

## LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume legislative session.

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

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

Mr. REID. Mr. President, we have a consent request we are working on. We hope to have people sign off on that. If they do not, one or many are going to have to object to it. We have spent enough time on this that we need to move forward.

We know we have a number of votes already scheduled. Senator MCCONNELL has something pending. I do too. We know we are going to have to vote on that, but that is the least of our worries. We have to work through this appropriations stuff. So people who have concerns, bring them to David Schiappa or Gary Myrick because otherwise I might come here and offer a consent request. Either we are going to move this bill forward or move off this bill.

Mr. WHITEHOUSE. I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. KYL. Mr. President, for my colleagues who are here, I wish to explain the reason for an amendment which I have filed, No. 912, along with the cosponsors, my colleagues Senator MCCAIN and Senator CORNYN from Texas, an amendment which seeks to add some money for the U.S. Marshals Service. I wish to explain why we think this is a good idea, but first to say that in speaking with Leader REID, we are trying with our staff and the majority staff to see if we can work out the appropriate pay-fors for this in an appropriate amount of money that would assist the U.S. Marshals Service. Hopefully we can work something out. I am just trying to explain the basis for this at this time.

As you know, we have done a lot of work on the borders to try to secure them, and that has required us to add money for the U.S. Border Patrol and several other accounts in the Department of Homeland Security. We have added money for the Department of Justice. We need new judges, courtrooms, prosecutors, defenders. It has taken a lot of money to secure the border with all of the different aspects that are involved.

The one area we have not kept up with is the U.S. Marshals Service. All of us know the U.S. Marshals Service. It is a great organization. These people do tremendous work. But sometimes we forget them. And what we have learned here is that while we have an increased ability to apprehend illegal immigrants and to try them in court, and even jail space to hold them, the group that does the holding and the transporting and the keeping of the judges and the courtrooms safe during the process, the U.S. Marshals Service, has not had funding to keep up with this. As a result, they are way low in terms of both personnel and also some facilities that need to be upgraded to accept the much larger numbers of illegal immigrants and other prisoners who are in their custody.

To give you one illustration, when prisoners are brought to a courthouse, obviously there are huge security measures that have to be followed to ensure that jurors, judges, the public at large, witnesses, and so on, are not in jeopardy because of the existence of the prisoners. So they are generally brought in vehicles, appropriately accompanied, to secure facilities in the court building and then at the appropriate time brought to the courtroom, and all in the custody of the marshals, and with appropriate security for all.

However, because of these increased numbers, what we found is, by way of example, they bring the prisoners from the holding facility, the prison, the jail, wherever it might be. They literally have to disembark in a public parking lot where jurors are parking to come up to be involved in cases, where the public at large, where witnesses, where victims and families, judges and lawyers are coming to park to go to the courthouse, and go up the elevators and so on right with these same people. That is not a secure situation.

In most situations the marshals have the ability to take their prisoners directly to a secure port, a place in the courthouse where they can immediately put them into custody in a secure locked-down facility. Construction of some court buildings need to keep up with this demand, and it requires some money, in this case, about \$16 million. I know this is a small matter in the overall budget that we are talking about. But for the Marshals Service to do its job, this is important for them.

They need additional personnel. The cost of that far exceeds \$10 million. But that is what we thought we would try to ask for in this amendment to at least bring the Marshals Service up to a level where they can accommodate the new numbers of prisoners.

In our amendment, \$20 million is provided for additional deputy marshals and security-related support staff to assist in overall Southwest border enforcement. We have narrowed this down to the five judicial districts on the border that have—well, in fact, these districts have about half—49.7

percent, to be exact, of all the prisoners nationwide brought into the custody of the Marshals Service are brought in by way of those five Southwest border judicial districts. And about half of those in the Marshals' custody along the Southwest border are or were held for immigration-related offenses.

So this is the need that we are trying to satisfy with this amendment. The Marshals Service employs only about 80 percent of what they need in terms of Marshals and support staff in these court facilities. A recent Department of Justice hiring freeze has prevented the Marshals Service from reaching even 90 percent of its personnel needs along the Southwest borders. To reach 100 percent of staffing would require \$43 million, to hire an additional 162 deputy marshals and 71 support staff.

We all know the constraints we are all operating under here, so we cut that back to simply try to reach 90 percent of their requirement for hiring needs. And that, as I said, would require just about \$20 million for these hiring purposes.

On the construction side of it, the amendment provides for \$16.5 million for these detention upgrades at the Federal courthouses located in this border region. Of the \$16.5 million, \$1.5 million would specifically be allocated for courthouse security equipment. I have told you a little bit about the problem with the security at the courthouses. Some of this would obviously be used for construction of a port that would allow these vehicles to unload detainees and prisoners right next to cellblock doors and so on. I described that.

But this is the least we can do, both to protect the public and to assist the Marshals Service. There has been some dichotomy of views, shall I say, expressed by the Department of Justice and Department of Homeland Security about whether they have what they need to secure the border. We have heard the Secretary of Homeland Security say, we have all we need. But we also know that the Secretary has said, we have to prioritize our detention policy, for example, because we do not have the facilities and the money we need to detain and deport all of the people who are deportable, so we have to focus on the most serious crimes, the felons primarily, who are now the top target for deportation.

Obviously if you have to prioritize, we would agree with that prioritization. But what that means is that they do not have enough money to do all that they are trying to do. So on the one hand, it is kind of distressing that the Department says we have all we need and, on the other hand, we do not have enough, so we have to prioritize what we do.

What we are trying to do in this appropriations bill is to attack the one part of the problem that we can in this bill, and that is to help the U.S. Marshals. As I said, I do not think there is

one of us here that would not be supportive of that. I want to avoid the situation where, God forbid, someone is at a courthouse or entering the courthouse or whatever and innocent people are harmed because we did not have the appropriate security. That is what we are trying to provide in this amendment.

As I said, this is cosponsored by my colleagues Senator MCCAIN and Senator CORNYN. Obviously the three of us are very aware of the problem that we have in our judicial districts on the border. So I reiterate, I appreciate the offer of the majority leader to make majority staff available to see if there is some way that with my staff we can work out some appropriate amount of money, with the appropriate pay-fors. I hope I will be able to announce that a little bit later on. I will not take any more of my colleagues' time right now.

But if anyone has questions about this and wishes to talk to us about it, since I am hoping that we will have something to support a little bit later on this evening, I would appreciate them either contacting me or Senator CORNYN or Senator MCCAIN.

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

Mr. TESTER. Parliamentary inquiry: Has Pastore time expired?

The ACTING PRESIDENT pro tempore. The Pastore time has expired.

Mr. TESTER. Mr. President, I rise today to speak about the priorities facing Montana and this Nation, creating jobs, responsibly cutting our spending, cutting the deficit, rebuilding our economy. I appreciate the proposal that will be put forth I think later this evening to attempt to create jobs. When that proposal gets to the floor, I will vote to have the debate on S. 1723, because only then will I be able to offer my amendments to that bill, because as it is written, I cannot support that bill.

Having debate will allow us an opportunity to amend it so that it will guarantee jobs in Montana and across America. The perspective I bring to the table is a little different than most. I am someone who lives in, works in, represents a rural State. My responsibility is to make sure every decision I make works for not only Montana but the entire country.

I expect full accountability for every penny of taxpayer dollars we spend. I expect that when you invest in something, you get what you pay for. A lot of folks know I am a farmer, but many do not know I am also a former schoolteacher. I used to teach elementary music at Big Sandy Elementary, in Big Sandy, MT. I fully understand the importance of making sure all of our Nation's teachers have the resources they need to do their job, to lead our most important resource, our children.

As a teacher, I also know that when rural schools are asked to compete with urban schools for Federal funding, rural schools often get left behind. The

same goes for emergency responders. Their service sometimes is—even as volunteers, it is very important to rural States such as Montana, whether it is firefighters, police officers, EMTs, they are on the clock whenever they are needed.

In Montana, as everywhere else, firefighters are respected for their courage and their hard work for doing whatever is expected of them to save property and save lives. But when Montana's rural fire departments and rural police departments have to compete for Federal funding, guess who often gets the short end of the stick. That is right, it is the emergency responders in rural States such as Montana, the folks who often do not have the professional grant writers to help them secure the basic equipment that they need to do their jobs safely.

That brings me to my proposal. I want to state again, as 1723 is written, I cannot support it. I am not convinced it will create the jobs it must create. And \$30 billion in this bill is meant to go to States to boost education, to hire teachers. Yes, investing in education is a powerful short-term and long-term way to create jobs. But as written, this bill fails to give taxpayers any guarantee that their money would actually be used to hire teachers and invest in our schools.

The fact is, this money could be used to supplant funds instead of supplement funds. A State would get loads of money with little guidance that they spend the money on teachers. But we all know what happens. A lot of smart folks who work in State budget offices can find their way around guidance, because money is pretty darn easy to move from one budget account to another. In other words, there is no guarantee that this bill will create the jobs.

Montana is one of two States that has a budget surplus right now. We have been living within our means. There are other States such as Kansas that are considering broad-based tax cuts. That is fine. Kansas can do that if it wants. But I am not convinced that we should be writing checks to States so they can cut taxes. Montanans should not be paying for tax cuts for people in our States, nor should we be giving precious taxpayer money for States to build up their rainy day fund.

I am all for individual States making smart choices with their own money. But giving them Federal money and hoping they will use it for education and teachers, well, that is not good enough. With that kind of money, we need a guarantee. If the motion to proceed is adopted, I plan to offer two amendments to address my concerns. One will address the \$5 billion in this bill meant to provide aid to the Nation's first responders. My amendment is a simple one. It requires that 20 percent of the competitive grant funding goes specifically for rural communities. That is only fair because rural communities make up 20 percent of our Nation.

The other amendment puts sideboards on the remainder of the money in this bill, to guarantee that it will be used in a way that it is supposed to be used, to create jobs in education, to invest in our kids. My amendment will prohibit States from pulling their own State money out of education programs when they take this Federal money. How? By putting the money into Part B of the Individual with Disabilities Education Act, IDEA, otherwise known locally as special education.

When I traveled around Montana after the passage of the Recovery Act in 2009, school administrators told me the money that made it to the ground was very much appreciated, but that special education was their top priority. IDEA funding is still one of the biggest unfunded mandates the Federal Government has on local school districts.

When it was first enacted, the Federal Government promised to pay 40 percent of the cost of this important law. Today, we pay less than half of that promise. This amendment will help bridge that gap somewhat. Special education funding is not only a top priority for the folks in Montana, it also guarantees that the funding gets to the local level.

It also guarantees that its funding gets to the local level. If the money in this bill is supposed to be for teachers, then let's make sure it ends up there. This amendment is a good way to do just that.

I ask unanimous consent that these two amendments be printed in the RECORD.

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

(Purpose: To require a portion of grants be awarded to entities in rural areas)

At the end of section 203, add "The Attorney General and Secretary of Homeland Security shall award not less than 20 percent of the total amount awarded by the Attorney General and the Secretary, respectively, using amounts made available under this section to entities that are located in areas that are not designated by the Bureau of the Census as urbanized areas."

(Purpose: To allot funds for special education and related services)

Strike the title heading for title I and all that follows through the section heading for section 111 and insert the following:

#### **TITLE I—SPECIAL EDUCATION STABILIZATION**

##### **SEC. 101. PURPOSE.**

The purpose of this title is to provide funds to States for special education and related services for the 2011–2012 school year.

##### **SEC. 102. DEFINITION.**

In this title, the term "State" has the meaning given the term in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401).

##### **SEC. 103. STATE ALLOTMENT.**

(a) ALLOTMENT.—For each fiscal year, the Secretary shall allot to each eligible State an amount bearing the same relationship to the amount of funds appropriated under section 106 for that fiscal year, as the amount that State receives under part B of the Individuals with Disabilities Education Act (20

U.S.C. 1411 et seq.) for that fiscal year bears to the total amount all such States receive under that part for that fiscal year.

(b) **GRANTS.**—From the funds allotted under subsection (a), the Secretary shall make a grant to the Governor of each eligible State.

(c) **ELIGIBLE STATE.**—To be eligible to receive an allotment and grant under this section, a State shall submit and obtain approval of an application under section 104.

#### SEC. 104. STATE APPLICATION.

The Governor of a State desiring to receive a grant under this title shall submit an application to the Secretary within 30 days after the date of enactment of this Act, in such manner, and containing such information, as the Secretary may reasonably require.

#### SEC. 105. USE OF FUNDS.

A State that receives a grant under this title shall use the funds made available under the grant in the same manner, and subject to the same requirements, as funds allotted to the State under part B of the Individuals with Disabilities Education Act.

#### SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

Mr. **TESTER.** I would like to talk about one other thing that is missing from the bill, and that is a reauthorization of the Secure Rural Schools Program and the Payment-in-Lieu of Taxes Program, otherwise known as PILT.

These two programs will do more to ensure that thousands of teachers stay on the job than anything else we can do around here. Here is the kicker: In the middle of this partisan debate, Secure Rural Schools and PILT are bipartisan programs.

Under the leadership of Senators BINGAMAN, MURKOWSKI, BAUCUS, CRAPO, WYDEN, and RISCH, we have a bill that can pass right now—today.

It would keep 4,000 teachers on the job at a cost of \$3.5 billion over the next 5 years. That is small potatoes compared to the \$35 billion in the bill that is before us today.

It is a very reasonable bill. But because it is so reasonable, nobody wants to see it appear in the middle of such a partisan debate. Once again, too many folks in Washington are looking for ways to point fingers.

Quite frankly, I don't have as many fingers as most folks around here, so I would rather use mine to solve some problems. Only after this final bill is amended to guarantee job certainty will it be able to earn my vote.

In order to amend it, I am going to vote for the motion to proceed. My vote is a vote for a debate we ought to have. It is an important one, so we can truly create jobs and focus on rebuilding our economy.

I look forward to that debate.

With that, I yield to my friend from West Virginia.

The **ACTING PRESIDENT** pro tempore. The Senator from West Virginia.

Mr. **MANCHIN.** Mr. President, I thank the Senator from Montana for speaking on behalf of the rural States. It is clear our Nation is facing two grave economic threats: a job crisis and a debt spiral. As much as some people may wish, we cannot ignore one

threat over the other. For the sake of our Nation's economic future, we must work together, Democrats and Republicans, and try to find a commonsense solution that protects and creates jobs but does so without adding to our growing deficit and debt.

In a more sensible legislative process, we would be able to sit down and work out compromises that make sense. It is what legislators throughout the Nation's history have done.

Unfortunately, looking at where things stand now, it is clear the legislative process in Washington has gotten so dysfunctional that it doesn't make much sense at all.

I came here to try to fix things, not to make excuses. I sure didn't come here to play the blame game. I have never fixed a thing by blaming someone else. As I have said many times before, it is time for all of us who have been given the great privilege to serve to focus on what is right for the next generation, not worry about the next election.

It is why—as frustrating as this legislative process can be—I will not lose hope that we can make this legislation better.

With respect to the current Teachers and First Responders Back to Work Act, there is no doubt about the fact that our teachers and first responders have a critical role in our Nation. From the classroom where teachers educate our children to the streets where first responders put their lives on the line to keep our communities and Nation safe, these great Americans are so important to the future of this Nation.

They and the American people deserve better than a temporary 1-year legislative proposal that does nothing to fix the long-term fiscal problems that led so many States to lay off thousands of teachers and first responders in the first place.

What will we do next year when States come back again asking for more Federal money? Will we give out more money and go further in debt? Will we borrow more money? What will we do?

As it stands, without any changes, this bill will not solve the fiscal problem that will come once the aid ends. But this bill is not hopeless. It can be made better. I know it.

In my State of West Virginia, we didn't have major layoffs of teachers or first responders during this brutal recession. As difficult as it was, we balanced our budget based on our values and priorities. We made difficult decisions, but we kept our teachers in the classroom and our firefighters protecting our citizens.

Make no mistake, we cut back our spending, but we did so responsibly. We spent where it was needed—on our priorities.

That is the commonsense approach that works in West Virginia because that is how people run their lives. It is how they operate their small busi-

nesses, and it is how we should run this country.

We make budget choices based on what is important in our State, to our family, to our business, and to our country.

In West Virginia, this simple, commonsense approach paid off. Every year I was Governor, we ended the fiscal year with a surplus. Every year for the past 3 years, West Virginia has seen its credit rating upgraded.

But now, because of the impact of this recession and the fact that other States did not make the difficult decisions years ago, the taxpayers of West Virginia are being expected to foot this bill for other States.

I believe there is a better way. I believe there is a better way where we can balance the fiscal constraints that States face with the need to protect these vital jobs.

I believe there is a better way we can balance the need to keep teachers and firefighters working, while not asking West Virginia taxpayers—or any taxpayer in any State—to pay for more than is necessary.

That is why I am offering a commonsense amendment that would transform this \$35 billion in funding to keep teachers and first responders working into a loan program instead of a grant.

The loan program would allow any State to borrow at very low—or no—interest the money they need to keep teachers and firefighters employed and pay it back over time, when this recession basically ends.

I don't know of any State that wouldn't put their teachers and firefighters as one of the highest priorities and budget that first.

So this loan program would ensure that States are making the decisions on how much money they actually need and not the Federal Government's willingness to put us further into debt by giving away more money.

It would also ensure that States make smarter and more responsible decisions about what they can and cannot afford to do.

Such a loan program would help protect these jobs and would protect the fiscal future of States when they get in trouble. In short, it just makes commonsense.

I encourage my Republican and Democratic colleagues to embrace this commonsense amendment. I encourage them to help me make it even better.

I hope they will support this cloture motion, not because they support the bill as it stands but because they believe in what this legislation could be if we all put politics aside and work to make it better.

If we can get past a filibuster, I hope the amendment process will be a testament to the great legislative moments this body has seen in the past.

As I have been assured by my leadership, this bill, if it gets to the floor, will have an open amendment process that will give us all an opportunity to make this legislation better. It is the

reason why I will vote for this motion to move on with debate.

To my Republican and Democratic friends who may not support this bill as it stands, I respectfully ask them to seize this opportunity to work together to make this bill better.

Trust me, I share many of their concerns. To be clear, if we cannot and do not adopt this commonsense approach that stops throwing money at the problems we have in this country, I will join them and vote against it.

This country is looking to us to do what is right. It is not about this vote or this bill. It is about the fact that so many Americans have lost confidence in this great body. They have lost confidence in the process that they see as broken and incapable of working. They have lost confidence in a legislative process that has become so political it doesn't matter what we do, it just seems all we care about is scoring political points to be used in the next election.

It is a fact that some folks in this town are so busy trying to make the other side look bad that they don't realize they are making us all look bad.

I don't believe for one minute that anybody in this Chamber—Democratic or Republican—is rooting for our economy to fail or jobs to be lost. We just all have different ideas. While we should question each other's ideas and policies, we should never question each other's convictions.

Shame on us if the blame game is the best thing we can do. We are better than that. I came here to fix things, not to play politics. It is time for us to stop with the bickering and remember one thing: We may be members of different political parties, but we are all party to this great Nation. We are all Americans.

As difficult as it may seem, America and the future of the American people are more important than politics or an election.

I ask again, let's work together on commonsense, bipartisan ideas to get this country on a responsible financial path that will strengthen the economy and create jobs.

Let's work together on making America's future brighter—not just for us but for the next generation.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. TESTER. Mr. President, will the Senator from West Virginia yield for a question?

Mr. MANCHIN. Yes.

Mr. TESTER. Mr. President, I say to Senator MANCHIN that I think everybody in this body wants to have real job creation. They want to see this unemployment rate go down. I think most everybody realizes that if we cannot get the unemployment rate to go down, the chances of paying off our debt and getting the budget under control will be severely diminished. The Senator has offered some potential amendments to S. 1723, as I have—as-

suming we get cloture on this bill. In a previous life, the Senator from West Virginia was a Governor. When I was in the State legislature, oftentimes, money came to us from the Federal Government, and we very much appreciated it. But we took an administrative cost right off the top, as a natural procedure—anywhere from 3 to a much higher percentage rate than that. Is that something they did in West Virginia? How would the Senator's amendment impact things such as administrative costs and will you be able to get more of your money to the ground out of these dollars?

Mr. MANCHIN. Mr. President, I say to my friend that the way the system is set up and the bill, we are able to use this money where possible. An example of where money was used prior—we had two rounds of stimulus funding. This is our third. It was for a very worthy cause. For my State and your State, which didn't have the layoff of teachers or have the cutbacks in education, they would short that into their budget proposal, so when the Governor made his proposal, that money would backfill. That is how it was used. We only created 33 new jobs that first round, but that was \$217 million.

The bottom line is—that is why I said we need a loan program. If spending money will fix our problems in America, we have no problems. We have to do it wisely. The Senator's amendments are appreciated, and I hope to support them.

Mr. TESTER. I thank the Chair.

Mr. MANCHIN. Mr. President, I ask unanimous consent that the text of my amendment be printed in the RECORD.

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

(Purpose: To establish a Federal loan program to carry out the activities provided under the Act)

At the end of the bill, add the following:

#### **TITLE IV—FEDERAL LOAN PROGRAM**

##### **SEC. 401. FEDERAL LOAN PROGRAM.**

(a) IN GENERAL.—Notwithstanding any provision of title I or title II, the President, acting through the appropriate Secretary, shall ensure that any funds provided under this Act shall be used to award loans to States and localities to carry out the activities described in the appropriate title.

(b) AMOUNT.—The amount of a loan authorized under subsection (a) shall be based—

(1) under title I, on the allocations determined for a State under title I; and

(2) under title II, on the grant programs cited under such title.

(c) REPAYMENT.—A State or locality shall not be eligible for further assistance under this section during any period in which the State or locality is in arrears with respect to a required repayment of a loan under this section.

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

Mr. BLUNT. Mr. President, I wish to talk about a bill that I believe and hope—

Mr. DURBIN. Mr. President, before my colleague begins, I ask unanimous consent to be recognized after Senator BLUNT.

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

Mr. BLUNT. Mr. President, the bill I hope we get to tonight is part of the President's jobs package. It would repeal an action taken by the Congress a few years ago that I think has proven to be a harmful decision on the part of the Federal Government.

This would repeal the 3-percent withholding tax, which has a dramatic impact on anybody who does business with the government. That includes local governments and State governments and anyone who contracts with the government—and the government basically pays 97 percent of the bill.

The President, rightly, pointed out that one of the things we can do to get more money in the economy—and in many cases, simply to create profit where profit is not there otherwise—there are government projects for many businesses, and the profit margin is less than 3 percent on big projects. There is only so much work one can do to stay in business. If a person is not making money, they cannot stay in the business of doing what they are doing. So for those large projects that have a huge overall number, often the profit doesn't even equal the 3-percent withholding, and businesses have determined they cannot do that. Obviously, it impacts the bidding process for Federal work.

The tax revenue generated by this mandate is thought to be only around \$200 million a year, and that \$200 million left in the economy, left in the bidding process, left in the granting process could make a real difference. The only thing this job-killing tax increase does is delay recovery and stop us from getting on with the business of making American private sector job creation a reality.

The repeal is strongly supported by dozens of groups, including the Farm Bureau, the National Association of Manufacturers, the U.S. Chamber of Commerce, the National Federation of Independent Business, the National League of Cities, the Corn Growers Association, the Associated General Contractors, the American Trucking Association, Associated Builders and Contractors, and the Federation of American Hospitals.

Think about that group, and the fact that you have the Federation of American Hospitals, the National League of Cities, and the Corn Growers Association. This must be a government policy that has broad impact on lots of different segments of the economy. It is not all that unusual to see the National Manufacturers Association or the Chamber of Commerce or the National Federation of Independent Business on a list supporting a bill. But when they are on the list with the other people I mentioned, plus the truckers and the Associated Builders and Contractors, something must be happening.

And why have all of these groups come together and said let's support

this part of that package? Medicare payments to hospitals and individual physicians will be affected when this goes into effect in January of 2013. Medicare payments to individuals and hospitals will have 3 percent withholding. This causes a lot of cashflow problems for both the physician and for the hospital.

Farm payments. Even loan deficiency payments, beginning January 1, 2013. You get 97 percent of the partial solution to the problem you already have.

Grants for for-profit companies, regardless of whether they are State or Federal, will have 3 percent withheld. Grants, by their definition, are allocated to an entity for a specific purpose, such as research. And if you have a research budget that is grant dependent, what happens if you get 97 percent of the budget? Do you get 97 percent of the solution or does that mean you never get to the full solution? What if the grant is for a facility of some kind or a delivery of a service? What happens when you can only deliver 97 percent of that? And again, back to these big construction projects, where 3 percent withholding may be more than the profit.

This is one of the pieces of the President's jobs bill that I and others wish to see become a reality so that people could look out a year from now and not have to begin to plan on what happens when you only get 97 percent of what you expected it would cost to complete a job or to complete a project.

I believe we are going to be able to vote on this later this evening. I think we are going to have that opportunity, and I urge my colleagues to vote on it. I think it is one of those things, if we actually let it occur in the first of January 2013, people would wonder: Why couldn't they figure out during the interim period of time when this was passed and was going to go into effect that no matter what the intention was this will not work? In a bipartisan way, we should step forward and clarify this problem before it becomes a real problem with real consequences and, in fact, probably already having an impact on bidding, on requesting grants, and on other things. People are probably already beginning to think about what happens if this project is agreed to or approved or our bid is accepted for work that would be done beyond 2012.

I see my friend from Illinois is not here, and until he gets back, seeing no one else on the floor, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, there are two amendments that are likely to

be called this evening, and I want to address them briefly because I believe both these amendments should be carefully scrutinized.

One amendment is by Senator AYOTTE of New Hampshire. What she would do in her amendment is restrict the authority of the President of the United States to refer suspected terrorists to our criminal justice system to be investigated, prosecuted, and tried. She would make it mandatory those terrorists—particularly associated with al-Qaida—would be tried before military commissions and tribunals.

I listened as she and Senator MCCONNELL came to the floor to explain their point of view. It is an interesting point of view, that we are at war with al-Qaida and, therefore, any trials of suspected terrorists associated with them should be before a military tribunal. Unfortunately, the logic of their argument falls flat when you look at reality. Here is the reality.

Since September 11, 10 years ago, President Bush and President Obama have faced time and time again allegations that individuals are suspected terrorists. Each President—Bush and Obama—has had to consult with the Secretary of Defense, the Attorney General, and other leaders in their administration to determine the appropriate place to investigate and try these cases.

Here is the record. Since 9/11, the Department of Justice advises us that on as many as 300 separate occasions—300—these suspected terrorists have been taken to the article III criminal courts of America and successfully tried and prosecuted. In that same period of time, exactly three suspected terrorists have been sent to military commissions and tribunals.

For the Senator from New Hampshire to now argue that all cases have to go to military commissions is to ignore the obvious. The President, as our Commander in Chief, with the premier responsibility to keep America safe, should decide the best place to try those who are accused. This has been a recurring theme on the Republican side—to take the terrorist cases out of our criminal courts. In fact, almost on a weekly basis Senator MCCONNELL has come to the floor making this argument.

The argument goes something like this: Do you mean to tell me we are going to take a suspected terrorist in and read them their Miranda rights; that they have the right to remain silent? You know what is going to happen. They will lawyer up and shut up and we won't get the information we need to keep America safe. That is why, he has argued time and time again, we shouldn't allow the FBI to be involved and we shouldn't refer these cases to article III criminal courts. And that is why Senator AYOTTE is offering her amendment this evening.

The fact is that argument isn't borne out by the facts. Look what happened 2 weeks ago. Remember the underwear

bomber—the somewhat crazed individual—maybe crazed—who got on an airplane and was apprehended over Detroit with the argument that his clothing was on fire, and when they apprehended him and took him in, the FBI asked him questions? He answered questions for some period of time and at that point stopped talking.

The scenario at that point would have ended, according to Senator MCCONNELL. He lawyered up and shut up. But it didn't end.

The FBI continued the investigation. They went overseas and brought this man's mother and father to the United States and they sat down and talked to him. After they talked to him, he said he would cooperate fully with the FBI. He talked for day after day after day, telling them all the information about al-Qaida. Then his case was referred to a criminal court in Detroit, and 2 weeks ago he pled guilty.

If you follow the logic that has been given to us by Senator AYOTTE and Senator MCCONNELL, this never would have happened. The fact is, it did. The FBI did its job, the Department of Justice did its job. The man was prosecuted in our criminal courts; he pled guilty; he is likely to be sentenced in January to life in prison. It is because the President had the authority, as Commander in Chief, to pick the forum to try the individual. He picked the most effective forum, and when he did, we ended up in a situation where this man pled guilty and is going to be sentenced. It isn't an isolated case. In fact, it is the overwhelming likelihood that when a person is suspected of terrorism, they are more likely to be successfully prosecuted in one of our article III courts.

I note today that the chairman of the Armed Services Committee, Senator LEVIN of Michigan, pointed out on the Senate floor that when Senator AYOTTE raised this issue in the Armed Services Committee markup on the Defense authorization bill, her amendment was defeated on a bipartisan rollcall. Six Republicans voted against her, including Senator MCCAIN, the ranking member of the Armed Services Committee, and Senator GRAHAM, the only military lawyer serving in the Senate. But the amendment will still come to the floor.

I urge my colleagues, whatever they think of President Obama—and I respect him very much. Whatever they think of him, do not tie the hands of any President when it comes to picking the proper forum to try a terrorist. If the proper forum is a military commission and tribunal, I will back the President. If the proper forum is an article III criminal court, let's proceed that way as well.

The evidence overwhelmingly tells us that going through our criminal court system, terrorists pay a price—a heavy price—with up to 300 convictions since 9/11 and more than 100 convicted since President Obama took office. Let's respect the President's authority. Let's do the best thing to secure our Nation.

Let's not let the Senate presume to know exactly where every suspected terrorist defendant is to be tried.

Mr. President, there is also another amendment that is likely to be considered this evening, and that I wish to speak to. Senator STABENOW of Michigan, as chairman of the Senate Agricultural Committee, has a special responsibility when it comes to nutrition programs and especially the program known as the Supplemental Nutrition Assistance Program, the SNAP program, which is known to most Americans as the Food Stamp Program.

Senator SESSIONS has introduced an amendment that would eliminate the use of what is known as categorical eligibility for people to qualify for the SNAP program. Forty States use it. What they basically say is if you are eligible for some other programs, then we believe, in establishing that eligibility, you are also eligible for the SNAP program. It turns out that only 1 percent of SNAP households have net incomes over 100 percent of the Federal poverty level. The Federal poverty level, incidentally, is \$22,350 per family of four. So when these people are judged to be part of a program, such as Temporary Assistance for Needy Families, TANF, LIHEAP, Low Income Heating and Energy Assistance Program, and the Social Security disability benefit program, they are eligible then for the SNAP program, the Food Stamp Program.

The Senator from Alabama, Senator SESSIONS, would change that. What he would add to it is a new redtape requirement that these people, who are by and large some of the poorest people in America, will now have to go through another bureaucratic process and fill out another application. I don't think that is necessary, and I am urging my colleagues not to support Senator SESSIONS' amendment.

He recently said on the floor something I want to point out. He said: No program in our government has surged out of control more dramatically than food stamps. Then he went on to say: We need people working with jobs, not receiving food stamps.

I will readily concede to the Senator from Alabama that the number of hungry Americans has increased. It is not only evident in the Food Stamp Program; it is evident at the food pantries, at the breakfast and lunch and dinner feeding programs that are available across Illinois and across America. I have been there and I have watched who comes through the door, and I want to tell you it is a heartbreak for them and for me to watch. Many of these people have never in their lives asked for anything, and now they have no choice. And many, to the surprise, I think, of many Senators, are actually working. But they make so little money that they have to go in and ask for help.

I agree, we need to put Americans back to work in good-paying jobs. The Senator from Alabama and others will

have the chance to vote for part of President Obama's jobs program this evening. The fact is, 14 million Americans are currently unemployed, another 10 million underemployed, and these feeding programs are essential for them to keep their families together.

The Senator from Alabama points out one example to give a reason why we need to change the law across America. He talks about a case where someone actually won the lottery and then went on to get food stamps. That case got a lot of media attention, but the fact is it was highly unusual. If the Senator from Alabama wants to ensure that people who win the lottery and a windfall of income are not eligible for SNAP, I will be glad to work with him. Let's get that job done. But this amendment is not that legislation. That single, highly unusual situation doesn't merit kicking people who are out of work or in a low-income job out of a program that feeds their families. To impose that new obligation, new paperwork, new redtape obligation on families who are struggling because one person abused the system I think goes too far.

SNAP, in fact, has one of the lowest error rates of all Federal programs. The U.S. Department of Agriculture data shows us that over 98 percent of those receiving SNAP benefits are eligible, and over 95 percent of payments are accurate. The system has good quality controls, and I will work with the Senator from Alabama and any other Senator to make them even better.

The problem isn't food stamps in America. The problem is hunger in America. Let's address the hunger problem and put people back to work. We will have less demand for food stamps and food pantries.

I think what we face in this country is serious. I know it is in my State. In Senator SESSIONS' home State of Alabama, 17.3 percent of residents live in poverty and the same percent live in households that have food insecurity. Sadly, children are disproportionately impacted with hunger. In Senator SESSIONS' home State, it is over one out of four kids who is in a situation with food deficiencies. And 873,174 people in Alabama rely on food stamps, the SNAP program. Are we going to make their life more difficult because one person who won the lottery abused the system? I think that goes too far.

I hope we can work together to make this a better program. For those who are angry about food stamps or angry about food pantries, direct your anger toward hunger, toward unemployment. That is what is driving up the numbers in this system. We can work together to make it a better system. But the approach being suggested by the Senator from Alabama will just add redtape, paperwork, and unnecessary hardship to a lot of people who are already struggling.

Mr. President, I yield the floor.

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

Mr. SESSIONS. Mr. President, I thank the distinguished assistant majority leader for his comments. And I will disagree, but I think we could agree, because my proposal is not to cut off anybody who ought to receive food stamps. My proposal wouldn't cut off any benefits to anybody who deserves food stamps. My proposal would not cut off anybody who qualifies for food stamps. It would say that just because you complied with the requirement for TANF or you complied with the requirement for LIHEAP or you sought assistance for some family planning issue, that those don't automatically qualify you. I don't think it is too much to ask someone who would be given thousands of dollars over a period of time in food stamps to fill out a form. That form would say what your income is and what your assets are. And if you have substantial assets that are higher than the food stamp law allows, you should not get it.

So I don't believe this proposal does anything but help tighten up the act. I don't believe it is too much to ask that somebody fill out a form to demonstrate they are qualified before they receive free money from the U.S. Government for the purchase of food, and certainly I would emphasize that dramatically.

I don't think the Senator disagrees that any program in the U.S. Government of any real size has surged faster than this program has. It has gone up, since 2010, \$20 billion. In 2009 or so, unemployment hit 9.8 percent. It is now 9.1. It is too high, and people need food stamps and they should get them. And perhaps there are more people out there who qualify even than in 2009, or whenever our unemployment hit almost 10 percent. Maybe there are more people today. I don't know. But I don't think there are huge numbers more. You go from \$59 billion to \$79 billion, that is about a 38- or 40-percent increase in 2 years in this program. One of the reasons is we have made people automatically eligible.

So if you are eligible for any of these programs, you have received any assistance, you may not have even filled out a form that has anything like the same qualifications that the Food Stamp Act requires, you are automatically, categorically, qualified.

The Congressional Budget Office says if this change in the law that happened recently were to be eliminated, it would save \$10 billion over 10 years. It would not reduce food stamps; it would just reduce a little bit the growth in food stamps. The \$10 billion over 10 years represents \$1 billion a year in the first year. It would be less than that, according to the score we have seen. But let's say in the first year that this program reduced spending by \$1 billion, that is \$1 billion out of the proposed \$79 billion. So we are expecting to spend \$79 billion this year, and we would only



spend \$78 billion. But that adds up over time. And food stamps need to be looked at across the board much more carefully, because we don't have that many more people who are in poverty today than we have had. But we have many more people receiving food stamps.

I would stress that this year's increase in food stamps by another 14 percent is not an acceptable figure, because we know that there are problems within the program.

AMENDMENT NO. 753

Mr. President, I wish to say one thing briefly about Senator AYOTTE's proposal on terrorism prosecution. As a Federal prosecutor for almost 15 years, I truly believe she is correct on this issue. It is something we have been debating in Congress for a long time. Congress has made clear its view about it.

I would simply say this. The Presiding Officer is a former Attorney General. But if you make the presumption that an individual who is arrested is to be tried in article III courts, even though they are an enemy combatant against the United States, against the laws of war, an unlawful enemy combatant, those individuals should be treated as warriors and they should be treated as enemies of the country, and they should be arrested and detained, and presumptively in military custody. This is the tradition of the United States from its founding. This is worldwide accepted law. And I do believe we need to understand the reason this is important.

An individual who is arrested attacking the United States and who is going to be tried in a Federal court must be given Miranda warnings before they are interrogated, must be provided a lawyer, must be promptly taken before a U.S. magistrate, must be provided discovery in the government's case, and must have a public hearing. You don't do that for people who are at war with you.

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

Mr. SESSIONS. I would yield.

Mr. MCCONNELL. I have heard it argued on the floor here in connection with this issue that somehow because the Christmas Day bomber pleaded guilty in an article III court, that was an argument for putting him in the article III court. As a distinguished former prosecutor, I wonder if my friend from Alabama could address the issue of whether because somebody happened to end up in an article III court and happened to plead guilty, how that was an argument for his placement there in the first place.

Mr. SESSIONS. That is a very important question. This individual perhaps looks like he just fell off a turnip truck or something. He was not a very solid person and he decided to plead guilty, and that was good.

Many of these individuals are very tough, very clever, very devious. They have, we know for a fact, used the civil

justice system to find discovery against us, how we discover their activities, what kind of surveillance techniques we use, and made the trials dangerous places and have made the trials showcases. So I think that just because one individual decided to plead guilty, it has no bearing on the overall principle that if you arrest people on the battlefield, they are not required to be taken immediately to a judge and given a lawyer.

Mr. MCCONNELL. Will my friend further yield for a question?

Mr. SESSIONS. I will be pleased to.

Mr. MCCONNELL. I have heard it said on the floor that because a number of terrorists have been tried in article III courts in the past—and I have heard people add up the number of times—that is somehow an argument for continuing to do it.

Is it not the case, I ask my friend from Alabama, that we just set up these military commissions a few years ago at the insistence of the Supreme Court in order to deal with this issue, and only since that time have we had a defined alternative for dealing with these enemy combatants who are also not citizens of the United States?

Mr. SESSIONS. The Senator is so correct. We went through a number of actions. The Supreme Court found the law inadequate, and Congress responded to the Supreme Court's concerns and passed clear laws that are certainly adequate within the Constitution as described by the Supreme Court. We now have an entire system set up to meet the Supreme Court's concerns about the trial of these individuals. It is safe. It is secure. It is consistent with Supreme Court requirements and international law.

Mr. MCCONNELL. I ask my friend, is it not also the case that the amendment of Senator AYOTTE has in it a national security waiver? I have heard it said that we have eliminated all the President's options. Is it not the case that even if the amendment of the Senator from New Hampshire were adopted and the President felt strongly, for some reason—it's hard for me to contemplate such a set of circumstances, but it is possible—he could, in fact, issue a national security waiver and go ahead and do it anyway, could he not?

Mr. SESSIONS. Absolutely correct. I think Senator AYOTTE really reached out to Members of this Senate to make sure they knew there was an option to do it another way, and it does provide the President that option.

With regard to the FBI and their involvement, they are a great investigative agency. If they participate in the arrest of one of these individuals and they were turned over to the military, the FBI can still work with the military to investigate the case. It would just be tried under military commissions according to the lawful system Congress, in a bipartisan way, passed several years ago.

Mr. MCCONNELL. I have also heard it said—I am going to pose another

question to my friend—that it is kind of ludicrous to assume this ultimately leads to reading Miranda rights to a foreign terrorist on foreign soil. I think it strikes the Senator from Kentucky that that might be the logical extension of where we are going. If, in fact, we are saying that, routinely, foreigners, enemy combatants are going to be mainstreamed into article III courts, when do these protections, if you will, we afford to American citizens under the Constitution attach?

Mr. SESSIONS. That is a very good question. Under the law of the United States, if you are to interrogate an individual who has been taken into custody, the police have to give them Miranda rights before they interrogate them. As long as that person is in custody, if you are going to try them in a civilian court—and Director Mueller of the FBI, in response to questions I asked him, acknowledged that if you are going to try the person in the civilian courts and you conduct interrogation, you must give them Miranda warnings.

Mr. MCCONNELL. So would it not be the case, then, that all of these issues in terms of the timing of the attachment of these rights would soon be before courts in the United States for interpretation—ultimately, I guess, by the Supreme Court—as to at what point do these rights now afforded a foreign enemy combatant attach?

Mr. SESSIONS. There have been suggestions that somehow the terrorist cases would allow the interrogation to go on a few hours, but I have not seen any real authority that would justify that. The clear Miranda standard for any police officer in America is that if you arrest someone, before you ask them questions, they must have been given their Miranda rights. That is the rule in the trial of any Federal court. I think it would be very dangerous to assume the court is going to give some extraordinary new rights that they have never indicated they would.

Mr. MCCONNELL. I thank the Senator from Alabama.

Mr. SESSIONS. I thank the Senator, the Republican leader, for his good questions.

I would just say I think Senator AYOTTE has worked very hard on this amendment. She herself is a skilled prosecutor. I believe the legislation would be helpful to us.

I will just say that as a matter of policy, you can be absolutely sure it will be more difficult to prosecute a case, more likely to complicate matters significantly, if they are given Miranda warnings, if they are given lawyers, if they are brought publicly before a judge—perhaps revealing to the other coconspirators the fact that you have been arrested before they can be apprehended. It would cause many more difficulties than are necessary.

Of all people we ought not to give extra rights to, it would be terrorists bent on killing and maiming innocent Americans.

I yield the floor.

The PRESIDING OFFICER (Mr. COONS). The Senator from Illinois.

Mr. DURBIN. Does the minority leader wish to speak? I will yield to him if he does. No.

Mr. President, I am going to respond very briefly. This argument is so upside-down. If during the last 10 years we had successfully prosecuted terrorists—300 of them—in military commissions and only 3 in our criminal courts, then all of their arguments would make sense because you would have to argue that is the best place to go, that is where you can investigate and prosecute and successfully incarcerate those accused of terrorism. Exactly the opposite is true.

President Bush and President Obama, given the authority to choose a forum to try a suspected terrorist, have overwhelmingly and successfully chosen the article III criminal courts of America. Here is the score. They don't like to hear me say this, but I am going to give them the score again. It is important to know. Since 9/11, we are told by the Department of Justice, as many as 300 suspected terrorists have been successfully prosecuted in our criminal courts and 3 before military commissions, 2 of whom—before the military commissions—were released within a year to return to their home countries of Australia and Yemen. When you look at where terrorists are in jail in America today, you will find 300 to 1 they were terrorists who were prosecuted in our criminal courts.

In comes the Ayotte amendment and the arguments by Senator MCCONNELL and Senator SESSIONS to argue that clearly this system is upside-down, that we should be going to the military commissions, not to the criminal courts. Their argument is, incidentally, Miranda warnings—when you give an alleged defendant, a suspected criminal defendant, Miranda warnings, end of story, they stop cooperating. The problem they have is the facts, and the facts are that all 300 prosecuted terrorists in article III courts were given their Miranda warnings, the investigation continued, and the prosecution continued successfully. It did not end the case.

They do not like to talk about the details about this Christmas bomber, the Underwear Bomber. He was read his Miranda rights, and he shut up. Then the FBI brought in his mother and father, who said, "Why don't you cooperate?" According to the head of the FBI, the Director of the FBI, he talked nonstop for days about everything he knew about al-Qaida. He did it after he was read his Miranda rights. Then he was off to court, where he is going to defend himself in this criminal case, and he pled guilty.

I have heard the Senators on the floor dismiss this—well, he pled guilty, so they didn't really prosecute him. They prepared the case—a case he knew he couldn't win. He fully cooperated with the investigation, and he

conceded that he was guilty. Now he faces a life sentence in prison.

Is that a good outcome? It is the best outcome, and I will tell you why because they will not acknowledge this fact, and they should. All across the world, when they look at the way we prosecute terrorists in the United States, they have to say: You know, they are following the same rules and laws for alleged terrorists as they are following for anyone accused of crime in their country, and it is public, and he had an opportunity for a lawyer, and he was given the same warnings as any prospective criminal defendant.

You can't argue that this was done behind closed doors or done any differently from any other criminal defendant. There is something to be said for that. It is a bragging right, or at least something we should be proud of, that in the United States we use that system and use it so successfully.

For those who want to pass the Ayotte amendment and make it more difficult for any President to decide the appropriate forum to prosecute terrorists, I just leave them one last reminder: The score is 300 to 3 since 9/11, 300 suspected terrorists successfully prosecuted in our criminal courts, 3 before military commissions.

Give this President, give every President the tools and the authority to make the right decision to keep America safe. Defeat the Ayotte amendment.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Mr. President, I am just going to make one final point on this issue, and then I want to address another amendment we will be voting on at some point.

One thing we have not discussed is what happens if the foreign enemy combatant in the article III court in the United States is actually acquitted. If he is, he, of course, has to be released. The deportation option is only available if some other country is willing to take him. There is not a whole lot of clamoring for these kinds of folks anywhere else in the world. We have had that experience. The courts then cannot keep them. They are released into the United States as a result of an acquittal in an article III court in the United States, and there is a situation where you cannot deport them because no one will take them.

I think the point is that this is all totally unnecessary. These are foreigners; these are not citizens of the United States. They have no right to be in an article III court. We don't dispute that the President can put them in an article III court, but why would he want to do that? We responded to the decision of the Supreme Court to set up these military commissions for this precise purpose, and it is clear this administration does not want to use them.

I also would like to make some brief comments about a matter we will be voting on later this evening. Every-

body here in this body knows the American people want us to do something about the jobs crisis. What Republicans have been saying is that raising taxes on business owners is not the way to do it. So what we have done is we have combed through the President's latest stimulus bill looking for things we can actually support, for things that do not punish the very people we are counting on to create jobs. In other words, since the President never asked if there was anything in this legislation we could support, we have actually done it ourselves.

It turns out there is a very sensible provision in the President's second stimulus bill that would help businesses across the country. In fact, it is absolutely identical to a bill Senator SCOTT BROWN of Massachusetts introduced with 30 cosponsors earlier this year, many of them Democrats, among them Senators FRANKEN, BEGICH, KLOBUCHAR, PRYOR, TESTER, and MCCASKILL. They are all cosponsors of Senator SCOTT BROWN's bill.

What this bill does is it repeals an existing requirement that government agencies at the State, local, and Federal level withhold 3 percent of every payment to any contractor with whom they do business. This is money contractors may very well end up getting back from the IRS at some point long after the job is done, but in the meantime the government gets to hold on to it instead of allowing the businesses to invest it in jobs and the economy. This is money these companies could be putting toward hiring workers and growing their businesses, but it is going to the IRS instead, basically as a zero-interest loan to the Federal Government here in Washington.

I know Members on both sides of the aisle are hearing from constituents about how burdensome this regulation is. That is why President Obama himself already embraced delaying its implementation in his first stimulus bill and proposed delaying it again in his latest stimulus bill. That is why Senator SCOTT BROWN got so many Democratic sponsors when he proposed a full repeal.

Like the President's bill, this bill is fully offset, and the offset we are proposing has been supported by our friends across the aisle. In fact, the last time I saw a vote, I think 81 Senators actually voted for it. So the bill we are proposing is bipartisan. The offset we are proposing is bipartisan. There is no reason in the world that our Democratic friends, including the President, certainly, should oppose it. If delaying this legislation was a good idea before, repealing it should be an even better idea now. The bill is supported by hundreds of business groups representing job creators across America. We should come together and act right now and make it easier for them to create jobs for a change, and not harder.

The President asked us to come together and pass pieces of this bill. Here



is one that all Senators should be able to agree on. Let's vote on it and prove the skeptics wrong by acting in a bipartisan fashion on something that the job creators in this country actually want.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, the provision my friend talks about is placed in legislation as a result of the study made during the Bush administration—second Bush administration. GAO did a study. They found that 33,000 contractors, in effect, cheated on their taxes, and they owed some \$3 billion. This money, they also determined, went mostly to giving the owners more salary and building them second and third homes.

There is no question that a lot of people, in addition to the 33,000 who cheated, were found to be burdened by this withholding 3 percent of what they had coming to them. What my friend fails to acknowledge is this bill that was amended that my friend has before the Senate has no chance of accomplishing anything. Constitutionally it will be killed in the House in a matter of a millisecond because constitutionally it will be what we call blue slipped here. It is a revenue measure. It cannot start in the Senate.

It costs \$11.6 billion to take this money out—I am sorry—take that 3-percent provision out, and we need to do that. It costs \$11.6 billion. What my friend fails to alert the Senators to is that since this matter has come up in years past and months past, things have changed. We have burdened the American people—especially the American middle class—with all of these cuts we have made. We did them. It was done by Democrats and Republicans, but they have given enough.

My friend's bill is offset by reducing discretionary spending by \$30 billion. Senator MCCONNELL's bill does nothing to address contractors who cheat on their taxes and still get Federal contracts. Nothing, zero.

Our alternative—and I will offer a unanimous consent request of this at a later time before we get to these two cloture motions we have. It repeals the 3-percent withholding tax, and we acknowledge it should do that. The Democratic alternative also addresses the problem of tax evaders receiving government contracts by expressly prohibiting contractors who are delinquent on their taxes being eligible for Federal contracts. That way all contractors are not punished, only those who are, in effect, cheating.

The Democratic alternative offsets the costs of repealing the withholding requirement by closing the loophole that allows companies to claim excess foreign tax credits and the famous corporate jet preference. It has a 1-year delay in implementing worldwide interest allocation which allows taxpayers to claim greater tax credits for the foreign taxes they pay; fair, reasonable, not a burden on the middle class.

A vote for Senator MCCONNELL's amendment would do nothing to repeal the withholding requirement because the House, I repeat, will blue slip this. The House will send us a repeal bill. They told us, the Republican leadership, soon, and I mean soon rather within a matter of weeks. We will have a real opportunity to repeal the withholding requirement when we get the House bill. We would, of course, put our amendment on that.

Let's be honest about this. This is nothing more than a misdirected stunt by my friend, the Republican leader. This provision will be repealed, but it should be done the right way. We all agree that it is unfortunate that the Bush administration did that. They had a good intent. They were trying to get rid of some people who were cheating, but it was too broad and overreaching and has hurt a lot of people. That GAO report said 33,000 people, civilian contractors, owed more than \$3 billion. I repeat, that 2005 GAO report said \$3 billion in taxes. I didn't make this up. The GAO report also found that these firms, many of them diverted these payroll taxes to increase an owner's salary or building him a new home or two.

So by withholding a small amount of a contractor's payment and sending it to the IRS, the belief was that the contractors would have more motivation to comply with the law. It didn't work well. It was too overreaching and too broad.

I would hope that we would look at the consent I will offer. Procedurally there is no way we can have a second-degree or side by side with what we are doing here. I would hope my friends, Democrats and Republicans, would do something that is real, not something that is only figurative. What we are doing is real. We agree it should be done. It should be done right. It should not be done by burdening the middle class with more domestic discretionary cuts.

I will say this generally. Here it is 9:30 at night. The decision is going to have to be made very quickly as to whether we will be here tomorrow. The two matters that the Republican leader and I have spoken about, we could vote on those right now. I offered to vote on those earlier today, but we were unable to do that. We can come tomorrow. It is getting late here, and I am not sure what we are accomplishing by trying to work through all of this tonight. We are trying to be reasonable. As I indicated, my friend the Republican leader said he needed 10 or 12 votes. We agreed to that a long time ago. I cannot imagine why we cannot move forward.

I repeat, we cannot be stalled so we come back with a very short work period. We have a continuing resolution and many other things to deal with when we come back with the short work period. I wish to do another appropriations bill, but we cannot do another appropriations bill while this one is still floundering here.

This was an experiment that I was happy to engage myself in because I believe we should try to do our work here. But this CR business and holding us up from doing the work we have done for 10 months this year was not our doing. This has been as a result of my friends who are the majority in the House and the minority over here. So we have spent all of these months on two major issues, CRs and raising the debt ceiling. I would hope we can work something out on this appropriations bill and get it done tonight.

Mr. MCCONNELL. Mr. President, I would ask my friend, did you propound a consent agreement?

Mr. REID. No. What I said I would do is when we get ready to schedule these votes, I will do it. I will make sure you are here.

Mr. MCCONNELL. Fair enough. I want to echo the comments of the majority leader. In my time in the Senate some of our best work has been done on Thursday night. Usually when we are passing bills around here, we are working on Thursdays into the evening and finishing them. It is my hope that we will continue on that path and finish this bill tonight. Frequently coming back on Friday is counterproductive, and I would encourage all of the Members to cooperate to the greatest extent possible. I think we were, the last time I checked, making progress toward getting a lot of amendments in the queue hopefully to be voted on tonight.

Mr. REID. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Ohio.

#### AMENDMENT NO. 771

Mr. BROWN of Ohio. I rise in support of amendment No. 771 sponsored by Senator BINGAMAN. It will strengthen our Nation's competitiveness. As I heard the majority leader and the Republican leader talk about job creation, this will matter, strengthening our Nation's competitiveness by ensuring we enforce trade laws better than we have.

American workers, American farmers can compete with anyone. We can compete on productivity, we can compete on skills. When workers are forced to compete against unfair export subsidy, that is cheating, as we showed on the China currency bill, which passed with 63 votes—a good, strong bipartisan effort. We cannot compete against unfair export subsidies. Our workers cannot compete against that kind of cheating.

Fortunately, we have tools to do something about that. Our trade laws are the last line of defense to retain and create jobs in American industries. Paper, steel, tires—President Obama

has actually enforced trade laws in those three industries which directly created jobs in Finley, OH, in Lorain, OH, in Youngstown, OH, including the construction of a new steel mill.

Our trade laws are critical if we are going to compete for advance manufacturing jobs. Jobs in solar, wind, and clean energy component manufacturing in the auto supply chain all rely—or should rely—on an active U.S. Trade Representative who will initiate more cases.

I proposed an amendment to this appropriations bill, No. 865, that would provide the office of the U.S. Trade Representative an additional \$5 million to initiate cases on China's subsidies to solar producers and China's hoarding of rare earth materials, an increasingly important problem that is eroding American manufacturing.

I support Senator BINGAMAN's amendment, which provides funds for general trade enforcement. But here is why I wanted to specify solar and rare earths in my amendment. According to the U.S. International Trade Commission, our solar producers, like those in Toledo—and there are three of them—are facing an expected 240-percent increase in the import of Chinese solar panels this year. Yesterday a number of solar companies filed a complaint with the Commerce Department and the ITC, asking them to seek duties on Chinese solar panels sold below cost. Understand, the Chinese sell these into our market as they sold coated paper, as they sold tires, as they sold oil country tubular steel. They often undercut our prices because they are subsidizing energy and water and capital and land and, of course, the currency subsidy, which this body spoke about and voted on a couple of weeks ago.

On rare earths, China is artificially using export restraints or quotas to raise the cost of rare earths internationally while keeping them low domestically so producers in Ohio and the Presiding Officer's home State of Delaware simply cannot compete because of how they are subsidizing their production.

Ohio companies such as Electrodyn in Cincinnati saw their costs go up 59 percent in June and 68 percent in July of this year alone on account of these price changes. How can we possibly compete when they are cheating that dramatically and to that degree? These policies have fundamentally turned rare earths into a spot price market. I want to see the USTR litigate on these protectionist policies. This is not American protectionism. This is our serving our own interest as a nation against answering the protectionism they have exhibited.

Every country in the world practices trade according to their national interest. Too often in the United States we practice trade according to a college economics textbook that is 20 years out of print. These two enforcement initiatives, critical to my State and many others of my colleagues here,

will absolutely matter. This amendment will ensure that USTR has the resources to investigate and to act on blatant, unfair trade practices. Trade enforcement is critical if we are going to compete for advanced manufacturing jobs and so many other industries that are in our States.

I urge my colleagues to support the amendment. I applaud Senator BINGAMAN for his leadership on amendment No. 771.

I yield the floor, and 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, I ask unanimous consent that at a time to be determined by the majority leader after consultation with the Republican leader, the Senate proceed to a series of votes in relation to the following amendments and motions: Landrieu No. 781, as modified with the changes that are at the desk; Kohl No. 755; Vitter No. 917 to Menendez No. 857; Menendez No. 857; Gillibrand No. 869; Lautenberg No. 836; Bingaman No. 771, as modified; Sessions No. 810; Coburn No. 791; Coburn No. 792; Coburn No. 796; Coburn No. 800; Paul No. 821; Portman No. 859; McCain No. 892; Cantwell No. 893, as modified with the changes that are at the desk; Cochran No. 805, as modified with the changes that are at the desk; Burr No. 890; DeMint No. 763; Inouye No. 918; Ayotte No. 753; Crapo No. 814; Kyl, as modified with the changes that are at the desk; and Lee motion to recommit; that there be no amendments or points of order in order against any of the amendments prior to the votes other than budget points of order; that there be 2 minutes equally divided in the usual form prior to each vote; that the Vitter, Menendez, Sessions, Paul, Ayotte, Crapo, and the Coburn amendments Nos. 792 and 796 be subject to a 60-affirmative vote threshold; that all after the first vote be 10-minute votes; that upon disposition of these amendments, the remaining pending Coburn amendments be withdrawn with the exception of amendment No. 801; that no other motions or amendments be in order to the bill, the Senate proceed to the cloture vote on the substitute amendment No. 738, as amended; that if cloture is invoked, the substitute amendment, as amended, be agreed to and be considered original text for the purposes of further amendment; that the majority leader then be recognized to raise points of order against any pending nongermane amendments; further, if cloture is invoked, the Senate resume consideration of the bill at 4 p.m., Monday, October 31, and proceed to votes in relation to any remaining germane pending amendments in the order they were of-

fered; further, that upon disposition of any pending germane amendments, the bill, as amended, be read a third time and the Senate proceed to vote on passage of the bill with no intervening action or debate; that when the Senate receives a message from the House with respect to H.R. 2112, the Senate insist on its amendment, request, or agree to, a conference with the House on the disagreeing votes of the two Houses; and the Chair be authorized to appoint the following conferees: KOHL, HARKIN, FEINSTEIN, JOHNSON of South Dakota, NELSON of Nebraska, PRYOR, BROWN of Ohio, INOUE, MURRAY, MIKULSKI, BLUNT, COCHRAN, MCCONNELL, COLLINS, MORAN, HOEVEN, HUTCHISON, and SHELBY; finally, that if cloture is not invoked on the substitute amendment No. 738, as amended, cloture on the underlying bill be vitiated and the bill be returned to the calendar in status quo. I failed, Mr. President, to identify the Kyl amendment. It is No. 912.

The PRESIDING OFFICER. Is there objection to the leader's request?

Without objection, it is so ordered.

Mr. REID. Mr. President, for all of these amendments that are pending, there is no requirement that we have to have rollcall votes. Everyone should understand that.

Mr. President, tonight the Senate will vote on a bill introduced by my friend, the Republican leader.

While I have great respect for my friend, the senior Senator from Kentucky, I believe in this case he is playing political games.

The Republican leader has inserted a poison pill for Democrats into his proposal.

To offset the \$11 billion cost of his legislation, the Republican leader proposes we slash \$30 billion in programs that help the middle class and get our economy back on track.

What is more, this is a backdoor violation of the debt ceiling agreement we reached after months of negotiation this summer.

This is not a serious attempt to repeal the rule requiring the government to withhold 3 percent from all government contractors. It is an attempt to circumvent the rules.

And even if we passed the Republican leader's bill tonight, the House will not act on it. Revenue bills like this one must originate in the House, a prerogative that body guards jealously.

So our action on this bill this evening is nothing more than a misdirected stunt by Republican leadership.

But let me be clear: this provision will be repealed before it takes effect.

The Senate will have a real opportunity to repeal this provision, when the House sends us a bill that repeals the 3-percent withholding the week we return from the in-State work period.

In 2 short weeks, we will have an opportunity to work together on a commonsense way to both repeal the withholding requirement and address the underlying problem it was enacted to address.

It is important to review the history of this proposal to understand why we are in this situation today, and how to move forward.

A 2005 GAO report found that 33,000 civilian contractors owed more than \$3 billion in taxes. The GAO report also found that some of these firms diverted payroll taxes to increasing the owner's salary or build him a new house.

By withholding a small amount from a contractor's payment and sending it along to the IRS, the belief was that contractors would have more motivation to comply with the tax law.

The withholding requirement was enacted with overwhelming Republican support. Only a couple of Democrats supported the legislation.

But this withholding has turned out to be more trouble than it is worth for a number of reasons, and now many on both sides feel it should be repealed.

But Democrats also believe we must address the underlying problem. The Republican leader's bill does nothing to prevent taxpayer dollars from going to contractors who fail to pay their taxes.

Democrats have offered alternative legislation that would address the problem of noncompliant contractors without targeting those who pay their taxes.

The Senate will take action on this worthy alternative in just a couple weeks, after the House sends us its bill.

Voting on this measure today is nothing more than a diversion by my Republican colleagues.

I am confident that Senate Democrats and Republicans will be able to work together next month to repeal this provision.

We should be successful at working together to stop an unfair tax increase that will hit middle-class families.

This month, Republicans blocked our attempt to keep payroll taxes low for families and businesses who are still struggling as our country fights its way out of a serious recession.

I hope they will be as willing to work with Democrats on finding solutions that work for middle-class families as they are on finding solutions for government contractors.

UNANIMOUS CONSENT REQUEST—H.R. 674

Mr. President, I want to get the Republican leader's attention.

I ask unanimous consent that when the Senate receives from the House H.R. 674, the Senate proceed to its consideration; that the Reid substitute amendment, the text of which is at the desk, be agreed to.

This amendment would do the following: It repeals the 3-percent withholding requirement; prohibits contractors who are delinquent on their taxes from being eligible for Federal contracts; offsets by closing a loophole that allows oil and gas companies to claim excess foreign tax credits, eliminating a tax preference for corporate jets, and a 1-year delay in implementing worldwide interest allocation.

I then ask consent that the bill be read a third time and the Senate pro-

ceed to a vote on passage of the bill, as amended, with all of the above occurring with no intervening action or debate.

We have both given our statements in this regard, Mr. President, earlier today.

The PRESIDING OFFICER. Is there objection?

The Republican leader.

Mr. MCCONNELL. Mr. President, reserving the right to object, this would implement a tax increase. It also would be subject to the same blue-slip concern the majority leader expressed with regard to the vote we are going to have on the 3-percent withholding. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The majority leader.

Mr. REID. Mr. President, I would say there would be no blue-slip problem whatsoever because, as I indicated, this would be an amendment to a revenue bill we have received from the House, and I identified which one that would be.

Mr. President, I ask unanimous consent that the cloture vote with respect to the Reid motion to proceed to Calendar No. 204, S. 1723, occur at 9:55 tonight; further, that if cloture is not invoked on the Reid motion to proceed, the Senate then proceed to a vote on the motion to invoke cloture on the McConnell motion to proceed to Calendar No. 205, S. 1726; finally, that if cloture is invoked on either motion to proceed, that notwithstanding cloture having been invoked, the Senate resume consideration of H.R. 2112, and upon disposition of H.R. 2112, the Senate resume consideration of the motion to proceed, postcloture.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, today I wish to express strong support for the Teachers and First Responders Back to Work Act, a bill that provides funding to hire and prevent the layoff of tens of thousands of teachers, police officers, and firefighters.

Difficult economic times have devastated the ranks of these critical positions. Since 2008, California alone has seen more than 70,000 educators laid off. The resources in this bill will help cities and towns across the country avoid more layoffs and start rebuilding their workforce.

Nationwide, some 300,000 education jobs have been lost in the past 3 years, and State and local budget cuts will endanger as many as 280,000 teacher jobs next year.

The difficult economy has also strained police departments across the country. In the past 18 months, 10,000 police officers have been laid off around the country, while 30,000 vacancies have gone unfilled.

I have heard from many police departments in my home State of California that fear that this understaffing will jeopardize public safety. They are

concerned that with fewer officers for patrols, investigations and other critical tasks, crime will increase.

Fire departments face similar problems. Thousands of firefighters were laid off in 2009 and 2010, and another 7,000 face layoffs this year.

This legislation will help communities address staffing shortages in these critical positions.

To help our schools, the bill would provide \$30 billion to States and school districts to protect and create up to 400,000 education jobs nationwide, which would prevent the layoffs of up to 280,000 teachers and hire tens of thousands more.

In my home State of California, this will safeguard more than 37,000 education jobs.

According to the Government Accountability Office, 72 percent of school districts expect to have less funding in the 2011–2012 school year as compared to last year.

In California, public schools are suffering from State budget cuts. I have heard from thousands of teachers in my State who have received pink slips each spring over the last several years warning that their jobs are in danger.

Many teachers wait for months to find out whether they will still be teaching the following year. Many pink slips are rescinded, sparing jobs, but others are not as lucky. Our teachers should not have to deal with such uncertainty, and this bill helps safeguard those jobs.

With so many teachers losing their jobs in California, classrooms are becoming crowded and the school year is becoming shorter. On average, K–3 classrooms in California are up to 25 students, up from 20 students 2 years ago.

Average class sizes for higher grades have risen from 28 students to 31. The more we squeeze students into one classroom, the more difficult it is to provide standards-based instruction, and the harder it is for students to focus on their education.

This bill invests in education to keep educators on the job, continuing to provide students with a supportive learning environment.

In a country that prides itself on providing children with every opportunity, it does not make sense to lay off the very teachers who prepare our children for the future.

Another casualty of budget cuts is the many talented individuals who are being driven away from the teaching profession because of the lack of job stability. I fear that a deteriorating education system means more children will slip through the cracks and be unprepared for college or to compete in the global economy.

The quality of education is a direct reflection of how firmly we support our teachers.

In addition to supporting thousands of teaching jobs, the Teachers and First Responders Back to Work Act also provides \$4 billion for communities to hire police officers. These

funds will support more than 17,000 positions over the next 3 years, including about 2,600 in my home State of California.

There is also \$1 billion for firefighters, supporting about 6,300 positions nationwide.

These funds go to support the dedicated first responders we depend upon in emergencies—the firefighters who enter burning buildings to save lives and the police officers who risk everything to keep our streets and homes safe.

In recent years, firefighters and police officers have taken on even more responsibilities as they prepare for—and respond to—terrorist attacks. We are reminded of the importance of these first responders when we remember the brave men and women who worked so heroically to save lives after the 9/11 attacks, including more than 400 firefighters, police, and other emergency personnel who lost their lives that day.

Now is the time to stand with our first responders and give them the support they need. We must make sure our emergency personnel are not risking their lives because too many of their colleagues have been laid off.

While this legislation will strengthen our schools and protect our streets and homes, it will not add a penny to the deficit. This is accomplished by paying for the bill with a half-percent tax on Americans with an adjusted gross income over \$1 million.

I have long said that those people who have benefited from this economy and can help out should do so. Millionaires can afford to help build a smarter, safer, stronger nation.

It is not the wealthiest Americans who have been bearing the brunt of this recession; it is the middle class and the poor who have suffered.

Our Nation continues to face serious economic difficulties. The unemployment rate is over 9 percent, and remains stuck at 12 percent in California. This lack of employment is causing severe financial strain with too many families losing their homes and too many families struggling to make ends meet.

Congress needs to help Americans get back to work and get our economy moving forward. And this bill will help.

With the Teachers and First Responders Back to Work Act, we will strengthen our schools, help our children get the education they deserve and give our first responders the support they need to keep our communities safe.

I urge my colleagues to support this legislation.

#### TEACHERS AND FIRST RESPONDERS BACK TO WORK ACT OF 2011—MOTION TO PROCEED

##### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate

the pending cloture motion, which the clerk will state.

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 the debate on the motion to proceed to Calendar No. 204, S. 1723, Teachers and First Responders Back to Work Act.

Harry Reid, Robert Menendez, Daniel Inouye, Herb Kohl, Sheldon Whitehouse, Jack Reed, Jeff Bingaman, Barbara Mikulski, Patty Murray, Debbie Stabenow, Richard Durbin, Sherrod Brown, Richard Blumenthal, Bernard Sanders, Robert Casey, Jr., Jeff Merkley, Patrick Leahy, Tom Harkin.

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 the motion to proceed to S. 1723, a bill to provide for teacher and first responder stabilization, 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.

The yeas and nays resulted—yeas 50, nays 50, as follows:

[Rollcall Vote No. 177 Leg.]

##### YEAS—50

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (FL)
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson (SD)	Rockefeller
Blumenthal	Kerry	Sanders
Boxer	Klobuchar	Schumer
Brown (OH)	Kohl	Shaheen
Cantwell	Landrieu	Stabenow
Cardin	Lautenberg	Tester
Carper	Leahy	Udall (CO)
Casey	Levin	Udall (NM)
Conrad	Manchin	Warner
Cooms	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feinstein	Merkley	Wyden
Franken	Mikulski	

##### NAYS—50

Alexander	Graham	Moran
Ayotte	Grassley	Murkowski
Barrasso	Hatch	Nelson (NE)
Blunt	Heller	Paul
Boozman	Hoeven	Portman
Brown (MA)	Hutchison	Pryor
Burr	Inhofe	Risch
Chambliss	Isakson	Roberts
Coats	Johanns	Rubio
Coburn	Johnson (WI)	Sessions
Cochran	Kirk	Shelby
Collins	Kyl	Snowe
Corker	Lee	Thune
Cornyn	Lieberman	Toomey
Crapo	Lugar	Vitter
DeMint	McCain	Wicker
Enzi	McConnell	

The PRESIDING OFFICER (Mr. BEGICH). On this vote, the yeas are 50, the nays are 50. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. Mr. President, I ask unanimous consent that all remaining votes tonight be 10 minutes in duration.

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

Mr. REID. Mr. President, we have 16 more amendments that we must vote

on. I hope people will look at those closely. A number of them—in fact, most of them—can be done by voice vote. If they win, it doesn't matter how you win. Let's get done with them as quickly as we can.

#### WITHHOLDING TAX RELIEF ACT OF 2011—MOTION TO PROCEED

##### CLOTURE MOTION

The PRESIDING OFFICER. The clerk will report the motion to invoke cloture.

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, do hereby move to bring to a close debate on the motion to proceed to S. 1726, the Withholding Tax Relief Act of 2011.

James Inhofe, David Vitter, Mike Crapo, Kelly Ayotte, Roy Blunt, Johnny Isakson, Jeff Sessions, Mike Lee, Saxby Chambliss, Tom Coburn, Jon Kyl, Susan Collins, Ron Johnson, Pat Roberts, Richard Burr, Lamar Alexander.

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 the motion to proceed to S. 1726, a bill to repeal the imposition of—the Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I ask unanimous consent to speak for a minute on this motion.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, we all agree that the contractors who contract with the Federal Government should pay their taxes. I don't think there is any dispute on that. There is also agreement that we should not overburden small businesses which are paying their taxes. The bill before us would repeal the provisions scheduled to go into effect in 2013 to require a withholding of 3 percent of payments from the U.S. Treasury to the government contractors. There are two flaws in this. One, it lets all government contractors off the hook, even those who refuse to pay taxes. Those contractors would not be subject to the mechanism to make sure they pay. Second, this is paid for by rescinding \$30 billion of appropriated funds, which is, frankly, contrary to the agreement reached with the President on the deficit reduction.

I ask colleagues to oppose the cloture motion to proceed to the bill.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. BROWN of Massachusetts. Mr. President, this is a no-brainer. This is where political theater stops and we actually do something the American people want and need. Three percent withholding is good for small businesses. We have viewed this pay-for