

EXECUTIVE SESSION

NOMINATION OF JOHN OWEN BRENNAN TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of the following nomination, which the clerk will report.

The bill clerk read the nomination of John Owen Brennan, of Virginia, to be Director of the Central Intelligence Agency.

Mr. McCONNELL. Mr. President, I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. THUNE. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for up to 12 minutes.

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

ECONOMIC GROWTH

Mr. THUNE. Mr. President, I come to the floor to speak about spending and its impact on economic growth. I think it is important Washington closely considers the true impact Federal spending and our soaring national debt are having on economic growth.

Over the past few weeks, the White House and the President have been out campaigning across the country and making statements aimed at causing fear and anxiety about the sequester. The White House has painted the sequester—which, keep in mind, amounts to just 2.4 percent of all Federal spending—as something which would lead to an economic disaster in this country.

The White House attempts to cause fear and anxiety have fallen flat. What is more, many of the claims which were made were simply false. In fact, the critics agree.

Bill Keller wrote in the New York Times: “The White House spent last week in full campaign hysteria.”

The Washington Post issued four Pinocchios with regard to false claims made by Education Secretary Arne Duncan about the sequester’s impact on teachers’ jobs.

The National Journal states: “The White House’s strategy to exaggerate the immediate impact of the cuts has backfired.”

In Politico: “For all the hype, spin and blame exchanged over the across-the-board cuts, the reality is they don’t mean the sudden economic collapse of America.”

It is important to see the sequester in its overall context. All the hype associated with this could be analogous, I suppose, to all the hype we had yester-

day about the weather. Everybody expected we were going to have the blizzard of 2013, and it never materialized. All of the predictions with regard to doom and gloom relating to sequester have also not amounted to very much.

The American people have picked up on that. I think most of them agree, if you look at public opinion polls, that Washington does need to tighten its belt. Washington does need to reduce its spending. Washington needs to lessen the appetite it has to take more of the American taxpayers’ money and spend it on what most taxpayers view to be not really necessary.

When you talk about a 2.4-percent reduction in overall Federal spending, most Americans, when they evaluate their own financial situations, come to the conclusion most of them probably could absorb, if they had to, a 2.4-percent reduction in their own spending. They would look at their budgets in very realistic ways. They would scrutinize and examine where they could find spending which is low priority, things they could live without. What we have seen here in Washington from the administration is various heads of agencies and departments going out and trying to identify the biggest, most high-profile thing for dramatic effect in an attempt to scare and frighten the American people.

The American people recognize, and hopefully the administration has come to the conclusion as well, a 2.4-percent reduction in overall Federal spending is something we need to absorb here in Washington, DC, and demonstrate to the American people we are serious about getting Washington’s fiscal house in order.

I have long maintained the sequester is not the best way to rein in Federal spending. There is a better way to do so. The reductions called for in the sequester disproportionately impact certain areas of the budget. We all know about the impact on the national security budget, which represents only 20 percent of Federal spending but gets 50 percent of the cuts in the sequester.

I would have preferred a different approach. Given the refusal of President Obama and Senate Democrats to come to the table and find alternative savings, the sequester has gone into effect. The President and most Senate Democrats wanted to see an increase in taxes, something many of us believe would be very harmful to the economy. If you look at what the President has already received in terms of tax increases since he has been in office, it amounts to about \$1.7 trillion.

If you look at the last 4 years and all the promises which were made about additional spending, stimulus spending, \$1 trillion in additional stimulus spending back when the President first took office, how that would impact the economy, we were told it would take unemployment down below 6 percent. We all know what has happened. We continue to experience sluggish, slow, anemic growth with chronic high unemploy-

ment, and we continue to pile massive amounts of debt on the backs of our children and grandchildren.

While the President has been seeking to cause alarm and cast blame with regard to the sequester, one must question the economic arguments he is making. The President and his allies in Congress claim he inherited a bad economy and increased spending is necessary to stimulate economic growth. President Obama’s agenda, since he has been in office, has been to spend more, tax more, and regulate more.

As I mentioned earlier, over \$1.7 trillion in new taxes has been imposed to be signed into law since he took office. The most recent of that, the fiscal cliff, was \$620 billion on January 1. If you add up the tax increases in ObamaCare, there is over \$1 trillion there. If you look at the \$518 billion in new regulations which have been approved since the President took office, you may see we put an enormous amount of cost, burden, new requirements, mandates, and harm to the economy and the small businesses which create jobs: \$1.7 trillion in new taxes, the \$518 billion in new regulations.

What has been the impact of those policies? It is pretty clear average economic growth under this President has averaged eight-tenths of 1 percent, .8 percent of the overall share of the economy, GDP. This is less than 1 percent economic growth, on average, in the 4 years this President has been in office.

To put it in perspective, if you look at past Presidents when we have had economic downturns and recessions, President Reagan inherited a bad economy too. When he came to office, we were faced with a series of real economic circumstances: high inflation, high interest rates, and weak growth.

President Reagan put in place policies which were progrowth. He enacted progrowth tax reform, fewer regulations. The economy grew nearly three times as fast as it has under President Obama’s watch.

The point, very simply, is if you put the right policies in place, if you make it less difficult and less expensive for our small businesses and our job creators to create more jobs, there are more jobs and economic growth. If you make it more difficult, more expensive, and harder for our small businesses and our job creators to create jobs, there are fewer jobs, less economic growth, and lower take-home pay for American families and workers.

If the Obama recovery was as strong as Reagan’s, our economy would be \$1.5 trillion larger today, meaning more jobs and more opportunity for Americans. This is assuming if you were getting a comparable level of growth in the economy. The fact is President Obama’s spending, tax, and regulatory policies are hamstringing economic recovery, jobs, and opportunity.

Yesterday the Federal Reserve released the latest edition of its so-called beige book or more formally known as

the Summary of Commentary on Current Economic Conditions. The beige book stated the 2010 health care law is being cited as a reason for layoffs and a slowdown in hiring.

This report, which examines economic conditions across various Federal Reserve districts throughout the country, stated: "Employers in several districts cited the unknown effects of the Affordable Care Act as reasons for planned layoffs and reluctance to hire more staff."

It is clear President Obama's policies are the real threat to our economy, not the sequester. A 2.4-percent across-the-board reduction in Federal spending here in Washington, DC, clearly—if you look at the rate of growth we have seen in spending since the President took office of over 20 percent in 2009, in the overall scheme of things, is something which is very reasonable. The American people see this as reasonable overall.

On the contrary, if you look at policies the President has put in place, whether this is more stimulus spending, growing government, higher taxes, more regulations, we are getting a very different picture of what those policies look like in terms of the impact on our economy. We have seen negative impacts, high-level spending, and high annual deficits during the President's first term. As a consequence of these statistics, there is slower economic growth.

I ask unanimous consent to have printed in the RECORD an opinion piece by Michael Boskin, which he wrote earlier in the week. In this article Mr. Boskin makes the case that spending cuts will actually help the economy: "Standard Keynesian models that claim a quick boost from higher government spending showed the effect quickly turns negative. So the spending needs to be repeated over and over, like a drug, to keep the hypothetical positive effect going."

Mr. Boskin points to an academic study which found returning spending to pre-crisis, pre-Obama levels—about a 3-percent reduction in spending as a percentage of our entire GDP—would increase short-term economic growth because expectations of lower future taxes and debt lead to higher incomes, more private spending, and investment.

[From the Wall Street Journal, Mar. 4, 2013]

LARGER SPENDING CUTS WOULD HELP THE ECONOMY

(By Michael J. Boskin)

President Obama's most recent prescription for economic growth—more government stimulus spending, new social programs, higher taxes on upper-income earners, subsidies for some industries and increased regulation for all of them—is likely to have the same anemic results as in his first administration.

Recall: The \$825 billion stimulus program did little economic good at a cost of hundreds of thousands of dollars per job, even based on the administration's own inflated job estimates. Cash for Clunkers cost \$3 billion merely to shift car sales forward a few months. The PPIP (Public-Private Invest-

ment Program for Legacy Assets) to buy toxic assets from the banks to speed lending generated just 3% of the \$1 trillion that the program planners anticipated.

And now? Mr. Obama proposes universal preschool (\$25 billion per year), "Fix it First" repairs to roads and bridges, plus an infrastructure bank (\$50 billion), "Project Rebuild," refurbishing private properties in cities (\$15 billion), endless green-energy subsidies, and a big hike in the minimum wage. The president and Senate Democrats also demand that half the spending cuts under sequestration be replaced with higher taxes.

These proposals are ill-considered. The evidence sadly suggests the initial improvement in children's cognitive skills from "Head Start" quickly evaporates. Higher minimum wages increase unemployment among low-skilled workers. A dozen recent studies in peer-reviewed journals, including one by the president's former chief economic adviser Christina Romer, document the negative effects of higher taxes on the economy.

As for adventures in industrial policy, former Obama economic adviser Larry Summers wrote a memo in 2009 about the impending \$527 million loan guarantee to Solyndra and other recipients of government largess. "The government is a crappy v.c. [venture capitalist]," he wrote, in what is also the best postmortem. In 2010, Harvard economist Edward Glaeser concluded in the New York Times that infrastructure is poor stimulus because "It is impossible to spend quickly and wisely." Federal infrastructure spending should be dealt with in regular appropriations.

Will more spending today stimulate the economy? Standard Keynesian models that claim a quick boost from higher government spending show the effect quickly turns negative. So the spending needs to be repeated over and over, like a drug, to keep this hypothetical positive effect going. Japan tried that to little effect, starting in the 1990s. It now has the highest debt-to-GDP ratio among the countries of the Organization for Economic Cooperation and Development—and that debt is a prime cause, as well as effect, of Japan's enduring stagnation.

The United States is heading in this wrong direction. Even if the \$110 billion in annual sequestration cuts are allowed to take place, the Congressional Budget Office projects that annual federal spending will increase by \$2.4 trillion to \$5.9 trillion in a decade. The higher debt implied by this spending will eventually crowd out investment, as holdings of government debt replace capital in private portfolios. Lower tangible capital formation means lower real wages in the future.

Since World War II, OECD countries that stabilized their budgets without recession averaged \$5-\$6 of actual spending cuts per dollar of tax hikes. Examples include the Netherlands in the mid-1990s and Sweden in the mid-2000s. In a paper last year for the Stanford Institute for Economic Policy Research, Stanford's John Cogan and John Taylor, with Volker Wieland and Maik Wolters of Frankfurt, Germany's Goethe University, show that a reduction in federal spending over several years amounting to 3% of GDP—bringing noninterest spending down to pre-financial-crisis levels—will increase short-term GDP.

Why? Because expectations of lower future taxes and debt, and therefore higher incomes, increase private spending. The U.S. reduced spending as a share of GDP by 5% from the mid-1980s to mid-1990s. Canada reduced its spending as share of GDP by 8% in the mid-'90s and 2000s. In both cases, the reductions reinforced a period of strong growth.

An economically "balanced" deficit-reduction program today would mean \$5 of actual,

not hypothetical, spending cuts per dollar of tax hikes. The fiscal-cliff deal reached on Jan. 1 instead was scored at \$1 of spending cuts for every \$40 of tax hikes.

Keynesian economists urge a delay on spending cuts on the grounds that they will hurt the struggling economy. Yet at just one-quarter of 1% of GDP this year, \$43 billion of this year's sequester cuts in an economy with a GDP of more than \$16 trillion is unlikely to be a major macroeconomic event.

Continued delay now leaves a long boom as the only time to control spending. There was some success in doing this in the mid-1990s under President Clinton and a Republican Congress. More commonly the opposite occurs: A boom brings a surge in tax revenues and politicians are anxious to spread the spending far and wide.

In any case, the demand by Mr. Obama and Senate Democrats that any dollar of spending cuts in budget agreements this spring (to fund the government for the rest of the fiscal year and when the debt limit again approaches) be matched by an additional dollar of tax hikes is economically unbalanced in the extreme. Those who are attempting to gradually slow the growth of federal spending while minimizing tax hikes have sound economics on their side.

Mr. THUNE. To wrap up and put this into perspective, Federal spending has increased nearly 20 percent since 2009. Sequestration, the across-the-board spending reductions which will occur under the sequester, amount to a reduction of 2.4 percent out of a \$3.5 trillion budget. Even with the sequester, the government will spend more this year than it did last year.

I would hope the President would begin to be honest with the American people about the impact of his tax hikes, his spending, and new regulations are having on our Nation's economic growth and recovery; more important, coming to the conclusion and being honest with the American people about that, change his policies; actually come to a conclusion based on what we have seen, 4 years of his policies, which is slow growth, and a .8 percent economic growth on average for the past 4 years. There is also, as I said before, high unemployment, chronic unemployment—which is still around that 8-percent level—and massive amounts of new debt we are piling on the backs of future generations.

Not only do we need the President, in terms of his rhetoric, to be honest with the American people, we need him to change his policies and take an honest look at the relationship between spending and economic growth. This shows the sequester will not have long-term negative impacts on the economy. We need to put the Federal Government on a stable fiscal path in order to create the kind of economic certainty needed in this country to grow the economy and create jobs.

Less spending by Washington, DC, actually will lead to greater economic growth, a private economy, more jobs for the American people, and higher take-home pay.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent to address the Senate as if in morning business and ask to be joined in colloquy with the Senator from South Carolina, Senator GRAHAM.

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

THE DRONE PROGRAM

Mr. MCCAIN. Mr. President, I wish to quote from this morning's editorial in the Wall Street Journal entitled "Rand Paul's Drone Rant." I wish to read for the edification of my colleagues the editorial which was in the Wall Street Journal, a credible media outlet, this morning.

The Wall Street Journal reads:

Give Rand Paul credit for theatrical timing. As the storm descended on Washington, the Kentucky Republican's old-fashioned filibuster Wednesday filled the attention void on Twitter and cable TV. If only his reasoning matched the showmanship.

Shortly before noon, Senator Paul began talking filibuster against John Brennan's nomination to lead the CIA. The tactic is rarely used in the Senate and was last seen in 2010. But Senator Paul said an "alarm" had to be sounded about the threat to Americans from their own government. He promised to speak "until the President says, no, he will not kill you at a cafe." He meant by a military drone. He's apparently serious, though his argument isn't.

Senator Paul had written the White House to inquire about the possibility of a drone strike against a U.S. citizen on American soil. Attorney General Eric Holder replied that the U.S. hasn't and "has no intention" to bomb any specific territory. Drones are limited to the remotest area of conflict zones like Pakistan and Yemen. But as a hypothetical constitutional matter, Mr. Holder acknowledged the President can authorize the use of lethal military force within U.S. territory.

This shocked Senator Paul, who invoked the Constitution and Miranda rights. Under current U.S. policy, Mr. Paul mused on the floor, Jane Fonda could have been legally killed by a Hellfire missile during her tour of Communist Hanoi in 1972. A group of non-combatants sitting in public view in Houston may soon be pulverized, he declared.

Calm down, Senator. Mr. Holder is right, even if he doesn't explain the law very well. The U.S. Government cannot randomly target American citizens on U.S. soil or anywhere else.

I repeat that: The U.S. Government cannot randomly target American citizens on U.S. soil or anywhere else.

What it can do under the laws of war is target an "enemy combatant" anywhere at any time, including on U.S. soil. This includes a U.S. citizen who is also an enemy combatant. The President can designate such a combatant if he belongs to an entity—a government, say, or a terrorist network like al-Qaida—that has taken up arms against the United States as part of an internationally recognized armed conflict. That does not include Hanoi Jane.

Such a conflict exists between the U.S. and al-Qaida, so Mr. Holder is right that the U.S. could have targeted (say) U.S. citizen Anwar al-Awlaki had he continued to live in Virginia. The U.S. killed him in Yemen before he could kill more Americans. But under the law al-Awlaki was no different than the Nazis who came ashore on Long Island in World War II, were captured and executed.

The country needs more Senators who care about liberty, but if Mr. Paul wants to be taken seriously, he needs to do more than pull political stunts that fire up impressionable libertarian kids in their college dorms. He needs to know what he's talking about.

I watched some of that "debate" yesterday. I saw colleagues of mine who know better come to the floor and voice this same concern, which is totally unfounded. I must say that the use of Jane Fonda's name does evoke certain memories with me, and I must say she is not my favorite American, but I also believe that as odious as it was, Ms. Fonda acted within her constitutional rights. To somehow say that someone who disagrees with American policy, and even may demonstrate against it, is somehow a member of an organization which makes that individual an enemy combatant is simply false. It is simply false.

I believe we need to visit this whole issue of the use of drones—who uses them, whether the CIA should become their own Air Force, what the oversight is. The legal and political foundation for this kind of conflict needs to be reviewed.

Relating to this, let me quote from an article by Jack Goldsmith that was in the Washington Post on February 5, 2013, entitled: "U.S. needs a rulebook for secret warfare."

The legal foundation rests mostly on laws designed for another task that government lawyers have interpreted, without public scrutiny, to meet new challenges. Outside the surveillance context, Congress as a body has not debated or approved the means or ends of secret warfare. Because secret surveillance and targeted strikes, rather than U.S. military detention, are central to the new warfare, there are no viable plaintiffs to test the government's authorities in court. In short, executive-branch decisions since 2001 have led the Nation to a new type of war against new enemies on a new battlefield without enough focused national debate, deliberate congressional approval or real judicial review.

What the government needs is a new framework statute—akin to the National Security Act of 1947, or the series of intelligence reforms made after Watergate, or even the 2001 authorization of force—to define the scope of the new war, the authorities and limitations on presidential power, and forms of review of the President's actions.

I don't think we should have any doubt there are people both within the United States of America and outside it who are members of terrorist organizations and who want to repeat 9/11. All of us thank God there has not been a repeat of 9/11. Most of the experts I know will say there has been a certain element of luck—a small element but still an element of luck, such as the Underwear Bomber and others—that has prevented a devastating attack on the United States. But to somehow allege or infer the President of the United States is going to kill somebody such as Jane Fonda or someone who disagrees with the government's policies is a stretch of imagination which is, frankly, ridiculous—ridiculous.

I don't disagree that we need more debate, more discussion, and, frankly,

probably more legislation to make sure America does protect the rights of all our citizens and to make sure, at the same time, if someone is an enemy combatant, that enemy combatant has nowhere to hide—not in a cafe, not anywhere. But to say that somehow, even though we try to take that person, that we would hit them in a cafe with a Hellfire missile—well, first of all, there are no drones with Hellfire missiles anywhere near. They are over in places such as Yemen and Afghanistan and other places around the world.

We have done a disservice to a lot of Americans by making them believe that somehow they are in danger from their government. They are not. But we are in danger—we are in danger—from a dedicated, longstanding, easily replaceable leadership enemy that is hellbent on our destruction, and this leads us to having to do things perhaps we haven't had to do in other more conventional wars.

I don't believe Anwar al-Awlaki should have been protected anywhere in the world, but that doesn't mean they are going to take him out with a Hellfire missile. It means we are going to use our best intelligence to apprehend and debrief these people so we can gain the necessary intelligence to bring them all to justice.

All I can say is, I don't think what happened yesterday is helpful for the American people. We need a discussion, as I said, about exactly how we are going to address this new form of almost interminable warfare, which is very different from anything we have ever faced in the past, but somehow to allege the United States of America, our government, would drop a drone Hellfire missile on Jane Fonda, that brings the conversation from a serious discussion about U.S. policy to the realm of the ridiculous.

I would also like to add an additional note. About 42 percent, as I am told, of the Members of this Senate are here for 6 years or less. Every time a majority party is in power, they become frustrated with the exercise of the minority and their rights in the Senate. Back some years ago, when the Republicans—this side of aisle—were in the majority, we were going to eliminate the ability to call for 60 votes on the confirmation of judges. We were able to put that aside. There was another effort at the beginning of this Senate to do away with 60 votes and go back down to 51, which, in my view, would have destroyed the Senate.

A lot of us worked very hard—a group of us—for a long time to come up with some compromises that would allow the Senate to move more rapidly and efficiently but at the same time preserving the 60-vote majority requirement on some pieces of legislation. What we saw yesterday is going to give ammunition to those critics who say the rules of the Senate are being abused. I hope my colleagues on this side of the aisle will take that into consideration.

I note the presence of the Senator from South Carolina. The Senator from South Carolina, as many of our colleagues know, is a lawyer. He has been a military lawyer in the Air Force Reserve for over 20 years. If there is anyone in the Senate who knows about this issue from a legal and technical standpoint, it is my colleague from South Carolina.

I ask my colleague from South Carolina, is there any way the President of the United States could just randomly attack someone, with a drone or a Hellfire missile, without that person being designated an enemy combatant?

And I don't think, as much as I hate to say it, that applies to Jane Fonda.

Mr. GRAHAM. I thank my colleague. That is a very good question.

This has been a very lively debate. Senator PAUL has a lot of passion, and that is a great thing. This is an important issue. We should be talking about it, and I welcome a reasoned discussion. But to my Republican colleagues, I don't remember any of you coming down here suggesting that President Bush was going to kill anybody with a drone—I don't even remember the harshest critics of President Bush from the Democratic side. They had a drone program back then, so what is it all of a sudden about this drone program that has gotten every Republican so spun up? What are we up to here?

I think President Obama has, in many ways, been a very failed President. I think his executive orders overstep, I think he has intruded into the congressional arena by Executive order, I think ObamaCare is a nightmare, and there are 1,000 examples of a failed Presidency, but there is also some agreement. People are astonished, I say to the Senator, that President Obama is doing many of the things President Bush did. I am not astonished. I congratulate him for having the good judgment to understand we are at war.

To my party, I am a bit disappointed that you no longer apparently think we are at war. Senator PAUL, he is a man unto himself. He has a view I don't think is a Republican view. I think it is a legitimately held libertarian view.

Remember, Senator PAUL was the one Senator who voted against a resolution that said the policy of the United States will not be to contain a nuclear-capable Iran. It was 90 to 1. To his credit, he felt that would be provocative and it may lead to a military conflict. He would rather have a nuclear-capable Iran than use military force, and he said so—to his credit. Ninety of us thought, well, we would like not to have a military conflict with Iran, but we are not going to contain a nuclear-capable Iran because it is impossible.

What would happen is that if Iran got a nuclear weapon, the Sunni Arab States would want a nuclear weapon, and most of us believe they would share the technology with the terrorists, who would wind up attacking

Israel and the United States. It is not so much that I fear a missile coming from Iran; I fear, if they got a nuclear weapon or nuclear technology, they would give it to some terrorist organization—like they gave IEDs to the Shia militia in Iraq to kill Americans—and they would wreak havoc on the world.

So we don't believe in letting them have it and trying to contain them because we believe their association with terrorism is too long and too deep, that it is too dangerous for Israel and too dangerous for us. But Senator PAUL, to his credit, was OK with that; I just disagree with him.

As to what he is saying about the drone program, he has come our way some, and I appreciate that. Before, he had some doubt in his mind as to whether we should have killed Anwar al-Awlaki in Yemen—an American citizen who had collaborated with al-Qaida and was actually one of the military leaders of al-Qaida in Yemen, who had radicalized Major Hasan, and who had been involved in planning terrorist attacks against U.S. forces throughout the region.

President Obama was informed through the military intelligence community channels of Anwar al-Awlaki's existence, all the videos he made supporting Jihad and killing Americans, and he, as Commander in Chief, designated this person as an enemy combatant.

Mr. President, you did what you had the authority to do, and I congratulate you in making that informed decision.

And the process to get on this target list is very rigorous—I think sometimes almost too rigorous.

But now, apparently, Senator PAUL says it is OK to kill him because we have a photo of him with an RPG on his shoulder. He has moved the ball. He is saying now that he wants this President to tell him he will not use a drone to kill an American citizen sitting in a cafe having a cup of coffee who is not a combatant. I find the question offensive.

As much as I disagree with President Obama, as much as I support past Presidents, I do not believe that question deserves an answer because, as Senator MCCAIN said, this President is not going to use a drone against a non-combatant sitting in a cafe anywhere in the United States, nor will future Presidents because if they do, they will have committed an act of murder. Non-combatants, under the law of war, are protected, not subject to being killed randomly.

So to suggest that the President won't answer that question somehow legitimizes that the drone program is going to result in being used against anybody in this room having a cup of coffee cheapens the debate and is something not worthy of the time it takes to answer.

Mr. MCCAIN. May I ask my colleague a question especially on that subject.

A lot of our friends—particularly Senator PAUL and others—pride them-

selves on their strict adherence to the Constitution and the decisions of the U.S. Supreme Court.

Isn't it true that as a result of an attack on Long Island during World War II, an American citizen—among others—was captured and hung on American soil, and the U.S. Supreme Court upheld that execution because that individual was an enemy combatant? Does that establish without a doubt the fact that these are enemy combatants, and no matter where they are, they are subject to the same form of justice as the terrorists in World War II were?

Mr. GRAHAM. It has been a long-held concept in American jurisprudence that when an American citizen sides with the enemies of our Nation, they can be captured, held, and treated as an enemy combatant; they have committed an act of war against our country, not a common crime.

In World War II, German saboteurs landed on Long Island. They had been planning and training in Germany to blow up a lot of infrastructure—and some of it was in Chicago. So they had this fairly elaborate plan to attack us. They came out of a submarine. They landed on Long Island. And the plan was to have American citizens sympathetic to the Nazi cause—of German origin, most of them—meet them and provide them shelter and comfort. Well, the FBI back then broke up that plot, and they were arrested. The American citizens were tried by military commission, they were found guilty, and a couple of them were executed.

Now, there has been a case in the war on terror where an American citizen was captured in Afghanistan. Our Supreme Court reaffirmed the proposition that we can hold one of our own as an enemy combatant when they align themselves with the forces against this country.

This Congress, right after the September 11 attacks, designated authorization to use military force against al-Qaida and affiliated groups. So the Congress has given every President since 9/11 the authority to use military force against al-Qaida and affiliated groups. And American citizens such as Anwar al-Awlaki and that guy Hamdi who was captured in Afghanistan have been treated as enemy combatants, and if President Obama does that, he is doing nothing new or novel.

What would be novel is for us to say that if a terrorist cell came to the United States, if an al-Qaida cell was operating in the United States, that is a common crime and the law of war doesn't apply. It would be the most perverse situation in the world for the Congress to say that the United States itself is a terrorist safe haven when it comes to legal rights; that we can blow you up with a drone overseas, we can capture you in Afghanistan and hold you under the law of war, but if there is a terrorist cell operating in the

United States, somehow you are a common criminal and we will read you your Miranda Rights.

I just have this one question to get Senator MCCAIN's thoughts. I hope we realize that, hypothetically, there are patriot missile batteries all over Washington that could interdict an airplane coming to attack this Capitol or the White House or other vital government facilities.

I hope the Senator understands—Senator MCCAIN is a fighter pilot—that there are F-15s and F-16s on 3-minute to 5-minute alert all up and down the east coast. If there is a vessel coming into the United States or a plane has been hijacked or a ship has been hijacked that is loaded with munitions or the threat is real and they have taken over a craft and are about to attack us, I hope all of us would agree that using military force in that situation is not only lawful under the authorization to use military force, it is within the inherent authority of the Commander in Chief to protect us all.

Mr. MCCAIN. And should not be construed as an authority to kill somebody in a cafe.

Mr. GRAHAM. It should be construed as a reasonable ability to defend the homeland against a real threat. And the question is, Do you feel threatened anymore? I do. I think al-Qaida is alive and well.

And to all those who have been fighting this war for a very long time, multiple tours in Iraq and Afghanistan, who have tried to keep the war over there so it doesn't come here, to the failed plots that have been broken up by the CIA and the FBI, God bless you. We have to be right every time; they only have to be right once.

If you think the homeland is not a desire of al-Qaida, it is absolutely on the top of their list. They are recruiting American citizens to their cause, and unfortunately a few will probably go over to their side. Thank God it will be just a few.

But to take this debate into the absurd is what I object to. We can have reasonable disagreements about, the regulatory nature of the drone program should be under the Department of Defense and what kind of oversight Congress should have. I think that is a really good discussion, and I would like to work with Senator DURBIN and others to craft—the Detainee Treatment Act was where Congress got involved with the executive branch to come up with a way to better handle the detainee issue.

But the one thing I have been consistent about is I believe there is 1 Commander in Chief, not 535, and I believe this Commander in Chief and all future Commanders in Chief are unique in our Constitution and have an indispensable role to play when it comes to protecting the homeland. If we have 535 commanders in chief, then we are going to be less safe. And if you turn over military decisions to courts, then I think you have done the ultimate harm

to our Nation—you have criminalized the war. And I don't think our judiciary wants that.

So as much as I disagree with President Obama, I think you have been responsible in the use of the drone program overseas. I think you have been thorough in your analysis. I would like to make it more transparent. I would like to have more oversight.

As to the accusation being leveled against you that if you don't somehow answer this question, we are to assume you are going to use a drone—or the administration or future administrations would—to kill somebody who is a noncombatant—no intelligence to suggest there are enemy combatants sitting in a cafe hit by a Hellfire missile—I think it is really off base.

I have this one final thought. If there is an al-Qaida operative U.S. citizen who is helping the al-Qaida cause in a cafe in the United States, we don't want to blow up the cafe. We want to go in there and grab the person for intelligence purposes.

The reason we are using drones in Afghanistan and Pakistan is we don't have any military presence along the tribal border. The reason we are having to use drones is we can't capture people. The preference is to capture them, not to kill them. But there are certain areas where they operate that the only way we can get to them is through a drone strike.

Mr. MCCAIN. And may I say to my friend that there are scenarios where there could be an extreme situation where there is a direct threat. We could draw many scenarios—a bomb-laden, explosive-laden vehicle headed for a nuclear powerplant—where the President of the United States may have to use any asset the President has in order to prevent an impending catastrophic attack on the United States of America. And that is within the realm of possible scenarios.

So to somehow say that we would kill people in cafes and therefore drone strikes should never be used under any circumstances I believe is a distortion of the realities of the threats we face.

As we are speaking, there are people who are plotting to attack the United States of America. We know that. At the same time, we are ready, as the Senator said, to discuss, debate, and frame legislation that brings us up to date with the new kind of war we are in. But to somehow have a debate and a discussion that we would have killed Jane Fonda does, in my view, a disservice to the debate and discussion that needs to be conducted.

Mr. GRAHAM. That is a very good point.

I look forward to a discussion about how to deal with a drone program. It is just a tactical weapon. It is an air platform without a pilot.

Now, if there is a truck going toward a military base or nuclear powerplant, we have a lot of assets to interdict that truck. Maybe you don't need the F-16. But I guarantee you, if there was a hi-

jacked aircraft coming to the Capitol, the President of the United States would be well within his rights to order the Patriot missile battery to shoot that plane down or have an F-16 shoot it down. And we are ready for that, by the way.

I would just suggest one thing. The number of Americans killed in the United States by drones is zero. The number of Americans killed in the United States by al-Qaida is 2,958. The reason it is not 2 million, 20 million, or 200 million is because they can't get the weapons to kill that many of us. The only reason it is 2,958 is because their weapons of choice couldn't kill more. Their next weapon of choice is not going to be a hijacked airplane up there; it is going to be some nuclear technology or a chemical weapon, a weapon of mass destruction. That is why we have to be on our guard.

When you capture someone who is associated with al-Qaida, the best thing is to hold them for interrogation purposes. We found bin Laden not through torture, we found bin Laden through a decade of putting the puzzle together.

Senator DURBIN and Senator MCCAIN, both are very effective advocates that we have to live within our values and that when we capture somebody, we are going to hold them under the law of war. We are going to explore the intelligence, but we are going to do it within the laws that we signed up to, such as the Geneva Conventions, the Convention Against Torture.

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

Mr. GRAHAM. Absolutely.

Mr. DURBIN. I very briefly thank my colleagues on the other side of the aisle. It was 12 hours ago when I was standing right here, a lonely voice among others who were discussing this issue, bringing up the points the Senator raises. The first is the drone is a weapon. There are many weapons that can deliver lethal force. We should view this as an issue of lethal force, not an issue of drones per se—although it may raise some particular questions in application. It is largely a question of lethal force.

The second question has been raised by both Senators. What if the fourth airplane had not been brought down by the passengers? What if that plane were headed for this Capitol Building and all other planes had been landed across America under orders of our government and we knew this plane was the fourth plane in control of the terrorists, what authority did President Bush have as Commander in Chief at that moment?

I don't think anyone would question he had the authority to use lethal force to stop the terrorists from using that plane as a fourth weapon against the United States.

There was no debate last night about that particular point. This notion—and I am glad this point has been raised—that we are somehow going to use drones to kill people sipping coffee in

cafes is ludicrous. It is absurd. It goes beyond the obvious. We need those people. Bringing those people into our control gives us more information.

Second, for goodness' sake, the collateral damage of something that brutish would be awful. So I thank the Senator for putting it in perspective.

I think Attorney General Holder could have been more artful in his language yesterday, but at the end of the day, even Senator CRUZ acknowledged he said it would be unconstitutional to use this kind of lethal force if there weren't an imminent threat pending against the United States.

Mr. MCCAIN. If I may say real quickly, an imminent threat.

MR. DURBIN. Yes.

Mr. MCCAIN. We may have to do a little better job of defining that, but to say imminent threat would then translate into killing somebody in a cafe is not a mature debate or discussion.

Mr. GRAHAM. If I can add, let me tell the Senator about imminent threat and military law. In Iraq we had disabled terrorist insurgents. There was a big debate in the Marine Corps because under military law when a lawful combatant, a person in uniform, has been disabled and it does not present an imminent threat, we don't have the ability to shoot them. OK.

The terrorists in Iraq put IEDs on wounded belligerents, unlawful enemy combatants. So the Marine Corps wrestled very long and hard with the rules of engagement. If you come upon somebody who is wounded, apparently was disabled, under what circumstances could you use lethal force because they may be booby-trapped.

To the Marine Corps' credit, they came up with a balance between who we are—we just don't shoot even our enemies who are helpless and wounded—and the ability for force protection.

Here is what I would say about the circumstance in question. The process of determining who an enemy combatant is has always been a military process. It is not a congressional debate. Our committees don't get a list of names and we vote on whether we think they are enemy combatants. Courts don't have trials over who is an enemy combatant. If there is a question about enemy combatant status under the Geneva Conventions, you are entitled to a single hearing officer and that is all. In World War II, there were a lot of people captured in German uniform who claimed they were made to wear the uniform by the Germans. All of them had a hearing on the battlefield by a single officer. It has been long held by military law it is a military decision, not judicial decision or legislative decision, to determine the enemy of the nation.

So President Obama has taken this far beyond what was envisioned. This administration has a very elaborate process to determine who should be determined to be an enemy combatant. I think it is thorough. I think it has

many checks and balances. As much as I disagree with this President on many issues, I would never dream of taking that right away from him because he is the same person, the Commander in Chief, whoever he or she may be in the future, that we give the authority to order American citizens in battle where they may die. He has the authority to pick up a phone, Senator MCCAIN, and say you will launch today, and you may not come back.

I cannot imagine a Congress who is OK with the authority to order an American citizen in battle—we don't want to take that away from him, I hope—that is uncomfortable with the same American determining who the enemy we face may be.

As to American citizens, here is the law. If you collaborate with al-Qaida or their affiliates and you are engaged in helping the enemy, you are subject to being captured or killed under the law of war. What is an imminent threat? The day that you associate yourself with al-Qaida and become part of their team, everywhere you go and everything you do presents a threat to the country. So why do we shoot people walking down the road in Pakistan? They don't have a weapon. There is no military person in front of them who is threatened. The logic is that once you join al-Qaida, you are a de facto imminent threat because the organization you are supporting is a threat.

For someone to suggest we have to let them walk down the road, go pick up a gun and head toward our soldiers before you can shoot them is not very healthy for the soldier they are trying to kill and it would be a total distortion of law as it exists. Back here at home, and I will conclude—

Mr. DURBIN. If the Senator will allow just one last comment and I thank him for the statement on the floor—from both my colleagues. The Judiciary Committee's Subcommittee on the Constitution is going to have a hearing, it is already scheduled, on this issue of drones. There are legitimate questions to be raised and answered.

Mr. GRAHAM. There are.

Mr. DURBIN. I might add that in my conversations with the President he welcomes this. He has invited us to come up with a legal architecture to make certain it is consistent with existing precedent and military law and other court cases as well as our Constitution. I think that is a healthy environment for us to have this hearing and invite all points of view and try to come up with a reasonable conclusion.

Mr. GRAHAM. I could not welcome that more. It worked with the Detainee Treatment Act, it worked with the Military Commissions Act. I think it is the right way to go.

Mr. MCCAIN. Madam President, I think that concludes our discussion. I would agree with the Senator from Illinois and my colleague from South Carolina that we need hearings. We need to discuss how we conduct this—the United States, in what appears to

be, for all intents and purposes, an interminable conflict that we are in and we have to adjust to it. But that conversation should not be talking about drones killing Jane Fonda and people in cafes. It should be all about what authority and what checks and balances should exist in order to make it a most effective ability to combat an enemy that we know will be with us for a long time.

Mr. GRAHAM. If I could just have 2 minutes of wrapup, I will. To my fellow citizens, the chance of you being killed by a drone—because you go to a tea party rally or a moveon.org rally or any other political rally or you are just chatting on the Internet quietly at home—by your government through the use of a drone is zero, under this administration and future administrations. If that day ever happened, the President of the United States or whomever ordered such an attack would have committed murder and would be tried. I don't worry about that.

Here is what I worry about; that al-Qaida, who has killed 2,958 of us, is going to add to the total if we let our guard down. I will do everything in my power to protect this President, whom I disagree with a lot, and future Presidents from having an ill-informed Congress take over the legitimate authority under the Constitution and the laws of this land to be the Commander in Chief on behalf of all of us.

As to any American citizen thinking about joining with al-Qaida at home or abroad: You better think twice because here is what is going to come your way. If we can capture you, we will. You will be interrogated. You will go before a Federal judge and one day you will go before a court and you will have a lot of legal rights, but if you are found guilty, woe be unto you.

Here is another possibility. If you join with these thugs and these nuts to attack your homeland and if we have no ability to capture you, we will kill you and we will do it because you made us. The process of determining whether you have joined al-Qaida is not going to be some Federal court trial. It is not going to be a committee meeting in the Congress. Because if we put those conditions on our ability to defend ourselves, we cannot act in real time.

Bottom line: I think we are at war. I think we are at war with an enemy who would kill us all if he could, and every war America has been in we have recognized the difference between fighting crime and fighting a war. If you believe, as I do, we are at war, those who aid our enemies are not going to be treated as if they robbed a liquor store. They are going to be treated as the military threat they are.

Mr. MCCAIN. Madam President, I thank my colleague and also thank the Senator from Illinois for his engagement. In closing, I would like to congratulate my friend from South Carolina for his best behavior last night at dinner. He was on his best manners and everyone was very impressed.

I yield the floor.

The PRESIDING OFFICER (Ms. BALDWIN). The Senator from Colorado. Mr. UDALL of Colorado. Madam President, I rise in support of the nomination of John Brennan to be the next director of the Central Intelligence Agency. Mr. Brennan earned a bipartisan vote of 12-3 in the Senate Intelligence Committee, on which I serve. He is clearly qualified to lead the CIA and deserved that bipartisan vote in committee. And he deserves confirmation by the full Senate today.

I say that in spite of the difficulties my colleagues and I encountered in extracting information and commitments throughout the confirmation process. Our concerns were less about John Brennan himself and more about the role that the next CIA director needs to play. And we believe that the information and commitments we finally secured from him and from the White House are extraordinarily relevant to the role of any CIA director.

Alongside several of my colleagues, I fought to enhance transparency and preserve our system of checks and balances. The American people have the expectation that their government is upholding the principles of oversight and accountability.

Consistent with our national security, the presumption of transparency should be the rule, not the exception. The government should make as much information available to the American public as possible, while protecting national security.

We have seen during previous administrations the problems that can arise when even the intelligence committees are left out of the loop: warrantless wiretapping, extraordinary detention and torture. Ben Franklin put it well when he said: "Those who would sacrifice liberty for security deserve neither."

Congressional oversight is critical to ensure that we sacrifice neither, as we pursue a smart, but tough, national security strategy, especially in this age of new forms of warfare.

This was true over the past several months, as I joined Senator WYDEN and others in pushing hard for access to the legal justification used by the executive branch to lethally target Americans using drones. The fact that we had to push so hard, I am sorry to say, no doubt erodes the government's credibility with the American people. But it also gives us an opportunity—and a good reason—to maintain and strengthen our system of checks and balances.

I am glad the Administration met our requests and is giving members of the Intelligence Committee access to legal opinions on targeting American citizens. This is an important first step. But there is more to be done for Congress to understand the limits on the drone program.

Madam President, our government has an obligation to the American people to face its mistakes transparently,

help the public understand the nature of those mistakes, and then correct them. In this regard, the next Director of the CIA has an important task.

The specific mistakes I am referring to are outlined in the Intelligence Committee's 6,000-page report on the CIA's deeply flawed detention and interrogation program. Acknowledging the flaws of this program is essential for the CIA's long-term institutional integrity as well as the legitimacy of ongoing sensitive programs.

I know the Presiding Officer will take a keen interest in this as she is a strong supporter of civil liberties and protecting our freedoms. That is why I will hold Mr. Brennan to the promise he made to me at his confirmation hearing; that is, to correct inaccurate information in the public record on the CIA's detention and interrogation program. That is why I will continue to urge him to ensure that the Senate Intelligence Committee's report on this flawed program is declassified and made public.

In the committee's confirmation hearing, Mr. Brennan promised to be an advocate of ensuring the committee has what it needs to do its functions. I believe Mr. Brennan is that advocate.

I look forward to working with him and the administration with my goal of protecting our national security while also safeguarding America's constitutional freedoms and determining the limits of executive branch powers in this new age of warfare.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, I ask unanimous consent to speak as if in morning business.

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

REMEMBERING DEAMONTE DRIVER

Mr. CARDIN. Mr. President, I come to the floor to note a sad anniversary. Friday, March 1, marked 6 years since the tragic death of a 12-year-old Maryland child named Deamonte Driver. I have spoken about him many times since his passing, which happened just weeks after I came to the Senate.

The death of any child is tragic; Deamonte's was even more so because it was entirely preventable. He died from untreated tooth decay. It started with an infected tooth. Deamonte began to complain about headaches in early January 2007. By the time he was evaluated at Children's Hospital's emergency room, the infection had spread to his brain, and after multiple surgeries and a lengthy hospital stay, he passed away.

The principal at Deamonte's school, Gina James, remarked, "Everyone here was shocked. They couldn't understand how he could have a toothache and then die. We sometimes give the little kids candy as a reward; well, for a while they stopped taking it because they would say, 'if I get a cavity, will I die?'"

Because Deamonte did not get a tooth extraction that would have cost

about \$80, he was subjected to extensive brain surgery that eventually cost more than \$250,000. That is more than 3,000 times the cost of an extraction.

After Deamonte's death, more Americans began to recognize the link between dental care and overall health that medical researchers have known for years.

Former Surgeon General C. Everett Koop once said that "there is no health without oral health." The story of the Driver family has brought Dr. Koop's lesson home in a painful way.

Children living in poverty have twice as much tooth decay as middle- and upper-income children, and nearly 40 percent of black children have untreated tooth decay in their permanent teeth.

This has serious implications for their overall health. Untreated oral health problems in children can result in attention deficits, poor school performance, and problems sleeping and eating. And these problems carry over to adulthood. Improper oral hygiene can increase an adult's risk of having low birth-weight babies, developing heart disease, or suffering a stroke.

Employed adults lose more than 164 million hours of work each year due to dental disease and dental visits, and in 2009 over 830,000 emergency room visits were the result of preventable dental conditions. Poor oral health is also associated with a number of other diseases, including diabetes, stroke and respiratory disease. In older adults, poor oral health is significantly associated with disability and reduction in mobility.

Medical researchers have discovered the important linkage between plaque and heart disease, that chewing stimulates brain cell growth, and that gum disease can signal diabetes, liver ailments and hormone imbalances. Further, oral research has led to advanced treatments like gene therapy, which can help patients who have chronic renal failure.

They have also discovered that oral disease is far more prevalent than you might imagine. In fact, dental decay is the most common chronic childhood disease in the United States. Dental disease affects 1 in 5 children aged 2 to 4, and more than half of all children have dental disease by the time they reach second grade. By the age of 17, approximately 80 percent of young people have had a dental cavity.

The average 50-year-old in the United States has lost 12 teeth, and by age 65 over one-quarter of Americans have lost all their teeth. More than 10 percent of the nation's rural population have never visited a dentist.

These are sobering statistics. But here is the good news: Dental decay is a dynamic disease process, and not a static problem. Before a cavity is formed in the tooth, the caries infection can actually be reversed. That means that we can prevent tooth decay, as long as dental care is made available and good oral hygiene practices are used.

Deamonte's story was told around the world. But nowhere did it hit harder than in his home State of Maryland. I am proud of how the Maryland Congressional Delegation, Governor Martin O'Malley, and the Maryland General Assembly have responded to the need for better access to oral health care.

In 2010 and 2011, the Pew Center on the States named Maryland a national leader in improving dental access for low-income Marylanders. We were the only State to meet seven of Pew's eight dental policy benchmarks, and we ranked first in the nation for oral health. CMS also invited our State officials to share their story at its national quality conference in August 2011 and placed Maryland's achievements in its Best Practices Guide.

I will mention just some of what Maryland has accomplished: In 2010, our State secured \$1.2 million in Federal funding to develop a statewide Oral Health Literacy Campaign, called "Healthy Teeth, Healthy Kids." More than 368,000 children and adults in Medicaid received dental care in 2011; 82,000 more than in 2010. The percentage of pregnant women receiving dental care in 2011 was 28.4 percent, compared to 26.6 percent in 2010.

Created by the Robert T. Freeman Dental Society and funded in part by the State, the Deamonte Driver Mobile Dental Van Project provided diagnostic and preventive services for over 1,000 Prince George's County children who live in neighborhoods where otherwise care would be unavailable to them.

The Kaiser Family Foundation awarded a \$200,000 grant to the Maryland Dental Action Coalition that funded a pilot dental screening program at a school-based health center in Prince George's County.

The Dental Action Coalition also began granting and reimbursing primary care providers to apply fluoride varnish for children up to 3 years of age. By June 2012, 385 primary care providers had administered over 58,000 treatments.

The Maryland Community Health Resources Commission continues to expand oral health capacity for underserved communities. Since 2008, the Commission has awarded 20 dental grants totaling \$4.6 million. These grants have funded services to more than 35,000 low-income children and adults in our State.

I am also very proud of what Congress has done. In the CHIP Reauthorization Act passed a few months after Deamonte died, we established a guaranteed oral health benefit for children. With the leadership of Senators BAUCUS, GRASSLEY, ROCKEFELLER, COLLINS, and former Senator Bingaman, we created grants to the States to improve oral health education and treatment programs. We also addressed one of the problems that Deamonte's mother faced in trying to get care for him—a lack of readily available information about accessible providers.

For a variety of reasons, it is difficult for Medicaid and CHIP enrollees to find dental care, and working parents whose children qualify for those programs are likely to be employed at jobs where they can't spend 2 hours a day on the phone to find a provider. So HHS must include on its Insure Kids Now Web site a list of participating dentists and benefit information for all 50 States and the District of Columbia.

Also, in 2009, Congress passed the Edward M. Kennedy Serve America Act. That law created the Healthy Futures Corps, which provides grants to the States and nonprofit organizations so they can fund national service in low-income communities. It will allow us to put into action tools that can help us close the gap in health status—prevention and health promotion. For too long we have acknowledged health disparities, studied them, and written reports about them. With the help of the senior Senator from Maryland, my colleague, Senator BARBARA MIKULSKI, we added language to that law specifying oral health as an area of focus.

Now the Healthy Futures Corps can help recruit young people to work in the dental profession, where they can serve in areas that we have shortages of providers in urban and rural areas. It will fund the work of individuals who can help parents find available oral health services for themselves and their children. It will make a difference in the lives of the Healthy Futures Corps members who will work in underserved communities and in the lives and health of those who get improved access to care. Then in the 2010 Affordable Care Act, we enacted several landmark provisions designed to improve oral health.

The ACA funds and encourages a number of oral health prevention activities. First, it directs the CDC to establish a 5-year national oral health education campaign. This campaign is required to use science-based strategies and to target children, pregnant women, parents, the elderly, individuals with disabilities and ethnic and racial minority populations, including Native Americans.

The ACA also created demonstration grants to study the effectiveness of research-based oral health programs, which will be used to inform the public education campaign.

The health care law expands an existing school-based dental sealant program to each of the 50 States and territories and to Indians, Indian tribes, tribal organizations and urban Indian organizations. It directs the CDC to enter into cooperative agreements with State, territorial and Indian organizations to establish guidance, conduct data collection and implement science-based programs to improve oral health.

ACA also authorizes HHS to make grants to dental schools, hospitals, and nonprofits to participate in dental training programs. This funding can be used to provide financial assistance to program participants, including dental

and dental hygiene students as well as practicing dentists, and for loan repayment for faculty in dental programs. The ACA also provides grants for up to 15 demonstration programs to train alternative dental health providers in underserved communities.

The law authorizes and requires a number of public health initiatives that should improve access to oral health care, including an \$11 billion, 5-year initiative that funds construction, capital improvements and service expansions at community health centers, where so many oral health services are provided.

It also establishes a National Health Care Workforce Commission to serve as a resource to evaluate education and training to determine whether demand for health care workers is being met, and identify barriers to improvement. We need that information. That was Senator Bingaman's provision and it should be funded as soon as possible.

But perhaps the most important provision is a requirement that health plans cover a set of essential health benefits, EHBs, that includes pediatric dental care. Beginning January 1, 2014, the law says that oral health care for children must be part of the essential health benefits package that must be offered in the new health insurance exchanges and in the small group and individual insurance markets that exist outside the exchanges.

When the ACA was passed nearly 3 years ago, I had great hopes that in a few years, I could stand here on the Senate floor and celebrate all the progress we had made in bringing affordable dental care to every child in this nation. I had hoped this would be a day to talk about what a difference Congress has made in the oral health of America's children. We celebrated that section of the law, because it meant that once and for all, oral health would be available to America's children. It gave many of us hope that we would be able to get every child basic dental care and begin to erase the epidemic of dental disease that still affects millions of American children. Now, however, the affordability of that benefit is at risk.

The ACA includes a Finance Committee provision that allows stand-alone dental plans to exist in the market. In a colloquy on September 26, 2011, Senators BAUCUS, STABENOW, and Bingaman engaged in a colloquy.

They clarified that the intent of the law in allowing stand-alone dental plans was not to create separate standards but to ensure competition in the insurance exchanges and allow choice in the marketplace.

Later, I joined 10 of my colleagues in writing to HHS Secretary Sebelius, urging her to ensure that all children who receive their dental coverage through a stand-alone dental plan should have the same level of consumer protections and cost-sharing as those who get coverage through a plan that offers integrated benefits.

Last week, HHS published a final rule on the benefits that creates a separate out-of-pocket limit for stand-alone dental plans, but only specifies that the limit be “reasonable.” There are two huge problems with this approach. First, an additional out-of-pocket limit will make the benefit far less affordable for many families. It was not what Congress intended. The whole point of adding pediatric dental benefits to the essential health benefits package was to make certain that oral health not be considered separate from overall health.

We have been here before. This approach is similar to policies that were set decades ago for mental health services—separate policies to cover mental health treatment, separate limits on coverage, and separate copays. Mental health was treated as second-class health care. We know now that this was an injustice. It was wrong to treat those services, and the patients who used them, as second-class. Many of my colleagues were here in Congress when we fought the battles for mental health parity. It was a difficult battle, but we won. It seems to me that this is what we are doing now with dental care, rather than treating it as part of the Essential Benefits Package, which was our intent in the Affordable Care Act.

Section 1402(b) of the law also establishes an out-of-pocket limit for all families and lowers that limit for families with incomes under 400% of the Federal poverty level. By creating a separate limit, HHS is reducing the number of families who will be able to afford dental coverage for their children.

Second, the rule has left the determination of what is a “reasonable” out-of-pocket limit to each State. With pressure from insurance companies, a State could decide to provide an out-of-pocket limit of \$1,000 or more per child, which could more than double out-of-pocket costs for a family with five children.

In the Federally run exchanges, HHS has the authority to set a “reasonable” out-of-pocket limit. Last Thursday, in a Finance Committee hearing, I asked Jon Blum, the CMS Deputy Administrator, about the idea of segregating dental benefits from health benefits and increasing cost-sharing. This is what he said: “Well I think one of the lessons that we learned within the Medicare program is that when the care is siloed, our benefits aren’t fully integrated. That can often lead to worse total health care consequences. I can pledge to get back to you with direct answers to your questions. But I do agree with your general principle that when benefit design is broken up and care is not coordinated, that it can often lead to bad quality of care.”

Later that day, I spoke with CMS acting administrator Marilyn Tavenner. I asked her to take into account the affordability of a plan that had separate, high cost-sharing, and she agreed to consider my views. Less

than 24 hours later, CMS released a proposed “guidance” to insurers, setting a maximum out-of-pocket limit of \$1,000. When I contacted HHS to ask whether this was a per-family or per-child limit, the expert in charge of the rule was unable to tell me. They did not know whether this meant extra costs per year of \$1,000 or \$5,000 for a family with five children. This tells me that the affordability of care was a secondary consideration when this final rule was written.

There are still millions of American children without coverage for dental care. If we are to make real progress in improving the health of Americans, we cannot afford to continue giving oral health care second-class treatment.

The question now is whether the guidance to plans will go forward. It is contrary to Congressional intent and contrary to the best interests of American families to allow it to stand. On this sixth anniversary of the death of Deamonte Driver, let’s pledge to do better for our children.

Madam President, I call to the attention of my colleagues a colloquy between Senators Bingaman, STABENOW, and BAUCUS in the RECORD of September 26, 2011, at page S5973.

With that, I yield the floor.

RECESS

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

Thereupon, the Senate, at 12:30 p.m., recessed until 2 p.m. and reassembled when called to order by the Presiding Officer (Ms. HETKAMP).

EXECUTIVE SESSION

NOMINATION OF JOHN OWEN BRENNAN TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY—Continued

The PRESIDING OFFICER. The time until 3 p.m. is equally divided.

The Senator from California.

Mrs. FEINSTEIN. Madam President, it is my understanding that this is an appropriate time for me, as chairman of the Intelligence Committee, to speak on the nomination of John Brennan for Director of the CIA.

The PRESIDING OFFICER. The Senator is recognized.

Mrs. FEINSTEIN. Madam President, as a kind of predicate to this nomination, we have heard a 13-hour filibuster from Senators who desire an answer to the question that was proffered by Senator PAUL. I have that answer. It is dated March 7. It is a letter from the Attorney General Eric Holder. It is to Senator RAND PAUL. This is what it says:

It has come to my attention that you have asked an additional question. “Does the President have the authority to use a weaponized drone to kill an American not engaged in combat on American soil?”

The answer to that question is no.

I ask unanimous consent that letter be printed in the RECORD.

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

THE ATTORNEY GENERAL,
Washington, DC, March 7, 2013.

Hon. RAND PAUL,
U.S. Senate,
Washington, DC.

DEAR SENATOR PAUL: It has come to my attention that you have now asked an additional question: “Does the President have the authority to use a weaponized drone to kill an American not engaged in combat on American soil?” The answer to that question is no.

Sincerely,

ERIC H. HOLDER, Jr.

Mrs. FEINSTEIN. So, hopefully, the need to continue any of this will be vitiated, and we will be able to proceed with a vote. It is my understanding that I have a half hour on behalf of the majority of the Intelligence Committee to make a statement in support of Mr. Brennan.

Mr. Brennan’s nomination was reported out of the Senate Intelligence Committee on Tuesday by a strong bipartisan vote of 12 to 3. I look forward to an equally strong vote by the Senate later today.

Let me begin with his qualifications, which are impressive and unquestioned. John Brennan began his career as an intelligence officer with the CIA in 1980. He worked as a CIA officer for 25 years in a variety of capacities, including as an analyst in the Office of Near Eastern and South Asian Analysis and as a top analyst in the CIA Counterterrorism Center from 1990 to 1992, both areas that remain very much a focus of the CIA today.

He was the daily intelligence briefer at the White House and served as George Tenet’s executive assistant. Despite his background as an analyst, Mr. Brennan was selected to serve as Chief of Station, a post generally filled by a CIA operations officer. He served in Saudi Arabia, one of the most important and complex assignments, and then returned to Washington as then-DCI Tenet’s Chief of Staff and the Deputy Executive Director of the CIA.

Mr. Brennan then served as the head of the Terrorist Threat Interrogation Center, the predecessor organization to the National Counterterrorism Center (NCTC), where he also served as the Interim Director. After a short stint in the private sector, he returned to be President Obama’s top counterterrorism and homeland security adviser. In that capacity, he has been involved in handling every major national and homeland security issue we have faced since 2009.

He has been involved in counterterrorism successes, including this administration’s efforts to bring Osama bin Laden to justice and at least 105 arrests of terrorist operatives and supporters in the United States since 2009. He also helped implement the lessons learned from Umar Farouq Abdul-