

That is the detainee issue—  
if the Secretary submits to Congress a certification in writing that such a waiver is in the national security interests of the United States.

So there is a national security waiver. We have given the President of the United States a way that he could waive every provision of this legislation—something I was not particularly happy about, but in the spirit of compromise, we gave a waiver.

Could I say, also, I am sure—I see the majority leader on the floor—yes, there have been contentious times. There was contention last year about the don't ask, don't tell act. The year before, there was contention about the fact that they added the hate crimes bill, which had nothing to do with national security, onto the bill. But at least we ought to go ahead and take up and debate and amend and have the Senate act, as the American people expect us to; that is, consideration, voting, and the President, if it is that objectionable, obviously, could veto the bill.

But to say, because of these few pages—these pages right here of the bill—that, therefore, we will not even take up the bill, for the first time in 50 years, in my view, is a great disservice to the men and women who are serving.

I thank my friends, the Senator from New Hampshire and the minority leader.

I yield the floor.

The PRESIDING OFFICER (Mr. TESTER). The majority leader is recognized.

#### OBSTRUCTION

Mr. REID. Mr. President, I have had several very good conversations with Senator McCAIN and Senator LEVIN about the provisions they have spent a lot of time on this morning. Discussions have been very positive. And, hopefully, these concerns can be resolved. Of course, if they cannot be, the only way to resolve them would be here on the Senate floor. I hope in the next several days we can work something out on this somewhat difficult provision that is in the bill reported out of the committee.

First of all, let me say to my friends who came and spoke on the floor today, I understand their concern about the defense of this country. Anytime JOHN McCAIN comes to the floor or comes anyplace in the world and talks about anything dealing with the security of this country, everyone should listen. He is a man we all know, we respect, and hold in the highest regard, not only because of his legislative skills—he has been a Presidential nominee—but the fact is, he is a certified American military hero. So I want everyone to understand that I have no problem at all with Senator McCAIN coming to the floor talking about something he knows a lot about.

But I do want to remind everyone that we are now in the 10th month of

this Congress and we have been blocked, obstructed, prevented, and held up from moving legislation for 10 months. We have wasted months and months because of obstructionism, threats to shut down the government.

Think back a little while on trying to get the government funded until the 1st of October. I do not know at this stage how many votes we had but at least a half dozen extending the government for a week, a few days, with the threat of the government shutting down with every one of those extensions of the continuing resolution.

Then we moved to a new stage in the history of our great country; that is, extending the debt ceiling. Times in the past it has been done routinely—hundreds of times—18 times during the Reagan administration. But, no, we took months to do it for President Obama. And that has prevented us from doing a lot of the routine work we need to do here, including the Defense authorization bill. These items used to be routine under Democratic and Republican Presidents. But in this Congress, Republicans have turned even routine matters into crises.

Since the beginning of the year, they have blocked jobs bills using obstructionist tactics. They have filibustered everything by amendment. Remember the small business innovation bill—a bill I like to talk about because it has been one of the best things that has happened to this country. Small business entrepreneurs, people who had ideas on how to improve the economy did good things with these small grants they got. My favorite, of course, is the electric toothbrush, but there were other things that have been done. But that bill traditionally has been handled with minimal controversy—in fact, no controversy—always passes unanimously with help from both sides. Republicans amended this little piece of legislation—so good for our country in creating jobs—to death. The process took nearly 2 months. There was the Economic Development Revitalization Act, something that started during the time Richard Nixon was President. We did this routinely, most every time by unanimous consent. A bill that creates lots and lots of jobs, employment for our country—the Republican Senators blocked this bill, dragging out the process for months. Their obstructionism has cost this country millions of jobs, including 2 million that would have been created by the American Jobs Act.

Suddenly they are calling for a return to regular order. Well, after 10 months of dragging out the most routine matters, preventing the normal order of business here in the Senate, suddenly they are calling for us to move quickly on the Defense authorization bill, something that should have been done some time ago. They are threatening to shut down the government if they do not get their way. We have coming up, in less than a month, another threat by the Repub-

licans to shut down the government. That seems to be the mantra: If we do not get what we want, we will close the government.

The continuing resolution expires on November 18, right before Thanksgiving. My colleagues are right about the Defense Authorization Act—absolutely right. We need to do this. We have always done it, and we are going to do it this year. As I said to Senator McCAIN on a number of occasions, and Senator LEVIN, I am eager to find a path to get this done.

My colleagues have said several times that they believe these provisions ought to be considered in regular order and that the Senate ought to proceed to debate them. As I indicated a few minutes ago, if that is the only avenue we have, then that is what we will do.

The Defense authorization bill is going to get done this year. But we have been held up for 10 months in doing the ordinary process this government is required to do.

Mr. DURBIN. Would the Senator yield for a question?

Mr. REID. I would be happy to yield to the Senator from Illinois.

Mr. DURBIN. I say to the majority leader, since I have listened to the colloquy by my Republican colleagues just a few minutes ago, and it related to the detainee policy, which is one of the controversial issues in the Defense authorization bill, I am sure he is aware of the fact that last week in Detroit, in an article III Federal court, an accused terrorist—the so-called Underwear Bomber—pled guilty to terrorism, having gone through the regular criminal process in article III courts, having been interrogated by the FBI, and even after Miranda warnings, surrendering very valuable information and intelligence to protect the United States.

Is it not true that when we look at the record about detainees or those accused of terrorism being tried, we find that since 9/11, over 200 of them have been successfully tried in article III courts under President Bush and President Obama and that under military commissions, exactly 4, 4 terrorists have been tried; and that the argument on the other side, which is that the article III courts are incapable of protecting the United States and successfully prosecuting terrorists, absolutely flies in the face of the facts: 200 terrorists convicted in article III courts, 4 by military tribunals. You would think it was exactly the opposite, from the arguments made on the floor by my friend from Arizona and others.

I would ask the Senator from Nevada, our majority leader, are we not trying to give to any President—this President and any President—the tools and the decisionmaking necessary to protect our Nation, to pick the best place to investigate and to prosecute those who are accused of terrorism?

Mr. REID. In response to my friend's question, he is absolutely right. Remember, this is not an Obama-driven

program. It started during the George Bush era. Why? Because George Bush was President of the United States on 9/11, and he recognized the importance of doing this in a fashion that would maintain the civility of our criminal justice system.

I say to my friend, I want to make sure—I will repeat what I said earlier. No one is saying we are not going to do the Defense authorization bill. We are going to do that. But we are really, because of being jammed, as I have tried to outline here to the entire country, and being unable to get our work done here these last 10 months, we are trying to find time to do lots of things. That is why we have come up with this unique way of moving appropriations bills. We are doing them together—three at a time rather than one at a time—in an effort to do what I have been asked to do by the Speaker of the House: Do what you can to get these appropriations bills done. Senator MCCONNELL suggested something. We are doing our very best, but we have been held up from doing the ordinary business. I gave two examples that were about as good as you could give of our trying to do things to create jobs in America today. We have been stymied from doing that.

So I say to everyone here that I am really somewhat at a loss for words, for an organization here—the Republican caucus has done everything they can these past 10 months to stop us from moving forward. Remember, the No. 1 goal of my friend the Republican leader—and I admire his honesty—he said his No. 1 goal was and has been to defeat President Obama. As a result of that, we have not been able to do the government's business, because everything they can do to slow down government is something they believe will help them a year from now.

Mr. DURBIN. Would the Senator yield for one more question?

Mr. REID. I would be happy to.

Mr. DURBIN. Is it not true that the majority leader came to the floor on the pending legislation, the appropriations bills, and invited Members on both sides to bring their amendments to the floor, call their amendments for a vote, that some 10 or 11 or more amendments have been filed, and we are still waiting for that? Is it not true that we are giving this opportunity to our colleagues to offer their amendments and to call their amendments, and that is a way for those who are looking for their opportunity on the floor to express their point of view and get a vote?

Mr. REID. I appreciate very much the Senator from Illinois reminding me what took place at the beginning of this Congress.

Mr. MCCAIN. Would the Senator yield for a comment?

Mr. REID. As soon as I answer my friend's question.

I am reminded of what took place at the beginning of this year. We had a number of new Senators—relatively

new Senators—who joined with some of the more experienced Senators who wanted to change the way the saw our having done business in the last Congress.

I joined with my friend the Republican leader and said: Let's back off a little bit.

The Republican leader said: We are going to be very discrete in what we do with the motions to proceed, to allow us to get on legislation.

I said: Fine. If that is the case, we will make sure we have the opportunity to offer amendments.

That has broken down big time, I say to my friend, because it is a rare day here that we have been able to move to a piece of legislation without having to go through the process of filing cloture on just the ability to get on a bill. And we have had open amendments, as we did on the small business innovation bill. Guess what happened. It was amended to death. So after 2 months—after 2 months—we gave up. We could not do that bill as had been done routinely in the past.

So I say to my friend, we are going to try it again. We have these appropriations bills. We are going to try to get it done. We are waiting for people to offer amendments, and we are going to try to move through this and get it done. We are going to do the appropriations bills this week. We have other things we need to do. It is an important time in the history of our country to show the American people we can work together. I hope that, in fact, is the case because based on my experience from the beginning of this Congress, where there was supposed to be a good-faith effort to return to regular order, it has not happened.

I would be happy to yield to my friend for a question.

Mr. MCCAIN. I want to say to the majority leader, whom I have known and been friends with for many years, I thank him for his kind remarks. I am very appreciative of his commitment to bringing the Defense authorization bill to the floor. I thank the majority leader.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT OF 2012

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2112, which the clerk will report by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2112) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

Pending:

Reid (for Inouye) amendment No. 738, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012.

Reid (for Webb) amendment No. 750 (to amendment No. 738), to establish the National Criminal Justice Commission.

Kohl amendment No. 755 (to amendment No. 738), to require a report on plans to implement reductions to certain salaries and expenses accounts.

Cornyn amendment No. 775 (to amendment No. 738), to prohibit funding for Operation Fast and Furious or similar "gun walking" programs.

Durbin (for Murray) amendment No. 772 (to amendment No. 738), to strike a section providing for certain exemptions from environmental requirements for the reconstruction of highway facilities damaged by natural disasters or emergencies.

The PRESIDING OFFICER. The Senator from Arizona.

#### AMENDMENTS NOS. 739, 740, AND 741 TO AMENDMENT NO. 738

Mr. MCCAIN. Mr. President, I ask unanimous consent to temporarily set aside the pending amendment for the purposes of calling up amendments.

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

Mr. MCCAIN. Mr. President, I call up three amendments numbered 739, 740, and 741 and ask unanimous consent that they be reported by number.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes amendments en bloc numbered 739, 740, 741 to amendment number 738.

The amendments are as follows:

#### AMENDMENT NO. 739

(Purpose: To ensure that the critical surface transportation needs of the United States are made a priority by prohibiting funds from being used on lower-priority projects, such as transportation museums and landscaping)

At the appropriate place in division C, insert the following:

SEC. \_\_\_\_ None of the amounts made available under this division may be used for—

- (1) scenic or historic highway programs, including tourist and welcome centers;
- (2) landscaping or scenic beautification;
- (3) historic preservation;
- (4) rehabilitation or operation of historic transportation buildings, structures, or facilities;
- (5) control or removal of outdoor advertising;
- (6) archaeological planning or research; or
- (7) the establishment of transportation museums.

#### AMENDMENT NO. 740

(Purpose: To eliminate funding for the trade adjustment assistance for firms program)

In the matter under the heading "ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS" under the heading "ECONOMIC DEVELOPMENT ADMINISTRATION" in title I of division B, strike "for trade adjustment assistance, and for grants authorized by section 27 of the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), as added by section 603 of the America COMPETES Reauthorization Act of 2010 (Public Law 111-358), \$220,000,000" and insert "and for grants authorized by section 27 of the Stevenson-