

be immediately notified of the Senate's action.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The majority leader.

#### DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2011—MOTION TO PROCEED

Mr. REID. Mr. President, I move to proceed to Calendar No. 14, H.R. 1.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

Motion to proceed to H.R. 1, a bill making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes.

#### ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business until 4:30 p.m. today, with Senators permitted to speak therein for up to 10 minutes each.

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

The Senator from Washington.

#### WOMEN VETERANS AND OTHER HEALTH CARE IMPROVEMENTS ACT OF 2012

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 564, S. 3313.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (S. 3313) to amend title 38, United States Code, to improve the assistance provided by the Department of Veterans Affairs to women veterans, to improve health care furnished by the Department, and for other purposes, which had been reported from the Committee on Veterans' Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Women Veterans and Other Health Care Improvements Act of 2012".

#### SEC. 2. CLARIFICATION THAT FERTILITY COUNSELING AND TREATMENT ARE MEDICAL SERVICES WHICH THE SECRETARY MAY FURNISH TO VETERANS LIKE OTHER MEDICAL SERVICES.

Section 1701(6) of title 38, United States Code, is amended by adding at the end the following new subparagraph:

"(H) Fertility counseling and treatment, including treatment using assisted reproductive technology."

#### SEC. 3. REPRODUCTIVE TREATMENT AND CARE FOR SPOUSES AND SURROGATES OF VETERANS.

(a) IN GENERAL.—Subchapter VIII of chapter 17 of title 38, United States Code, is amended by adding at the end the following new section:

#### "§1788. Reproductive treatment and care for spouses and surrogates of veterans"

"(a) IN GENERAL.—The Secretary shall furnish fertility counseling and treatment, includ-

ing through the use of assisted reproductive technology, to a spouse or surrogate of a severely wounded, ill, or injured veteran who has an infertility condition incurred or aggravated in line of duty in the active military, naval, or air service and who is enrolled in the system of annual patient enrollment established under section 1705(a) of this title if the spouse or surrogate and the veteran apply jointly for such counseling and treatment through a process prescribed by the Secretary.

"(b) COORDINATION OF CARE FOR OTHER SPOUSES AND SURROGATES.—In the case of a spouse or surrogate of a veteran not described in subsection (a) who is seeking fertility counseling and treatment, the Secretary may coordinate fertility counseling and treatment for such spouse or surrogate.

"(c) CONSTRUCTION.—Nothing in this section shall be construed to require the Secretary to find or certify a surrogate for a veteran or to connect a surrogate with an injured veteran."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1787 the following new item:

"1788. Reproductive treatment and care for spouses and surrogates of veterans."

#### SEC. 4. ADOPTION ASSISTANCE.

(a) IN GENERAL.—Subchapter VIII of chapter 17 of title 38, United States Code, as amended by section 3, is further amended by adding at the end the following new section:

#### "§1789. Adoption assistance"

"(a) IN GENERAL.—The Secretary may pay an amount, not to exceed the limitation amount, to assist a covered veteran in the adoption of one or more children.

"(b) COVERED VETERAN.—For purposes of this section, a covered veteran is any severely wounded, ill, or injured veteran who—

"(1) has an infertility condition incurred or aggravated in line of duty in the active military, naval, or air service; and

"(2) is enrolled in the system of annual patient enrollment established under section 1705(a) of this title.

"(c) LIMITATION AMOUNT.—For purposes of this section, the limitation amount is the amount equal to the lesser of—

"(1) the cost the Department would incur if the Secretary were to provide a covered veteran with one cycle of in vitro fertilization, as determined by the Secretary; and

"(2) the cost the Department would incur by paying the expenses of three adoptions by covered veterans, as determined by the Secretary."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title, as amended by section 3, is further amended by inserting after the item relating to section 1788 the following new item:

"1789. Adoption assistance."

#### SEC. 5. REPORT ON PROVISION OF FERTILITY COUNSELING AND TREATMENT.

(a) IN GENERAL.—Each year, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the fertility counseling and treatment furnished by the Department of Veterans Affairs during the year preceding the submittal of the report.

(b) ELEMENTS.—Each report submitted under subsection (a) shall include, for the period covered by the report, the following:

(1) The number of veterans who received fertility counseling or treatment furnished by the Department of Veterans Affairs, disaggregated by era of military service of such veterans.

(2) The number of spouses and surrogates of veterans who received fertility counseling or treatment furnished by the Department.

(3) The cost to the Department of furnishing fertility counseling and treatment,

disaggregated by cost of services and administration.

(4) The average cost to the Department per recipient of such counseling and treatment.

(5) In cases in which the Department furnished fertility treatment through the use of assisted reproductive technology, the average number of cycles per person furnished.

(6) A description of how fertility counseling and treatment services of the Department are coordinated with similar services of the Department of Defense.

#### SEC. 6. REGULATIONS ON FURNISHING OF FERTILITY COUNSELING AND TREATMENT AND ADOPTION ASSISTANCE.

(a) IN GENERAL.—Not later than 540 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall prescribe regulations—

(1) on the furnishing of fertility treatment to veterans using assisted reproductive technology;

(2) to carry out section 1788 of title 38, United States Code, as added by section 3; and

(3) to carry out section 1789 of such title, as added by section 4.

(b) LIMITATION.—Notwithstanding any other provision of law, during the period beginning on the date of the enactment of this Act and ending on the date on which the Secretary prescribes regulations under subsection (a), the Secretary may not furnish—

(1) to any veteran, any fertility treatment using assisted reproductive technology;

(2) any fertility counseling or treatment under section 1788 of title 38, United States Code, as added by section 3; or

(3) any assistance under section 1789 of such title, as added by section 4.

#### SEC. 7. COORDINATION WITH DEPARTMENT OF DEFENSE ON FURNISHING OF FERTILITY COUNSELING AND TREATMENT.

The Secretary of Veterans Affairs shall coordinate the furnishing of fertility counseling and treatment by the Department of Veterans Affairs with the furnishing of fertility counseling and treatment by the Department of Defense.

Mr. COCHRAN. Mr. President, I will not object to the request made by the Senior Senator from Washington, and I do not object to the policy provisions in this bill. However, I must point out that this bill indiscriminately diverts Overseas Contingency Operations funds, which are necessary to ensure resources, equipment, and supplies are available to our servicemembers deployed across the globe. This is not how the provisions of this bill should be paid for. Taking away funds intended for our men and women who are currently serving could, in time, place some of the veterans that this bill intends to help at greater risk. This legislation could also divert funding intended for the security of our Ambassadors, Foreign Service Officers, and other State Department officials, placing them at additional risk.

Quality healthcare for those who have honorably served our country is something that I think all Senators, including me, support. If the provisions of this legislation are a priority for this body, we should be deliberate in determining how we should pay for them. The Senior Senator from Washington has put forward a thoughtful bill that merits consideration, but I think this body would prefer to consider other means to pay for new programs that do not divert funds intended to keep our troops well-equipped and safe.

Mr. McCAIN. Mr. President, I do not intend to object to the request of the Senator from Washington, and I do not object to the policy provision of this bill at this time. But I strongly object to the Senator seeking to fund these new veterans benefits out of the Department of Defense budget that funds the needs of our military men and women serving in combat overseas.

The cost of Senator MURRAY's bill, provided by the Congressional Budget Office, is \$568 million over 5 years. To cover that cost, Senator MURRAY proposes to strip \$568 million from war-time funding for troops in Afghanistan over the next 5 years without even considering the impact of that cut on their safety and security. This is preposterous. This bill assumes that Congress will still be passing emergency spending bills for Afghanistan 5 years from now, and somehow our troops will be able to bear the risk of having hundreds of millions siphoned from their critical needs for a program that has nothing to do with the war they are currently engaged in. Every dollar requested in the defense budget for our combat forces will be needed to keep them adequately equipped, armed, and engaged in defeating the enemy and coming home with honor.

The proposed offset for this new program is an irresponsible budget gimmick designed to shift the funding burden for these new benefits from VA to DOD. Funding for the DOD Overseas Contingency Operations fund is within the jurisdiction of the Armed Services Committee, and should be considered by the full Senate, rather than slipped into a reported bill at the last minute without debate or discussion.

I also am surprised that Senator MURRAY, a vocal supporter of improving the welfare of our troops, would actually propose cuts to funding for our combat troops without even assessing the impact of those cuts. The job of making that assessment lies within the Armed Services Committee's jurisdiction, and I will seek to ensure that the Senate has an opportunity to make that assessment before passing any legislation that attempts to shift defense dollars from the direct combat needs of our Armed Forces to any new benefits or policies.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the committee-reported amendment be considered; the Murray amendment, which is at the desk, be agreed to; the committee-reported amendment, as amended, be agreed to; and that the bill, as amended, be read a third time.

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

The amendment (No. 3336) was agreed to, as follows:

Purpose: To provide an offset.

At the end, add the following:

#### SEC. 8. FUNDING.

Amounts for a fiscal year to carry out this Act, section 7330B of title 38, United States Code, as added by section 2(a), section 1787 of such title, as added by section 4(a), and the

amendments made by this Act shall be derived from amounts made available for an overseas contingency operation in that fiscal year, if amounts were made available for an overseas contingency operation in that fiscal year.

The committee-reported amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 3313), as amended, was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 3313), as amended, was passed, as follows:

#### S. 3313

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

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"(b) COORDINATION OF CARE FOR OTHER SPOUSES AND SURROGATES.—In the case of a spouse or surrogate of a veteran not described in subsection (a) who is seeking fertility counseling and treatment, the Secretary may coordinate fertility counseling and treatment for such spouse or surrogate.

"(c) CONSTRUCTION.—Nothing in this section shall be construed to require the Secretary to find or certify a surrogate for a veteran or to connect a surrogate with an injured veteran."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1787 the following new item:

"1788. Reproductive treatment and care for spouses and surrogates of veterans."

#### SEC. 4. ADOPTION ASSISTANCE.

(a) IN GENERAL.—Subchapter VIII of chapter 17 of title 38, United States Code, as amended by section 3, is further amended by adding at the end the following new section:

##### "§ 1789. Adoption assistance"

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"(b) COVERED VETERAN.—For purposes of this section, a covered veteran is any severely wounded, ill, or injured veteran who—

"(1) has an infertility condition incurred or aggravated in line of duty in the active military, naval, or air service; and

"(2) is enrolled in the system of annual patient enrollment established under section 1705(a) of this title.

"(c) LIMITATION AMOUNT.—For purposes of this section, the limitation amount is the amount equal to the lesser of—

"(1) the cost the Department would incur if the Secretary were to provide a covered veteran with one cycle of in vitro fertilization, as determined by the Secretary; and

"(2) the cost the Department would incur by paying the expenses of three adoptions by covered veterans, as determined by the Secretary."

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(b) ELEMENTS.—Each report submitted under subsection (a) shall include, for the period covered by the report, the following:

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(b) LIMITATION.—Notwithstanding any other provision of law, during the period beginning on the date of the enactment of this Act and ending on the date on which the Secretary prescribes regulations under subsection (a), the Secretary may not furnish—

(1) to any veteran, any fertility treatment using assisted reproductive technology;

(2) any fertility counseling or treatment under section 1788 of title 38, United States Code, as added by section 3; or

(3) any assistance under section 1789 of such title, as added by section 4.

**SEC. 7. COORDINATION WITH DEPARTMENT OF DEFENSE ON FURNISHING OF FERTILITY COUNSELING AND TREATMENT.**

The Secretary of Veterans Affairs shall coordinate the furnishing of fertility counseling and treatment by the Department of Veterans Affairs with the furnishing of fertility counseling and treatment by the Department of Defense.

**SEC. 8. FUNDING.**

Amounts for a fiscal year to carry out this Act, section 7330B of title 38, United States Code, as added by section 2(a), section 1787 of such title, as added by section 4(a), and the amendments made by this Act shall be derived from amounts made available for an overseas contingency operation in that fiscal year, if amounts were made available for an overseas contingency operation in that fiscal year.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the committee-reported title amendment be agreed to, the motions to reconsider be laid upon the table with no intervening action or debate, and that any related statements be printed in the RECORD.

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

The title amendment was agreed to, as follows:

Amend the title so as to read: "A bill to amend title 38, United States Code, to improve the reproductive assistance provided by the Department of Veterans Affairs to severely wounded, ill, or injured veterans and their spouses, and for other purposes."

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, the Senate has just passed legislation that will bring into focus a real need for the VA to help women veterans and the spouses of male veterans access assistance for one of the most impactful and serious wounds of these wars—reproductive and urinary tract trauma.

As many of my colleagues know, the nature of the current conflict we are involved in and the use of improvised explosive devices leave our servicemembers far more susceptible to very serious injuries, such as reproductive and urinary tract trauma. Army data shows that between 2003 and 2011, we had 2,000 servicemembers suffering from these kinds of injuries. Like so many of our veterans, these men and women come home and want to return to their lives, to find employment and to start a family. But today, when they go to the VA, the fertility services that are available don't meet the very complex needs of these serious injuries. In fact, veterans who have suffered from these injuries find that the VA is specifically barred from providing more advanced assisted reproductive techniques, such as in vitro fertilization. They are, in fact, told—despite the fact that they have made such an extreme

sacrifice for our country—that they can't be provided with the medical services they need to start a family.

One of those veterans I have come to know is SSG Matt Keil and his wife Tracy, who are here with us today. Staff Sergeant Keil, whom I talked about this morning, was shot in the neck while he was on patrol in Ramadi, Iraq, on February 24, 2007, just 6 weeks after he married Tracy. Staff Sergeant Keil instantly became a quadriplegic. Later, when he came home and they wanted to start a family, Tracy and Matt were faced with the fact that they could not access IVF services through the VA, which meant they had to pay \$32,000 out of their own pocket.

Mr. President, the bill we passed today means those families who are coming behind Tracy and Matt won't have to go through the same fight to take care of something that is so vital to so many American families; that is, having a family of their own. This is an important step we have taken today in passing this out of the Senate. I am hopeful that the House will take it up and pass it. And I assure Tracy and Matt that one day, when this bill is signed into law, they will have made a true difference for those families who come behind them, and for that I am eternally grateful.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. COONS. Mr. President, I wish to commend Senator MURRAY before she leaves the floor for her tireless dedication to America's Armed Forces, for her commitment to our veterans and her passion for addressing their very real and very human needs, and for bringing examples from her home community as well as from our country at large of just how much we owe our veterans and in just how many different ways they face challenges as they try to move forward with their lives after their service for us. I wanted to thank her and recognize the Senator from Washington.

**MORNING BUSINESS**

**376TH ANNIVERSARY OF THE NATIONAL GUARD**

Mr. COONS. Mr. President, one of the best things about a good day in the Senate is when we get a chance to visit with friends from home. Earlier today, I had a chance to visit with the Hopkins family. They run a small business in Delaware. And I have had the great joy of spending time with our U.S. Congressman, JOHN CARNEY, our incoming speaker of the house, Pete Schwarzkopf, and friend Quin Johnson today. All of this has brought to mind something I wanted to speak to for a moment, if I might.

I rise today to mark the 376th anniversary of a great American institution that is critical to our safety here and abroad—the National Guard.

The National Guard goes back to the citizen soldier tradition of our colonial-era militia of citizens who took up arms or who came together for collective action in times of natural disaster or of threat. The National Guard today, 376 years later, still has that dual mission—to serve our communities by responding to domestic emergencies and to deploy, when needed, to serve and protect our Nation overseas. While they do all this, they also often hold down full-time civilian jobs. In their daily lives, National Guard troops are teachers and police officers, firefighters and office workers. When called upon by their Governor or Commander in Chief, they change their uniforms and report for duty as civilian soldiers.

In my home State, our Delaware National Guard is on the front lines every day, whether keeping our streets safe after a storm, deploying to Iraq or Afghanistan, or traveling to other parts of the country to help our citizens recover and cities rebuild in the wake of a natural disaster. Organized and managed so capably by Major General Frank Vavala, the Delaware National Guard has the capability to keep us safe. They transport people and supplies on land and through the air. They defend our Nation in cyber space. They support law enforcement's fight against illegal drugs. They are on the scene of any suspicious chemical or biological event, and they enable friendly forces to communicate with each other in war zones.

When duty calls, the Delaware National Guard is there. The 153rd Military Police Company, for example, was deployed to Iraq, where they logged hundreds of combat patrols on some of the most dangerous streets in the world and trained Iraqi police officers in all aspects of their profession. In January, this unit will deploy again, this time to Afghanistan.

The 126th Medical Aviation Battalion was deployed to Afghanistan, where they flew 400 priority medevac missions for over 500 critically injured patients, about half to unsecured landing zones outside of secure walls or fortified structures.

These are just two examples of the many ways the Delaware Guard protects our Nation overseas. But they are also vital to our security here at home. When there is a blizzard, the National Guard uses their humvees and heavy trucks to transport Delawareans with medical emergencies. When Superstorm Sandy struck last month, 120 soldiers traveled with heavy equipment to assist with recovery efforts in New York and New Jersey. When Hurricane Katrina devastated New Orleans in 2005, two C-130 aircraft left from New Castle airports the next day carrying the first of what would be 400 troops from Delaware who assisted with gulf coast recovery efforts.

The National Guard is resourceful, ready to serve, and they go everywhere they are called. These are truly citizen-soldiers.