

1. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, we have a lot more work to do. This will be the last vote of the day, the one coming up.

#### DEPARTMENT OF DEFENSE APPROPRIATIONS ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (H.R. 1) 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.

Pending:

Reid amendment No. 3395, in the nature of a substitute.

Reid amendment No. 3396 (to amendment No. 3395), to change the enactment date.

Reid amendment No. 3397 (to amendment No. 3396), of a perfecting nature.

Reid amendment No. 3398 (to the language proposed to be stricken by amendment No. 3395), to change the enactment date.

Reid amendment No. 3399 (to amendment No. 3398), of a perfecting nature.

Reid motion to commit the bill to the Committee on Appropriations, with instructions, Reid amendment No. 3400, to change the enactment date.

Reid amendment No. 3401 (to (the instructions) amendment No. 3400), of a perfecting nature.

Reid amendment No. 3402 (to amendment No. 3401), of a perfecting nature.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, I rise to raise a point of order against a very small segment of this bill, and I wish to yield myself some time to discuss that at this time.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the critical sections of that act, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Under the previous order, there will be 10 minutes of debate equally divided prior to a vote on the motion to waive.

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I understand the Senator from Pennsylvania wishes to speak. I just need to essentially object to his point of order. I do this because although I know he is indeed well intentioned—Mr. President, the Senate is not in order. This is an important precedent that could be set, and I would like Members not to talk.

The PRESIDING OFFICER. If Members would please take their conversations out of the Chamber if they wish to talk. If not, could they be quiet.

Ms. MIKULSKI. I want them to more than be quiet. We are talking about a precedent in the Senate, so I would like, please, if Senators could take

their conversations either in the back or off the floor.

The PRESIDING OFFICER. Yes. OK. If Senators could be quiet and listen, and if you must talk, could you do it off the floor.

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, the reason I am so insistent is, No. 1, the decorum of the Senate; and No. 2, this is a dangerous precedent. If this point of order is sustained, it will mean \$3.4 billion of urgent disaster relief in this supplemental has to be offset in future appropriations bills. This will mean real consequences this year.

Now, in a \$1 trillion budget and the way we talk about money \$3.4 billion might not seem like a lot, but it does mean a lot in disaster assistance, and it does mean a lot to the Appropriations Committee. This is a \$3.4 billion unspecified cut that will go to domestic programs for fiscal year 2013.

I wish to remind my colleagues we are in a 6-month CR now, so this means right in the middle of a CR, until March, we have to take out an additional \$3.4 billion. This will have a terrible impact on domestic programs, and it is a dangerous precedent. We have never offset disaster assistance, and I urge the adoption of my position.

I yield to the Senator from New York whose community is suffering, and he has done an able job in helping to manage this bill.

Mr. SCHUMER. Mr. President, first, I wish to thank my colleague from Pennsylvania. He didn't try to knock out the whole thing and we appreciate that. Having said that, I urge any of my colleagues in disaster areas to think very carefully before they vote for this. This will be the first time ever when a disaster is declared that we have offset money for it. That will mean that disaster money will be much less readily available in the future. The precedent is an awful one. It is something that goes against 100 years of Democrats, Republicans—north, east, south, and west—voting to, when one area has trouble, send the money, without spending months and months and months fighting about whether to cut this or cut that or raise these taxes or do this or that to offset.

I would say we had this fight when Irene came about, and 19 of our colleagues came to the wisdom that it was a bad idea to offset it, and we didn't.

So I urge and plead with my colleagues, on this quick notice to reverse 100 years of decisionmaking and start invoking offsets for disaster, which this is—it is mitigation. We have always done mitigation. It means that instead of rebuilding in the floodplain, we build in a different place nearby. It means instead of putting all of these machines that are flooded in the basement, we put them on the third floor. It means if there is a beach that is not protected, we build a berm. That is mitigation. It is all related to protecting from a disaster and not making the same mistake of building in a

floodplain or not protecting in a sub-way or whatever.

We have always done it. We have never offset mitigation, and it has been in every disaster relief. So I plead with my colleagues to think twice.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, I have a different plea for my colleagues; that is, to sustain this budget point of order, acknowledging that it does not cut one dime of spending from this supplemental. If my budget point of order is sustained, every single dime, if it were eventually passed—every dime that is allocated for future mitigation would, in fact, be spent for future mitigation.

The question before us is, when we are running trillion-dollar deficits, must we add another \$60 billion on top of that deficit?

So what I have done is I have looked at this bill, and there are many parts that are not directly in aid of any of the victims of Sandy.

Look, my State was hit by that storm, not nearly as bad as New York and New Jersey and Connecticut and some others. But there are real victims of this storm, there are genuine needs, and we need to fund those needs. I am in favor of making sure we do fund the needs that we have. But we have a category of spending that is going for construction for years to come to mitigate against dangers of future storms in future years and future decades. That might be very wise, that might be very appropriate spending, but it is not an emergency.

This is not sandbags around someone's house who is in danger of a storm. That kind of infrastructure spending is the kind of spending we do routinely, but we plan for it and we budget it. If it is, indeed, the priority that many people—probably, including myself—believe it is, then it ought to be weighed in competition with the other pressing needs, and we ought to plan for it and budget for it. That is all I am asking.

So this budget point of order does not cut one dime of spending from this bill. It simply says the \$3.4 billion that is identified for the construction of future mitigation projects would count toward the discretionary spending caps we have in place. Unfortunately, our deficit would grow if all else stays the same, but at least not by that \$3.4 billion. That part would eventually have to be offset with some modest restraint on discretionary spending at some point.

But I would stress that there is not a dime that will be cut from this bill by virtue of this point of order, and it would establish that going forward, hopefully, when we are doing long-term construction projects for future mitigation, we would consider them in the context of the infrastructure spending that they are.

So for that reason, Mr. President, pursuant to section 314(e)(1) of the Congressional Budget Act of 1974, I raise a

point of order against the emergency designation in the appropriation for the Army Corps of Engineers, "Construction," contained in title 4 of the substitute amendment. And I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable section of that act, and I ask for the yeas and nays.

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

Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to waive.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Massachusetts (Mr. BROWN), the Senator from North Carolina (Mr. BURR), the Senator from Oklahoma (Mr. COBURN), the Senator from South Carolina (Mr. DEMINT), the Senator from Oklahoma (Mr. INHOFE), the Senator from Illinois (Mr. KIRK), the Senator from Utah (Mr. LEE), and the Senator from Kansas (Mr. MORAN).

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

The yeas and nays resulted—yeas 57, nays 34, as follows:

[Rollcall Vote No. 231 Leg.]

#### YEAS—57

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

#### NAYS—34

|           |              |           |
|-----------|--------------|-----------|
| Alexander | Grassley     | Murkowski |
| Ayotte    | Hatch        | Paul      |
| Barrasso  | Heller       | Portman   |
| Boozman   | Hoeben       | Risch     |
| Chambliss | Hutchison    | Roberts   |
| Coats     | Isakson      | Rubio     |
| Collins   | Johanns      | Sessions  |
| Corker    | Johnson (WI) | Thune     |
| Cornyn    | Kyl          | Toomey    |
| Crapo     | Lugar        | Wicker    |
| Enzi      | McCain       |           |
| Graham    | McConnell    |           |

#### NOT VOTING—8

|            |        |       |
|------------|--------|-------|
| Brown (MA) | DeMint | Lee   |
| Burr       | Inhofe | Moran |
| Coburn     | Kirk   |       |

The PRESIDING OFFICER. On this vote, the yeas are 57, the nays are 34. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained. The emergency designation is removed.

#### VOTE EXPLANATION

• Mr. BROWN of Massachusetts. On Thursday, December 20, 2012, my father, Claude Bruce Brown, passed away. Growing up, my relationship with my Dad was a complicated one. As we both matured, our relationship, respect and love for each other also matured. He was a good man with a big heart. Our family—my wife Gail, and my daughters Ayla and Arianna—are thankful to his wife, Peggy, her family and for their unwavering love for him during his difficult final days. I will miss my father's guidance and his sense of humor.

As a result of my father's passing, I am departing Washington so that we can be together and mourn together as a family. Unfortunately, that means that on Friday, December 21, 2012, I am not present in Senate for three rollcall votes. In my nearly 3 years of service in the Senate, I have only missed one vote, and I want to be clear about how I would have voted on the measures that are before the Senate today.

I strongly support the Conference Report to accompany H.R. 4310, the Department of Defense Authorization bill, and I would have voted aye in favor of its passage. Providing the necessary resources to our men and women in uniform is critical, and as a member of the Senate Armed Services Committee, I applaud the authors of this legislation for their work on this measure. It contains many provisions that I believe are important to both the Commonwealth of Massachusetts and the security of our Nation.

Additionally, I would have supported the motion to invoke cloture on the Reid substitute amendment No. 3395 to H.R. 1, the vehicle for the Hurricane Sandy emergency supplemental appropriations bill. Hurricane Sandy had a major impact on the Commonwealth of Massachusetts and had a terrible toll on New York and New Jersey especially.

Finally, on the motion to waive the Budget Act point of order on a small portion of that disaster response bill that did not pertain to responding to the impacts of Hurricane Sandy, I would have voted no. I believe that funding for infrastructure improvements to mitigate the impacts of future storms is critical, but should be fully offset in the future. This is consistent with all of the new spending efforts that are considered under the bipartisan budget controls currently in place.●

The PRESIDING OFFICER.

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I know the hour is late and there are Members who want to go home. We have been through an emotional roller coaster here in the Senate, as has the Nation. One week ago we saw this terrible, horrific shooting in Connecticut. While the Nation mourned what happened there, we mourn here in the Senate because of the passing of Senator Inouye. Yet the work of Senator

Inouye went on through the urgent supplemental.

I would like to thank the Senator from New York for helping with the management of this bill, as well as the Senator from Vermont and Senator LANDRIEU, the chair of the Homeland Security Subcommittee, who have all done good work.

DAN INOUE

We Senators know we are only as good as our staff. As the Inouye era goes through its transition, I would like to thank the Inouye staff first of all for everything they have done on this bill. I thank the Inouye staff for all they did in staffing for truly one of the great icons in the Senate. Now, do not think the Inouye staff is going to go away under BARBARA MIKULSKI. I want to publicly thank them on behalf of all of the Senate that they held their own emotions in control so we could move forward with the Senate business. That is what professional staff is. They are the highest and the best of the best. I think the Senate owes them a debt of gratitude. I will lean on them to be back here on Thursday to move this bill in regular order.

I want to just end today's proceedings by saying God bless Senator Inouye and all that he meant to America, and God bless the staff, who has helped him be one of the greatest Senators in American history.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Would the Senator yield?

Ms. MIKULSKI. Yes.

Mrs. HUTCHISON. Mr. President, I want to say that we all will miss Senator Inouye. He was one of the most loved people who have ever served in this Senate. But I also want to say that we have passed on now and will take the bill in its entirety later. But because of the leadership of Senator MIKULSKI and many others working together, we now have a start on the supplemental appropriation.

We have worked in the Senate together to accommodate the concerns of many on our side about that bill. We have now had a say. I think there will be overwhelming support now for going forward. I think that is due to the ability of Senator MIKULSKI to step to the plate and become the first woman chairman of the Appropriations Committee in the history of the Senate.

She has already shown the leadership that will continue in her tenure as chairman. I have worked with her as the ranking member of the subcommittee this last year on appropriations. She has been chair, and I have been the ranking member. I will say that every time we have had a disagreement, it has been worked out, and we have passed our bills, our legislation. That is what is going to happen next year as she becomes the chairman of Appropriations. I think it is a good day for the Senate.

Ms. MIKULSKI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCHUMER. 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. SCHUMER. Mr. President, first, I would like to congratulate Senator MIKULSKI on a fine first day on the floor as chair of Appropriations. We are all excited about it on both sides of the aisle and expect great things of that committee next year. Perhaps there will be a change—we will get appropriations bills done, get them on the floor, and move them under her leadership.

I also want to thank Senator LANDRIEU, who is not here, who really helped out as well, as well as Senator MURRAY and Senator FEINSTEIN. I thank them very much.

I also thank the staff, which really is professional. In England, they are a civil service. It is the highest calling, it is professional, and it works hard no matter who is in charge. They do a great job. You are our English civil service, which is a very high compliment.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. 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.

The Chair will announce that following the invoking of cloture on Senate amendment No. 3395, the motion to commit fell, being inconsistent with cloture.

The Senator from Alabama.

TRIBUTE TO NAVY COMMANDER JEFFREY A. BENNETT II

Mr. SESSIONS. Mr. President, I rise today to honor Navy CDR Jeffrey A. Bennett II. Commander Bennett served as a military fellow in my office since December of last year. He brought to public service the same passion and honor he brought to military service.

Commander Bennett is a 1992 US Naval Academy graduate who was nominated for the academy by the chairman of the Armed Services Committee, CARL LEVIN, several years ago.

He came to my office after a tour serving as captain of the USS Stockdale, an Arleigh Burke class guided missile destroyer. I know he was an excellent captain, indeed, I have personally observed Commander Bennett's abilities. I am very impressed. He has a good strategic grasp of America's challenges, while also mastering the details necessary to fully grasp military budget and financial issues, among other matters that we deal with.

His command of defense authorization and appropriations legislation from both the House of Representatives and the Senate has been exceptional. He consistently puts in late nights and long weekends studying the details of legislation affecting programs that are vital to our national defense and the State of Alabama.

More importantly, Jeff possesses excellent judgment. I have valued his judgment and insight on global issues as well as the more rigorous and detailed issues that come up in the Senate. I can say without hesitation, he has fulfilled the high reputation that the Navy Fellowship Program has earned in every way. He has been a tremendous resource to my office. He is a man of integrity, who puts his country first. He is committed to serving America in whatever role he is given. All the while, he carries out his duties with exceptional grace, collegiality, and positive spirit. I am exceedingly impressed with Jeff, both as a person, an officer, and a staff member.

His time in my office has gone too quickly. We will miss the force of his fine mind, his hard work, and his positive approach to all challenges. The Navy most surely has an unusually talented and valuable officer in Commander Bennett.

Commander Bennett has served my office with honor and distinction, truly personifying the qualities of a U.S. naval officer.

I would be remiss if I did not thank his wonderful wife Heather and his children Grace and Jay. As is the case with all our military families, we know that Commander Bennett's service is one supported and shared by the whole family. He is, indeed, a great family man.

I look forward to following his bright career and continuing service to God and country.

I yield the floor.

The ACTING PRESIDENT pro tempore. The majority leader.

UNANIMOUS-CONSENT AGREEMENT—H.R. 5949

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding cloture having been invoked, at a time to be determined by the majority leader, after consultation with the Republican leader, the Senate proceed to the consideration of Calendar No. 510, H.R. 5949; that the only first-degree amendments in order to the bill be the following: LEAHY, MERKLEY, PAUL, WYDEN; that there be 30 minutes of debate equally divided between the proponents and opponents on each amendment; that there be up to 5 hours of debate on the bill equally divided between the proponents and opponents; that upon the use or yielding back of time, the Senate proceed to vote in relation to the amendments in the order listed; that there be no amendments in order to any of the amendments prior to the votes; that upon disposition of the amendments, the bill be read a third time and the Senate proceed to vote on passage of the bill, as amended, if amended.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MCCONNELL. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. REID. Mr. President, I ask unanimous consent that the request be modified—I reluctantly do this—to set a 60-affirmative-vote threshold on each of the amendments and passage of the bill.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The Senator from Oregon.

INTELLIGENCE AUTHORIZATION

Mr. WYDEN. Mr. President, both sides are working to pass the intelligence authorization bill for 2013.

I voted against this legislation when it was marked up in committee. I objected to it here on the floor last month. But I am able to support it at this time.

The bill has a number of valuable provisions in it, and I thank Chairwoman FEINSTEIN and Vice Chairman CHAMBLISS for making the changes in the bill to address my concerns.

The changes Senators FEINSTEIN and CHAMBLISS have made would remove a number of provisions that were intended to reduce unauthorized disclosures of classified information, of course, known as leaks.

I objected to these provisions because, in my view, they would have harmed first amendment rights, led to less informed public debate about national security issues, and undermined the due process rights of intelligence agency employees, without actually enhancing national security.

I am going to take a few minutes to explain my views on this so that those who are not on the Intelligence Committee and who have not heard this issue addressed before will understand what the debate was about and what I believe has been accomplished.

I certainly agree with Senators that unauthorized disclosure of national security information, known as leaks, is a serious problem. Unauthorized disclosure of sensitive information can jeopardize legitimate military and intelligence operations, and even put lives at risk. So I do believe it is appropriate for Congress to look for ways to help the executive branch protect information that intelligence agencies want to keep secret, as long as Congress is careful not to do more harm than good.

Personally, I have spent more than 4 years working on the legislation to increase the criminal penalty for those who are convicted of deliberately exposing covert agents, and I was pleased that, with the help of Senators on both sides of the aisle, that legislation was finally signed into law in 2010. So I am all for the Congress recognizing that leaks are a serious problem and for doing things to show the men and women of the U.S. intelligence community that the seriousness of this issue is recognized in this body.

It is important for Congress to remember, however, that not everything

that is done in the name of stopping leaks is necessarily wise policy. In particular, I think Congress ought to be extremely skeptical of any antileak legislation that threatens to encroach on the freedom of the press or that reduces access to information that the public has a right to know.

A number of Senators may be aware that my father was a journalist who reported on national security issues. Among other books, he wrote what has been called the definitive account of the Bay of Pigs invasion, as well as an authoritative account of how the United States came to build and use the first atomic bomb. Accounts such as these are vital to the public's understanding of national security issues. Without transparent and informed public debate on foreign policy and national security topics, American voters are ill-equipped to elect the policymakers who make important decisions in these areas.

Congress too would be much less effective in its oversight if Members did not have access to informed press accounts on foreign policy and national security topics. And while many Members of Congress do not like to admit it, Members often rely on the press to inform them about problems that congressional overseers have not discovered on their own. I have been on the Senate Intelligence Committee for 12 years now, and I can recall numerous specific instances where I found out about serious government wrongdoing—such as the NSA's warrantless wiretapping program or the CIA's coercive interrogation program—only as a result of disclosures by the press.

With all of this in mind, I was particularly concerned about sections 505 and 506 of this bill because both of them would have limited the flow of unclassified information to the press and to the public. Section 505, as passed by the Intelligence Committee, would have prohibited any government employee with a top secret, compartmented security clearance from “entering into any contract or other binding agreement” with “the media” to provide “analysis or commentary” concerning intelligence activities for a full year after that employee left the government.

That provision would clearly have led to less-informed public debate on national security issues. News organizations often rely on former government officials to help explain complex stories or events, and I think it entirely appropriate for former officials to help educate the public in this fashion.

I am also concerned that prohibiting individuals from providing commentary could be an unconstitutional encroachment on free speech. For example, if a retired CIA Director wishes to publish an op-ed commenting on a public policy debate, I see no reason to ban that person from doing so even if they have been retired less than a year. This provision also would have said that retired officials who comment in

the media would not be able to serve on advisory boards for the intelligence community, which I believe would have deprived the community of valuable knowledge and advice.

Section 506 would also have led to a less informed debate on national security issues by prohibiting nearly all intelligence agency employees from providing briefings to the press, unless those employees gave their names and provided the briefings on the record.

It seems to me that authorized unclassified background briefings from intelligence agency analysts and experts are a useful way to help inform the press and the public about a wide variety of issues, and there will often be good reasons to withhold the full names of the experts giving those briefings. I have seen no evidence that making it harder for the intelligence agencies to provide these briefings will benefit national security in any way. So I see no reason to limit the flow of information in this manner.

The third provision I thought was troubling was section 511, which would have required the Director of National Intelligence to establish an administrative process under which he or she and the heads of the various intelligence agencies would have had the authority to take away pension rights from an intelligence agency employee or a former employee. That could be done if the DNI or the agency head determined that the employee knowingly violated his or her nondisclosure agreement and disclosed classified information.

I have been concerned that the Director of National Intelligence himself said this provision would not be a significant deterrence to leaks, and that it would neither help protect national sensitive security information nor make it easier to identify and publish actual leakers.

Beyond these concerns about the provision's effectiveness, I have also been concerned that giving intelligence agency heads broad new authority to take away the pensions of individuals who have not been formerly convicted of any wrongdoing could pose serious problems for the due process rights of intelligence professionals, particularly when the agency heads themselves have not told Congress how they would interpret and implement the authority.

As many of my colleagues will guess, I was especially concerned about the rights of whistleblowers who report waste, fraud, and abuse to the Congress or the inspector general. I have outlined these due process concerns in more detail in the committee report that accompanies this bill.

I would just note for a moment that I was particularly concerned that section 511 would have created a special avenue of punishment that only applied to accused leakers who worked for an intelligence agency at some point in their career. There are literally thousands of employees at the Department of Defense, State, and Jus-

tice, as well as the White House, who have access to sensitive national security information. I do not see a clear justification for singling out intelligence community employees when there is no apparent evidence these employees are responsible for a disproportionate number of leaks.

For what it is worth, Robert Litt, the general counsel for the Director of National Intelligence told the American Bar Association last month that in his view these proposals, “really would not have any deterrent impact or punitive impact on leaks, and might in fact have an adverse impact on the free flow of information to the American people.”

In summary, I am grateful to the chair of the Intelligence Committee, Senator FEINSTEIN, and vice chairman, Senator CHAMBLISS, for responding to the concerns that I have outlined by removing nearly all of the antileak provisions from this legislation. The provision that remains would require the executive branch to notify the Congress when they classify information to disclose it to the press.

I believe this provision will lead to more informed public debate by making it clear to Members of Congress whether particular press reports are based on authorized but unattributed disclosures that we can respond to as we see fit, and unauthorized leaks that would not be responsible for us to confirm or deny. So I believe that particular provision is useful, and I commend the chair and vice chairman for including it.

In summary, I think we all understand that in these important intelligence debates—and I remember when the Presiding Officer was on the committee and doing good work—we always understood that it came down to striking a balance. There is something of a constitutional teeter-totter where on one side we have protecting collective security, and on the other said we have the public's right to know and the individual liberties of the American people.

As written, as reported by the committee, I believe that legislation would have seriously put out of balance the constitutional “teeter.” I think it would have harmed legitimate first amendment rights. I think it would have done damage to the public's right to know. I believe it would have discouraged the ability to ensure that we had a thorough and adequate discussion of issues that are so important for the American people, as the American people look to the Congress of the United States, and particularly this body, to strike the appropriate balance, the right balance, between protecting our country at a time when there are serious threats and, on the other hand, protecting our individual liberties and protecting the public's right to know.

With the changes the Chair, Senator FEINSTEIN, and the vice chair have accepted, I believe this legislation now

strikes the right balance. With both sides working on an agreement to improve the intelligence authorization bill for 2013 by unanimous consent, it is my hope that legislation will be approved by unanimous consent shortly.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

#### THE FISCAL CLIFF

Mr. SESSIONS. Mr. President, President Obama made a statement within the last hour or so. He called on Congress to act to avoid the fiscal cliff.

We know last night the House was unable to bring forward a bill that would deal with the fiscal cliff. Previously, they passed a bill that would have solved that problem and put us on the right path, but they did not pass another bill last night.

The Senate has not acted. There has been a lot of criticism of the House, that the House failed to pass legislation last night. However, the Senate has passed no legislation.

The President made a little speech this afternoon, and I take it as a serious statement. But previously he made a speech on his budget plan. It sounded good. It had a lot of things in it that sounded good. I believe Congressman RYAN, the budget chairman in the House, sent it to the Congressional Budget Office and asked that they score it. A score means they analyze how much taxes are going to be raised—exactly how much—how much spending is going to be increased or reduced, and then they lay out an analysis, called a score, of what that proposal actually will do. That is what how we are supposed to consider budgets here.

So they sent the President's previous speech over to the Congressional Budget Office. The Congressional Budget Office said: You cannot score a speech. Sorry. Well, you cannot score a speech.

We are about to come back in next week. Maybe they will try to finish Thursday, maybe go into Friday. But we do not need to have a serious matter involving more than \$1 trillion of the U.S. taxpayer's money dropped on the Senate next Thursday without us being able to read it and analyze it and having it scored. We can't be expected to rubberstamp it like the old Soviet Politburo, the Duma, where leaders would put out the word to the members they would all vote just like that, 445 to 5 or something like that. And they called themselves a democracy.

We do not need that in the Senate. We, each Senator, represent individual Americans, millions of them. They expect us to know what we are voting on. Secret meetings and secret talks between just the Speaker and the President is not a good process. I do not know what is going on in these talks. I am the ranking member of the Budget Committee. I am just one Member of Congress who has a role in this process. Many others have a lot bigger role than I have, but none of us know what is going on in these secret meetings.

But each Senator has an equal vote. Each Senator has an equal responsibility to represent their constituents.

So I am uneasy about this process. So I will just say this: Nobody should criticize the House of Representatives for not producing legislation last night until they have passed their own proposal. The Senate has had just as much time as the House to lay out a plan. Months ago the House laid out a 10-year budget plan that would put America on a sound financial course.

Everybody can have different views on it, but it is a comprehensive plan that would start reducing our deficits and put us on a good long-term course. It has been complimented by people on both sides of the aisle. Meanwhile, the Senate has produced nothing. We have gone 3 years without a budget. We have not had a serious and broad debate about the financial challenges of America. Senator CONRAD had a number of very important hearings with witnesses 2 years ago in the Budget Committee. We talked about the issues. No bill was brought forth in committee that was actually marked up. That was a decision made by the Democratic leadership. They decided not to bring forth a budget. It was calculated. They never brought one forward despite the fact the law requires one. The United States Code requires a budget be brought up by April 1. They decided not to do so and would take the criticism from people like me. They took their lumps and never brought a budget forward.

Now for 3 years, they never produced a concurrent budget, but they have had great fun attacking Congressman RYAN in the House, who passed a budget, a comprehensive, historic budget that would change the debt course of America—never having produced anything. But we have had a number of speeches, a lot of speeches, a lot of outlines, a lot of proposals and schemes and plans, difficult to score, and never finally reaching fruition so that they could actually be considered by this body.

So I guess what I would conclude with is to say I am glad the President discussed the budget problem in a little speech this afternoon. He has an entire Treasury Department. He has a Director at the Office and Management and Budget overseeing hundreds of budget experts. They have more than enough capability to produce detailed financial plans and make these plans public. He could make his detailed plan public today. Presumably, he would not have made a speech today if someone in the OMB or the White House or the Treasury Department had not approved the outline of his plan. At the very least, that outline ought to be placed in print for everyone to see.

Senator REID should bring it up on the floor. It should be sent to the Congressional Budget Office to be scored. It should be analyzed. They should do that long before the Senate meets next Thursday. It should have been done a month ago.

I do find it odd—think about this—that the President has not laid out a plan since the election over a month ago. He won the election. He said certain things he wants to see in a plan, higher taxes and more spending. Indeed, he had some spending cuts. He said: My plan cuts spending. But he has failed to note and acknowledge that the plan, as reportedly laid out by Secretary of Treasury Geithner in closed meetings, had far more spending increases than spending cuts. So the President's proposal as laid out by Secretary Geithner, on net, increases spending. It increases spending, it does not reduce spending.

It has some reductions of spending in it, but spending increases overwhelm the spending reductions. So it is not right, is it, for the President of the United States to say: I have a plan to cut spending. He has been meeting in secret with BOEHNER, so we have to base this on reports, but this is what it appears to do.

I believe Senator REID would serve the President well if he called him up and said: Let's get that fiscal cliff proposal over here and have your team meet with my staff, and we will publish it on Saturday. Congress can begin to look at it, and maybe we can beat this January 1 deadline and not go over the cliff. That would be my suggestion as to how we should proceed, and every Senator should have as much time as possible to study it. It should be made available to the House because they would ultimately also be called on to vote on it. Everyone should see it as soon as possible. That is the way government should be run.

I have written an op-ed, printed in the Wall Street Journal and elsewhere, that says America would really be better off had we used the legitimate committee process of the Senate to address this problem. The President can advocate for his views, the Republicans can advocate for their views, and the Democratic Senators can advocate for their views. We would actually have votes, and some of them would be tough votes, but we can begin to see where we stand, where the votes are.

If somebody wants to raise taxes and it gets voted down and somebody wants to cut taxes and it gets voted down—those votes happen over a period of time, and the numbers are all out there for everyone to see. At that point, it is much easier to tell your constituents: I have truly fought for the things I believe.

Now, I think it is best for America that we reach a compromise. That would be better than this process by which the whole Senate sits while the Speaker of the House and the President of the United States meet to develop a plan that we are presumably expected to, like the old Communist Duma, ratify at the eleventh hour without time to actually study it, with no real input. That is how this government, this Senate, was meant to work.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WYDEN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The majority leader.

AMENDMENTS NOS. 3396 AND 3398 WITHDRAWN

Mr. REID. Mr. President, I ask unanimous consent that the following amendments be withdrawn: Nos. 3396 and 3398.

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

#### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak for up to 10 minutes each.

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

#### THE "DAIRY CLIFF"

Mr. LEAHY. Mr. President, I have spent time on the Senate floor this week talking about the emergency supplemental appropriations bill to address Hurricane Sandy. But today I remind the Congress of another impending disaster. Unlike Sandy, but exactly like the fiscal cliff crisis, this is a man-made disaster that can and must be averted by December 31. Unfortunately, this calamity has been artificially created and forced upon us by forces of stalemate and obstruction in the House of Representatives. This disaster involves the Farm Bill and what happens on the first of January if the House continues to hold the Senate-passed Farm Bill hostage.

The American people have heard again and again about the fiscal cliff. Today, once again, I am talking about the "dairy cliff" that awaits us if the House continues to block action on the Farm Bill. A full six months have passed since the Senate approved a strong Farm Bill with bipartisan support. We came together in the Senate and passed a 5-year Farm Bill that contains some of the most significant reforms in agricultural policy in a generation, while providing \$23 billion in real deficit reduction.

After we passed the Senate Farm Bill, the House Agriculture Committee held a markup of their bill in July and passed a bipartisan bill out of Committee. Regrettably, that is where their work ended. The leadership in the House has refused to even bring their bill to the floor for debate, something that has not happened in the past 50 years.

Inaction by the House caused the Farm Bill to expire on September 30, terminating authorizations for a long list of important programs that benefit farmers, rural communities, consumers, and the 16 million Americans whose jobs depend on agriculture. Chairwoman STABENOW was on the floor earlier this week to point out the

fact that it has been 80 days since the Farm Bill expired. That is 80 days that our farm families and small businesses have been waiting and holding their breath. This is artificially generating untold uncertainty that is costing farmers, consumers and our entire economy in very real and highly unpredictable ways. This not only is unprecedented, it is legislative malpractice. It threatens great harm to the Nation and the American people. And it is wrong. Yet the Nation, including Vermont dairy farmers, incredibly enough are now on the verge of plunging over the dairy cliff.

By failing to even consider a Farm Bill, the House leadership has driven us straight to the edge of this dairy cliff and now is refusing to turn the wheel or put a foot on the brake. This is a pointless and dangerous game of chicken, dragging all Americans along for the ride.

On January 1—a mere 11 days from now—the final shoe will drop when the U.S. Department of Agriculture will be required to implement what is known as "permanent law" for our Nation's dairy industry. The Secretary of Agriculture and his staff have been—quite literally—dusting off old paper files and mimeographed notes from the 1940s and 50s to review the Agricultural Act of 1949. Without a new Farm Bill, on January 1 the Nation will be forced to revert to the parity pricing that was part of that long-ago law that was passed a few short years after the end of World War II.

The House's inaction on its own version of the Farm Bill, and its obstruction of the Senate bill—a Senate bill that saves taxpayers \$23 billion—will force the Secretary of Agriculture to implement a law from the middle of the last century. This archaic law will force the Federal Government to spend billions of dollars to buy and store dairy products to help raise the price of fluid milk for dairy farmers. The Secretary will have to keep spending until he is able to raise the price of fluid milk by 60 or 70 percent. This is pointless and wasteful Federal spending. And it is even worse than that. Taking those products off the market will drive up consumer prices—prices that struggling families must pay, from coast to coast, just to put food on the table—as early as next month. And that's not the end of this needless waste. The Department of Agriculture then will have to pay still more taxpayers' dollars to store all of these dairy products.

So rather than pass the Senate Farm Bill that saves \$23 billion, the House is choosing to put the Secretary of Agriculture on a path to having to spend billions of dollars on dairy products, paying to store those products, and driving the price of milk through the ceiling for consumers. This is not even to mention the effects this could have on world prices and the harm it will cause for the vulnerable millions worldwide who rely on dairy products

for their basic nutrition. That, in summary, is what the dairy cliff is all about.

Every 5 years for the last 60 years, Congress has passed a Farm Bill. Never before has the Farm Bill expired like this. And now on January 1 we will implement market-distorting dairy policy so old that 49 current members of the Senate—including the Chairwoman of the Senate Agriculture Committee—were not even born when it was signed into law by then-President Harry Truman.

Market chaos will erupt if we do not divert from this disastrous, reckless, needless, man-made path. Chaos, from the fact that farmers will be pressed to increase production at this inflated price, and chaos as we see an influx of imported dairy products as processors in other countries would divert products to the U.S. It is a rollercoaster of milk prices that, in the end, will benefit no one and hurt everyone. It is the kind of rollercoaster of dairy prices that the reforms we included in the Farm Bill are designed to address. As milk floods the market, the USDA will have to buy even more milk to keep up. Economists at the USDA say that implementation of permanent law for dairy would cost at least \$12 to \$15 billion per year. That does not include the cost of storing these dairy products. The USDA may not have enough storage space, and once USDA fills every warehouse at its storage facility in Kansas City, it will have to bring the rest to Washington and fill every closet at the Department of Agriculture's sprawling South Building with cheddar cheese and powdered milk.

The effects of these purchases will reverberate throughout the economy, and time is running out. The cascade of damage will be felt by our farmers, our food processors, our grocery stores, and by American consumers and taxpayers. It will also be felt by the 16 million Americans with jobs in agriculture. All at a time when they can least afford it.

Farmers in Vermont are very concerned that we are headed over this dairy cliff, and inaction on the Farm Bill has left the Nation's dairy farmers with no safety net, since the Milk Income Loss Contract Program expired on September 30.

The House of Representatives is not giving our farmers, and especially our dairy farmers, a fair deal. We have been sent here to do a job, and it is not asking too much that Congress pass a five year Farm Bill, and on time. We heard Senator STABENOW speaking earlier this week about the agricultural disaster programs that have expired, in a year when we have experienced record droughts, terrible freezes, and then historic damage to farms as Hurricane Sandy stormed through the Garden State.

Also at stake are eight important energy programs that have expired and programs to support America's organic farmers, specialty crop producers and beginning farmers. Close to my heart