

one person confirmed by the Senate who was against it. So it was a 1-to-1 tie. That would normally defeat anything.

The biggest thing that is being taken away in this, the biggest thing that collapsed the time down to a potential 10 days, the biggest thing is eliminating the preelection hearing. That is when the employees—the employees—get their fairness of finding out exactly who is going to be represented, who is going to be part of their unit, and get any of their questions answered about this organization that is about to receive their dues. It seems like the employees, for fairness, ought to have that right. It also ought to be for the employers to have that right, especially small businesspeople to have the time to get it together so they are not violating any of the National Labor Relations Board's rules that they can easily step into and be in big trouble during one of these elections.

I urge all of my colleagues to support this resolution of disapproval and stop the National Labor Relations Board's ambush election rule. This vote will send a message to the National Labor Relations Board that their job is not to stack the odds in favor of one party or another—under this administration or another—but to fairly resolve disputes and conduct secret ballot elections.

We have heard from several speakers on the other side of the aisle that this debate and vote are a waste of time. Debating the merits of this regulation is not a waste of time for the millions of small businesspeople and millions of employees who are going to be negatively impacted by it. In fact, once it goes into effect next week, I believe all of us will be hearing from unhappy constituents and asked what we did to stop this legislation, and we will be asked. The contention that we should not be able to raise concerns about the National Labor Relations Board's ambush election regulation before it goes into effect sounds a lot like what the National Labor Relations Board is trying to do to small businesses and employees who have questions about a certification election.

This regulation will take away the right to question whether the appropriate employees are in the bargaining unit or whether it includes supervisors and managers who should not be in the union or whether it leaves out a group of employees who should be in the union because they have similar jobs, and if they are excluded, they will lose ground against the newly unionized employees. This regulation takes away the right to present evidence and testimony at a preelection hearing and to file briefs supporting a position.

Because of the Congressional Review Act, we Senators have had the opportunity to present evidence and have debate. That is a privilege the NLRB is taking away from many small employers and employees, and that will lead to some suffering of the employees.

I urge my colleagues to vote for the motion to proceed to S.J. Res. 36.

Again, it is a congressional privilege and we should take advantage of it. It is a chance to send a message that we want all of our boards to be fair and equal.

I yield back any remaining time.

The PRESIDING OFFICER. Time was yielded back.

VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2011—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 1925.

The Senator from Arizona.

POSTAL REFORM

Mr. MCCAIN. Mr. President, I want to discuss one of the amendments that I believe we will be voting on later, and basically what it does is it establishes a BRAC-like process in order to consolidate redundant, underutilized, and costly post offices and mail processing facilities.

We found over the years that Congress was politically unable to close a base or a facility that had to do with the military, so we adopted a process where a commission was appointed, those recommendations to consolidate excess and underutilized military bases were developed, and Congress was given an up-or-down vote. This is sort of based on that precedent.

The bill before us clearly doesn't offer any solutions. According to the Washington Post editorial:

The 21st Century Postal Service Act of 2011, proposed by Senators Joseph Lieberman and Susan Collins and passed last week by the Senate Committee on Homeland Security Government Affairs, is not a bill to save the U.S. Postal Service. It is a bill to postpone saving the Postal Service.

I agree with the Washington Post. I usually do. The Service's announcement that they lost \$5.1 billion in the most recent fiscal year was billed as good news. That is how dire the situation is, the fact that they only lost \$5.1 billion.

The Collins-Lieberman bill, which transfers \$7 billion from the Federal Employee Retirement System to the USPS—to be used to offer buyouts to its workers and paying down debts—can stave off collapse for a short time at best.

Nor do the other measures in the bill offer much hope. The bill extends the payment schedule for the Postal Service to prefund its employee retirement benefits from 10 to 40 years. Yes, the funding requirement is onerous, but if the USPS cannot afford to pay for these benefits now, what makes it likely that it will be able to pay later, when mail volume has most likely plummeted further?

The bill also requires two more years of studies to determine whether a switch to five-day delivery would be viable. These studies would be performed by a regulatory body that has already completed a laborious inquiry into the subject, a process that required almost a year.

The Washington Post goes on to say:

This seems a pointless delay, especially given a majority of Americans support the switch to five-day delivery.

And finally they go on and say:

There is an alternative—a bill proposed by Rep. Darrell Issa that would create a supervisory body to oversee the Postal Service's finances and, if necessary, negotiate new labor contracts. The bill . . . is not perfect, but offers a serious solution that does not leave taxpayers on the hook.

So we now have legislation before us that makes it harder, if not impossible, for the Postal Service to close post offices and mail processing plants by placing new regulations and limitations on processes for closing or consolidating mail processing facilities, a move in the wrong direction. It puts in place significant and absolutely unprecedented new process steps and procedural hurdles designed to restrict USPS's ability to manage its mail processing network.

Additionally, the requirement to redo completed but not implemented mail processing consolidation studies will ultimately prevent any consolidations from occurring this calendar year.

What we have to realize in the context of this legislation is that we now have a dramatic shift, technologically speaking, as to how Americans communicate with each other. That is what this is all about. We now have the ability to communicate with each other without sitting down with pen and paper, just as we had the ability to transfer information and knowledge by means of the railroad rather than the Pony Express.

We now have facilities that are way oversized and unnecessary, and we are facing a fiscal crisis. According to the Postal Service:

The current mail processing network has a capacity of over 250 billion pieces of mail per year when mail volume is now 160 billion pieces of mail.

So now we have overcapacity that is nearly double what is actually going to be the work the Postal Service does, and all trends indicate down. More and more Americans now acquire the ability to communicate by text message, Twitter, and many other means of communications. So to somehow get mired into while we cannot close this post office, we have to keep this one open, we have to do this—we have to realize it in the context that a large portion of the U.S. Postal Service's business is conducted by sending what we call "junk mail" rather than the vital ways of communicating that it was able to carry out for so many years.

In addition, the Postal Service has a massive retail network of more than 32,000 post offices, branches, and stations that has remained largely unchanged despite declining mail volume and population shifts. The Postal Service has more full-time retail facilities in the United States of America than Starbucks, McDonald's, UPS, and FedEx combined. And according to the Government Accountability Office, approximately 80 percent of these retail facilities do not generate sufficient

revenue to cover their costs. That is what this debate is all about. I hope my colleagues understand that we are looking at basically a dying part of America's economy because of technological advances, and in this legislation we are basically not recognizing that problem.

When 80 percent of their facilities don't generate sufficient revenue to cover their costs, then any business in the world—in the United States of America—would right-size that business to accommodate for changed situations. This bill does not do that. It continues to put up political roadblocks that prevent tough but essential closings and consolidations.

I grieve for the individuals who took care of the horses when the Pony Express went out of business. I grieve for the bridle and saddle and buggy makers when the automobile came in. But this is a technological change which is good for America in the long run because we can communicate with each other instantaneously. So we have a Postal Service—and thank God for all they did all those years, in fact, to the point where they were even mentioned in our Constitution. But it is now time to accommodate to the realities of the 21st century, and the taxpayers cannot continue to pick up the tab of billions and billions of dollars. Again, last year it lost only \$5.1 billion, which they suggested was good news.

All this bill does is place significant and absolutely unprecedented and new process steps and procedural hurdles designed to restrict USPS's ability manage its mail processing network. Additionally, the requirement to redo completed but not implemented mail consolidation studies will ultimately prevent any consolidations from occurring this year.

So what do we need to do? We obviously need a BRAC. We need a group to come together to look at this whole situation, find out where efficiencies need to be made—as any business in America does—and come up with proposals, because Congress does have a special obligation, and have the Congress vote up or down. This bill will continue the failing business model of the Postal Service by locking in mail service standards for 3 years which are nearly identical to those that have been in place for a number of years.

The clear intent of this provision is to prevent many of the mail processing plant closures that the Postal Service itself has proposed as part of its restructuring plan. It also prohibits the Postal Service from moving to 5-day mail delivery for at least 2 years with significant hurdles that must be cleared before approval, even though the Postmaster General has been coming to Congress since 2009 and asking for this flexibility.

One of the largest single steps available to restore USPS's financial solvency would save the Postal Service at least \$2 billion annually. If you told Americans that we would save the tax-

payers' money—because they are on the hook for \$2 billion a year—if you went from 6-day to 5-day mail delivery, I guarantee you that the overwhelming majority of Americans do support a 5-day delivery schedule rather than 6-day delivery schedule.

This, of course, kicks the can down the road. The bill also has at least five budget points of order against it about which the ranking member of the Budget Committee came to the floor yesterday and spoke.

So the BRAC-like amendment is essential, in my view, to moving this process forward. I don't know how many more billions of dollars of taxpayers' money is going to have to be spent to adjust to the 21st century. There is no business, no company, no private business in America that when faced with these kinds of losses wouldn't restructure. And they would restructure quickly because they would have an obligation to the owners and the stockholders. We are the stockholders. We are the ones who should be acting as quickly as possible to bring this fiscal calamity under control.

The GAO, the Government Accountability Office, states:

The proposed Commission on Postal Reorganization could broaden the current focus on individual facility closures—which are often contentious, time consuming, and inefficient—to a broader network-wide restructuring, similar to the BRAC approach. In other restructuring efforts where this approach has been used, expert panels successfully informed and permitted difficult restructuring decisions, helping to provide consensus on intractable decisions. As previously noted, the 2003 Report of the President's Commission on the USPS also recommended such an approach relating to the consolidation and rationalization of USPS's mail processing and distribution infrastructure.

We pay a lot of attention to the Government Accountability Office around here and this is something the Government Accountability Office recommends as well.

In addition:

[GAO] reviewed numerous comments from members of Congress, affected communities, and employee organizations that have expressed opposition to closing facilities. Such concerns are particularly heightened for postal facilities identified for closure that may consolidate functions to another state causing political leaders to oppose and potentially prevent such consolidations.

We should listen to the Government Accountability Office, take politics out of this delicate process, and move forward with their recommendations.

Our proposal would be composed of five members appointed by the President, with input from the House and Senate and the Comptroller General, with no more than three members being of the same political party.

The Postal Service, in consultation with the Postal Regulatory Commission, will be required to submit a plan to the BRAC-like Commission on closures and consolidations, which will include a list of closures and consolidations, a proposed schedule, estimated

annual cost savings, criteria and process used to develop the plan, methodology and assumptions used to derive the estimates and any changes to processing, transportation, delivery or other postal operations anticipated as a result of the proposed closures and consolidations.

The Commission will be required to publish in the Federal Register the definition of "excess mail processing capacity" with a period of public comment.

After receiving the plans, the BRAC-like Commission will be required to hold at least five public hearings.

Finally, the Commission will be required to vote on the recommendations, with the concurrence of at least four of the members, and submit the recommendations to Congress. Any recommendation will be the subject of a congressional vote of approval or disapproval.

The amendment recognizes the fact that the current business model for the Postal Service is no longer viable. If we continue to act in an irresponsible way by putting up political roadblocks, the American taxpayer will be the one who ultimately suffers in the form of higher postage prices and bailouts. We should make hard choices now so future generations of Americans will have a viable Postal Service.

I ask unanimous consent the Washington Post editorial, "A Failure to Deliver Solutions to Postal Service's problems," be printed in the RECORD.

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

[From the Washington Post, Nov. 18, 2011]

A FAILURE TO DELIVER SOLUTIONS TO POSTAL SERVICE'S PROBLEMS

The 21st Century Postal Service Act of 2011, proposed by Sens. Joseph I. Lieberman (I-Conn.) and Susan Collins (R-Maine) and passed last week by the Senate Committee on Homeland Security and Governmental Affairs, is not a bill to save the U.S. Postal Service (USPS).

It is a bill to postpone saving the Postal Service.

The service's announcement that it lost \$5.1 billion in the most recent fiscal year was billed as good news, which suggests how dire its situation is. The only reason the loss was not greater is that Congress postponed USPS's payment of \$5.5 billion to prefund retiree health benefits. According to the Government Accountability Office, even \$50 billion would not be enough to repay all of the Postal Service's debt and address current and future operating deficits that are caused by its inability to cut costs quickly enough to match declining mail volume and revenue.

The Collins-Lieberman bill, which transfers \$7 billion from the Federal Employee Retirement System to the USPS—to be used for offering buyouts to its workers and paying down debts—can stave off collapse for a short time at best.

Nor do the other measures in the bill offer much hope. The bill extends the payment schedule for the Postal Service to prefund its employee retirement benefits from 10 to 40 years. Yes, the funding requirement is onerous, but if the USPS cannot afford to pay for these benefits now, what makes it likely that it will be able to pay later, when mail volumes most likely will have plummeted further?

The bill also requires two more years of studies to determine whether a switch to five-day delivery would be viable. These studies would be performed by a regulatory body that has already completed a laborious inquiry into the subject, a process that required almost a year. This seems a pointless delay, especially given that a majority of Americans support the switch to five-day delivery.

We are sympathetic to Congress's wish to avoid killing jobs. And the bill does include provisions we have supported—such as requiring arbitrators to take the Postal Service's financial situation into account during collective bargaining and demanding a plan for providing mail services at retail outlets.

But this plan hits the snooze button on many of the postal service's underlying problems. Eighty percent of the USPS's budget goes toward its workforce; many of its workers are protected by no-layoff clauses. Seven billion dollars' worth of buyouts may help to shrink the workforce, but this so-called overpayment will come from taxpayers' pockets, and it is a hefty price to pay for further delay.

There is an alternative—a bill proposed by Rep. Darrell Issa (R-Calif.) that would create a supervisory body to oversee the Postal Service's finances and, if necessary, negotiate new labor contracts. The bill, which just emerged from committee, is not perfect, but it offers a serious solution that does not leave taxpayers on the hook.

Mr. MCCAIN. I don't know what the ultimate result of the votes in the Senate will be. I do know that if it passes, it will be strongly opposed in the other body, the House of Representatives. If it is passed and signed into law, we will be back on the floor within 2 years addressing this issue again because this is not a solution. This isn't even a mandate. It is a proposal that will do business as usual and an abject failure to recognize there are technological changes that make certain practices obsolete, and that is what this is all about. Is it painful? Yes. Is it difficult? Yes. But the overall taxpayer obviously wants us to act in a fiscally responsible manner.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, knowing we are scheduled to go out at 12:50, I ask unanimous consent to stay in session for no longer than 10 minutes more, so we will break at 1 p.m., for Senator COLLINS and I to respond to Senator MCCAIN—hopefully, sooner than that.

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

Mr. LIEBERMAN. I thank the Chair, particularly since the Chair will be occupied by the distinguished Senator from Montana between now and then.

I wish to respond very briefly to the statement of my friend from Arizona, with a couple big points. The first is that Senator MCCAIN has declared the Postal Service of the United States dead much too prematurely. He compares it to the Pony Express. Of course, electronic mail and other changes have occurred but, today, every day, the Postal Service delivers 563 million pieces of mail—every day. There are businesses and individuals all over our

country who depend on the mail. The estimate is there are approximately 8 million jobs in our country, most of them, of course—almost all of them—in the private sector, that depend in one way or another on the functioning of the U.S. Postal Service.

It is not fair and it is not realistic to speak as if the Postal Service is dead and gone and it is time to essentially bury it with the McCain substitute. I cannot resist saying that Senator COLLINS and I come not to bury the U.S. Postal Service; we come to change it but to keep it alive and well forever because it is that important to our country.

Secondly, Senator MCCAIN speaks as if the substitute legislation, S. 1789, that we are proposing—bipartisan legislation—does nothing; that it is a status quo piece of legislation; it is not even a bandaid on the problem. We all know, because we have talked about it incessantly since we went on this bill, that the Postal Service is in financial difficulty. Incidentally, I wish to say there is not a dime of taxpayer money in the Postal Service. Ever since the Postal Service reforms occurred, it has been totally supported by ratepayers, basically by people who buy the services of the Postal Service, with two small exceptions which are small—one to pay for overseas ballots for members of the military so they can vote and another special program to facilitate the use of the mail by blind Americans. But it has a problem: \$13 billion lost over the last 2 years.

This proposal of ours—Senator COLLINS and I, Senator CARPER and Senator SCOTT BROWN—is not a status quo proposal. It makes significant changes. There are going to be about 100,000 fewer people working for the Postal Service as a result of this bill being passed. There will be mail processing facilities that close. There will be post offices that will be closed and/or consolidated. There will be new sources of revenue for the Postal Service. The bottom line: The U.S. Postal Service itself estimates that our legislation, if enacted as it is now, as it is phased in over the next 3 to 4 years, by 2016, will save the Postal Service \$19 billion a year. This isn't a bandaid. This is a real reform, a real transformation of the Postal Service to keep it alive—\$19 billion.

Let me put it another way. This is a bipartisan proposal. We have worked on it very hard to keep it bipartisan. We think it can pass the Senate and it can ultimately be enacted. If Senator MCCAIN's substitute were to pass the Senate, nobody thinks it is going to get enacted into law. It would not. Certainly, the President of the United States would not sign it, and that will mean nothing will be done. What will be the effect of that? The effect will be that the post office will go further and further into debt and deficit. Also, the Postmaster General will be faced with a choice of either enormous debts and deficits or taking steps that will make

the situation worse—which our bill, through a reasonable process, is trying to avoid—which is a kind of shock therapy whose effect will be, as the McCain substitute would be, to actually drop the revenues of the post office and accelerate its downward spiral.

I think the two numbers to think about—the ones that come from the Postal Service itself—are these: By 2016, if we do nothing, the Postal Service will run somewhere between a \$20 billion and \$21 billion annual deficit. If we pass this bill and it is enacted into law, that deficit will be down to around \$1 billion—a little more—and heading toward balance in the years that follow.

So I urge my colleagues to vote against the McCain substitute and the BRAC amendment. The BRAC-like Commission amendment I think is not necessary. It is not necessary for us in Congress to give up and give in. We have a good resolution to the problem. Incidentally, if we get this enacted, I think we will send a message to the American people that we can face a tough problem that exists in a public service, deal with it in a reasonable way, and ask people to sacrifice but keep a venerable and critically important American institution alive and well.

I thank the Chair and I yield the floor for my distinguished ranking member.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I am only going to speak very briefly. I wish to shine a spotlight on a provision of Senator MCCAIN's substitute that has not yet been discussed that actually raises constitutional issues.

All of us believe the labor force of the Postal Service is too large and unfortunately will have to be reduced, and we do that through a system of buyouts and retirement incentives through a compassionate means very similar to the way a large corporation would handle the downsizing of its employees. But Senator MCCAIN's alternative takes a very different approach. It would have this new control board that would be created to impose on the Postal Service an obligation to renegotiate existing contracts to get rid of the no-layoff provision.

I will say I was very surprised when the Postmaster General signed the kinds of contracts he did this spring. The fact is Senator MCCAIN's amendment—section 304 of which amends section 1206 of existing law—requires existing contracts to be renegotiated. That creates constitutional questions. The potential constitutional issue derives from the contracts clause of article I, which prohibits States from passing laws impairing the obligation of contracts. Of course, this provision does not apply to the Federal Government. The Congressional Research Service has explained in a memorandum to me on this topic in July of 2011 that the due process clause of the

fifth amendment has been held to provide some measure of protection against the Federal Government impairing its own contracts. I ask unanimous consent that the CRS memorandum I just referred to be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, July 7, 2011.

MEMORANDUM

To: Senate Committee on Homeland Security and Governmental Affairs Attention: Lisa Nieman.

From: Thomas J. Nicola, Legislative Attorney, 7-5004.

Subject: Congressional Authority to Alter Postal Service Employee-Management Relations, Including Collective Bargaining Agreements.

This memorandum responds to your inquiry regarding the authority of Congress to alter Postal Service employee-management relations, including collective bargaining agreements. The employee-management authority that Congress has granted to the United States Postal Service in the Postal Service Reorganization Act of 1970, P.L. 91-375, is broader than authority that it has granted to most federal entities. Congress enacted the 1970 Act, codified in title 39 of the United States Code, to enable the U.S. Postal Service to operate more like a business than a government agency. Before this statute became law, postal services were operated by the Post Office Department, a cabinet level government agency.

The Act established the Postal Service as an independent establishment in the executive branch of the United States Government. While Congress applied to the Postal Service some statutes including those relating to veterans' preference and retirement that apply to federal agencies, it provided in 39 U.S.C. section 1209(a) that, "Employee-management relations shall, to the extent not inconsistent with the provisions of this title [title 39 of the U.S. Code], be subject to the provisions of subchapter II of chapter 7 of title 29[.] i.e., the National Labor Relations Act, which governs private sector employee-management relations. By contrast, provisions relating to those relations for federal agencies are codified in chapter 71 of title 5 of the United States Code.

In section 1005 of title 39, Congress identified subjects of Postal Service collective bargaining—compensation, benefits, and other terms and conditions of employment. This scope of subjects differs from the scope for federal agencies identified in chapter 71 of title 5, which is limited to "conditions of employment."

Addressing the transition from the Post Office Department to the businesslike U.S. Postal Service, Congress in 39 U.S.C. section 1005(f), as amended, stated, in relevant part, that:

No variation, addition, or substitution with respect to fringe benefits shall result in a program of fringe benefits which on the whole is less favorable to the officers and employees in effect on the effective date of this section [enacted on August 12, 1970], and as to officers and employees/or whom there is a collective-bargaining representative, no such variation, addition, or substitution shall be made except by agreement between the collective bargaining representative and the Postal Service." (Emphasis supplied.)

In section 1207 of title 39, Congress provided procedures for terminating or modifying collective bargaining agreements. It

stated that a party wishing to terminate or modify an agreement must serve timely written notice on the other party. If parties cannot agree on a resolution or adopt a procedure for a binding resolution of a dispute, the Director of the Federal Mediation and Conciliation Service must appoint a mediator. This section also provided authority to establish an arbitration board under certain circumstances and said that board decisions are conclusive and binding on the parties.

A collective bargaining agreement is a contract between the Postal Service and a recognized bargaining unit. Can Congress affect a collective bargaining agreement through legislative action? The power of Congress over employee-management relations at the Postal Service, including these agreements, may be divided into prospective authority versus authority over existing agreements. Congress has authority to modify the scope of bargaining prospectively. In the Postal Reorganization Act of 1970, Congress granted the Postal Service authority to bargain over compensation, benefits (such as health insurance and life insurance, for example), and other conditions of employment, but it could amend that statute to limit the scope of bargaining subjects in the future. It could, for example, provide that health insurance no longer will be the subject of collective bargaining after collective bargaining agreements that address that subject expire.

A more difficult question is whether Congress could modify agreement terms that the Postal Service and recognized bargaining representatives have bargained collectively and included in collective bargaining agreements before they expire. Article I, section 10, clause 1 of the United States Constitution, the Contract Clause, provides that laws impairing the obligation of contracts shall not be passed, but this prohibition applies to the states, not to the federal government. Nevertheless, the jurisprudence under this clause may help inform an inquiry regarding the power of Congress to modify terms of collective bargaining agreements while they are in effect.

In *United States Trust Co. v. New Jersey*, the Supreme Court said that, "Although the Contract Clause appears literally to proscribe 'any' impairment, this Court has observed that 'the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.'" It added that:

The Contract Clause is not an absolute bar to subsequent modification of a state's own financial obligations. As with laws impairing the obligation of private contracts, an impairment [of those obligations] may be reasonable and necessary to serve an important public purpose. In applying this standard, however, complete [judicial] deference to a legislative assessment of reasonableness and necessity is not appropriate because the state's self interest is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a state could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.

Based on the *United States Trust Co.* case, courts subsequently developed a three-part test when assessing the constitutionality of state action challenged as an impairment of contracts—(1) whether the state action in fact impairs a contractual obligation; (2) whether the impairment is substantial; and (3) whether the impairment nevertheless is reasonable and necessary to serve a public purpose.

Although the Contract Clause does not apply to the federal government, the Due

Process Clause of the Fifth Amendment has been held to provide some measure of protection against the federal government impairing its own contracts, but the limitations imposed on federal economic legislation by the latter clause have been held to be "less searching" than those involving the state legislation under the Contract Clause. In two Depression-era cases, however, the Supreme Court held that some statutes which impaired obligations to pay purchasers of federally issued war risk insurance and bondholders that Congress had enacted as economy measures exceeded constitutional limits.

If a court should be influenced by the reasoning expressed in these cases, it may strike down as a Due Process Clause violation a statute it finds to impair a term of a Postal Service collective bargaining agreement before that agreement expires. If a court should wish to avoid deciding a case involving whether such a statute violates the Due Process Clause, a constitutional ground, it may uphold the statute, but require the United States to pay damages for breaching a term of the agreement. Alternatively, because the limitations on federal impairment of contracts have been held to be "less searching" than those that apply to state impairments under the Contract Clause of the Constitution, which are permitted if found to be "reasonable and necessary," a court may uphold a statute that impairs a term of a current Postal Service collective bargaining agreement and not assess damages against the United States.

Ms. COLLINS. There is also a Supreme Court case, *Lynch v. The United States*, which makes clear that the due process clause prohibits the Federal Government from annulling its contracts and the United States is as much bound by its contracts as are private individuals.

In the landmark case of *U.S. v. Winstar* decided in 1996, the Supreme Court cited *Lynch* for the proposition that the Federal Government "has some capacity to make agreements binding future Congresses by creating vested rights," even though the Contract Clause does not directly apply.

Obviously, one Congress cannot bind another, and no Federal agency can bargain away the right of Congress to legislate in the name of the people. But no one would ever sign a contract with an instrumentality of the Federal Government if that contract could be rewritten by Congress at will.

Recognizing this, the courts have distinguished between acts which affect contracts in general, where the Federal Government is exercising its sovereign powers, and acts directly altering the obligations of contracts to which the Federal Government is itself a party.

The *Winstar* case I mentioned before illustrates this distinction. *Winstar* was brought by a financially healthy Savings & Loan institution that was asked by Federal regulators to take over failing thrifts during the S&L crisis of the 1980s. After *Winstar* entered into a contract with the Federal Savings & Loan Insurance Corporation stipulating that it could count the "goodwill" of the thrifts it took over to offset the liabilities it was assuming, Congress changed the underlying

law. Based on that change, the regulators reneged, declared Winstar “inadequately capitalized,” and seized its assets.

In that case, the Supreme Court held that even though Congress had the right to change the law in general, the Federal Government could still be liable for breach of contract it had entered into with Winstar, and for damages.

I am concerned that if the Postal Service reopens and renegotiates its collective bargaining agreements to comply with the McCain amendment, courts could find the Postal Service in breach of those agreements, and force it to pay damages.

At a minimum, it strikes me that Senator MCCAIN’s language could tie up the Postal Service in litigation for years, which would defeat our efforts to reduce the workforce costs faced by the Postal Service.

Bottom line: I am very concerned that if the Postal Service is forced by the McCain substitute to reopen and renegotiate current collective bargaining agreements, the courts would find the Postal Service in breach of those agreements and force it to pay damages and also that it would be found to be unconstitutional. The approach we have taken does not raise those constitutional concerns. It does not have Congress stepping in to abrogate contracts, which is a very serious and potentially unconstitutional step for us to take.

Finally, I would say I agree with everything my chairman has said. Senator MCCAIN’s amendment does not address the true problems of the Postal Service. Instead, it assumes that the Postal Service is obsolete, that they cannot be saved, and that we should just preside over its demise. I reject that approach.

Thank you, Mr. President.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 1:01 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. WEBB).

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE RULE SUBMITTED BY THE NLRB RELATING TO REPRESENTATION ELECTION PROCEDURES—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S.J. Res. 36.

The question is on agreeing to the motion.

The majority leader.

Mr. REID. Mr. President, we are going to have a bunch of votes today, and we are going to have to do them quickly. I say this to Democrats; I say

it to Republicans: We are going to have—after this first vote, I ask unanimous consent that we have 10-minute votes.

The PRESIDING OFFICER. That is the order.

Mr. REID. And we are going to enforce that. So if people are not here, they are going to miss a vote. Unless there is a situation where we have a close vote, then we will extend it a little bit because that is what the tradition has been. So I repeat, everybody be here or you are going to miss a vote if you are not here at the end of the time.

Mr. President, I ask for the yeas and nays on this matter.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Illinois (Mr. KIRK).

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

The result was announced—yeas 45, nays 54, as follows:

[Rollcall Vote No. 68 Leg.]

YEAS—45

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

NAYS—54

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

NOT VOTING—1

Kirk

The motion was rejected.

21ST CENTURY POSTAL SERVICE ACT

The PRESIDING OFFICER. Under the previous order, the clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 1789) to improve, sustain, and transform the United States Postal Service.

Pending:

Reid (for Lieberman) modified amendment No. 2000, in the nature of a substitute.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate the good work of our colleagues on this legislation. Unfortunately, the legislation spends \$34 billion, all of which would be borrowed, all of which adds to the debt of the United States and is contrary to the Budget Control Act limitations that were passed just last August. It is really a grievous problem, not one that can be avoided lightly.

Just last August we agreed to certain debt limits—the amount of debt we would incur and add to the U.S. Treasury. It was a fought-over agreement, but we reached it and we stood by it. I believe we have a moral obligation to not mislead the people who elected us when we said we intend to stand by the limits on increasing debt. This bill increases debt above that limit. The Congressional Budget Office scores it as adding \$34 billion in debt to the United States.

Chairman CONRAD has certified that a budget point of order is legitimately placed against it. I would expect we would have a motion to waive the budget point of order. I would expect there might be a motion to say, well, we do not agree with CBO or that somehow this is so important we need to add to the debt anyway. But, colleagues, if we mean what we say, if at this time in history we begin to at least stay within the limits we agreed and we don’t do that, then I think we will lose further credibility with the American people.

I respect the work of my colleagues on the bill, but I think we are setting a great precedent. It is a matter of importance for our own integrity and the fiscal stability of America. I believe it is important that we adhere to that limit.

The spending measure, amendment No. 2000 to S. 1789, the 21st Century Postal Service Act, would violate Senate pay-go rules and increase the deficit; therefore, I raise a point of order against this measure pursuant to section 201(a) of S. Con. Res. 21, the concurrent resolution on the budget for fiscal year 2008.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and the waiver provisions of applicable budget resolutions, I move to waive all applicable sections of the act and budget resolutions for purposes of the pending amendment for reasons that we described in the debate we had here on the floor yesterday. The U.S. Postal Service says this bill will, in fact, save \$19 billion a year.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

Mr. LIEBERMAN. I ask unanimous consent that the vote on this motion to