said is, we will protect British Petroleum and Halliburton over the rights and needs of the families of 11 men who died because of negligence. Is this what the Senate has come to? Is this what it has come to? By our failure to even vote, our unwillingness to stand up and vote, our effort to do a maybe instead of a yes or no, we are sending a Christmas present. I suppose we should say Merry Christmas, British Petroleum, Merry Christmas, Halliburton. We protected you and saved you from having to pay for your negligence. That is a pretty cold signal to send to these families of the 11 men who died.

Frankly, as I have often said, the Senate should be the conscience of the Nation. How do we express our conscience when we don’t even have the courage to vote yes or no on a matter of this significance?

Mr. WHITEHOUSE. I thank the chairman for his leadership and for his compassion. I am proud to join him today in this effort.

I yield the floor.

**MORNING BUSINESS**

Mr. WHITEHOUSE. I ask unanimous consent that the Senate proceed to a

period of morning business with Senators permitted to speak for up to 10 minutes each.

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

The Senator from Colorado.

**DEFENSE AUTHORIZATION**

Mr. UDALL of Colorado. Madam President, we have again witnessed gridlock at its worst on the heels of the vote that just concluded. When the Senate was given a chance to lead on critical issues crucial to our national security, to our troops and to our leadership in the 21st century, the Senate let politics obstruct progress that we should make.

This is the second time this year we have prevented ourselves, if you will, from debating critical national security issues. Like so many other debates that we wanted to have this year, this one was derailed by obstruction before it even began.

The last time the minority party blocked debate of a national defense authorization act, they argued that the DREAM Act should not be considered as an amendment to the bill and that we needed to wait on the report of the Pentagon study group on how to repeal don’t ask, don’t tell before we can vote on the broader bill.

This time we did consider the DREAM Act in a separate vote and this time, after voting today, we voted after the Pentagon’s task force on don’t ask, don’t tell has weighed in with the most comprehensive review of a personnel policy that DOD has ever conducted on any policy being proposed. But the obstruction continues. There are new excuses this time. Opponents now say we need to extend tax breaks before we can consider legislation necessary to ensure our national security. It doesn’t seem to matter to those who voted no today that the Pentagon study group looking at repeal confirmed what many of us have been saying for years, that don’t ask, don’t tell can be overturned without disrupting our Nation’s military readiness. It doesn’t seem to matter to these opponents that Secretary Gates, Admiral Mullen, and a host of other military and civilian leaders believe that repeal by a Federal judge would be far more disruptive and damaging to readiness and morale than repeal through legislation that has been thoughtfully and comprehensively drafted by the Congress. This wide-ranging and highly respected group of military and civilian leaders has strongly urged us, the Senate, to act on this Defense authorization bill this month.

Unlike what some on the other side of the aisle have claimed, the repeal language in this legislation respects the Pentagon’s timeline and it gives our military leaders the flexibility they say they need to implement repeal in a way that tracks with military standards and guidelines. The best way to change the policy is for elected representatives—that is us—to pass the