Last week, HHS published a final rule on the benefits that creates a separate out-of-pocket limit for standalone 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. HEITKAMP).

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-

mutallab's attempted bombing of a jet over Detroit, the loss of CIA personnel in Khowst, Afghanistan, and the terrorist attacks in Benghazi, Libya. So he is qualified.

For the past 4 years, Mr. Brennan has been among the President's closest advisers. As Director of the CIA, he would lead this Nation's largest intelligence agency and will continue to provide information and advice on intelligence matters to the President, his national security team, and this Congress.

Throughout the past three decades, Mr. Brennan has observed every aspect of intelligence from analysis to collection to covert action, from inside government and the private sector, and from both the intelligence and policy sides.

I actually do not believe there is anyone who is more qualified to take over the CIA than John Brennan. So he cannot be denied this post, in my view, on the basis of qualification. I think even those who oppose his nomination recognize there is no question but that he is well qualified. From the time he walks into the CIA, he will be ready to go, up to speed on the numerous threats and challenges this country faces all over the globe.

Let me speak for a moment why that is important and why it is so important that we move to confirm John Brennan. As the Director of the CIA, he leads the most diverse and clandestine intelligence agency, the only agency to conduct covert actions, the largest all-source analytic workforce. And he sits in the principal committee meetings where the most sensitive national security decisions are made.

The past two CIA Directors, both Mr. Panetta and General Petraeus, have played significant roles in keeping the Senate and House Intelligence Committees informed of sensitive operations. They have provided an independent assessment of hot spots and strategic threats around the world. John Brennan will do the same.

By its nature, the CIA is among the parts of our government that receive the least oversight. Its activities are largely shielded from the view of the press, the public, the Government Accountability Office, and, indeed, most Members of Congress. The Director of the CIA must be both unimpeachable in his—or, hopefully, one day her—integrity, while guiding a workforce of people who operate in the shadows for the benefit of our Nation. This is important.

He must manage an independent and creative workforce, build and nurture relationships with foreign spy chiefs, and lead teams of scientists, technicians, lawyers, analysts, and operatives who are involved in clandestine work. In short, the CIA is capable of the very best of America, and, catastrophically at times, it is capable of great mistakes.

It follows that the position of CIA Director requires an uncommon nominee. That position should not remain vacant for long. For the past 5 months, the Deputy Director, Michael Morell, has served as the Acting Director.

Mr. Morell, like John Brennan, is a career CIA officer and a very gifted one. But as I discussed with him last Friday, he cannot single-handedly attend the White House principals meeting, the deputies meetings, direct the agency, meet with liaison partners, testify before Congress, implement sequestration, and do everything else the Director and Deputy Director must jointly do.

John Brennan and Michael Morell will be a great team in leading the CIA. I believe they compensate for one another. Michael Morell has these skills in analysis, and I think John Brennan has skills that make him a very strong and, yes, even tough leader.

We face continuing attack from terrorists. There is no question about that. I see the reports every day. Our posts overseas remain at risk, and terrorists still seek to attack us at home. As a matter of fact, there have been over 100 arrests in the last 4 years by the FBI in this country.

There is a massive and still growing humanitarian disaster underway in Syria with no end in sight and the prospect of an increasingly desperate regime with nothing to lose. Instability is going to continue to fester across North Africa, from Mali to Algeria, to Libya and beyond, breeding and harboring a new generation of extremist.

The North Korean regime is threatening to disavow the 1953 cease-fire with the South, and it has the nuclear and missile capability to cause massive destruction and instability.

Iran's nuclear program continues to grow and its Revolutionary Guard and Hezbollah proxy are growing bolder and more capable.

China's foreign policy and military might are increasing. According to well-sourced recent unclassified reports, its cyber operations are bleeding our private sector dry.

The CIA has a role to play in all of these areas, as well as maintaining and expanding its global coverage. This is going to require prioritizing resources and producing better results from a very skilled CIA workforce. So the CIA Director position must be filled. Five months is too long to leave it vacant. John Brennan, I believe, and 12 members of our committee believe, is the right person to fill it.

On that question, whether we can depend on John Brennan to be straight with the committee, I believe he will be and that he will be someone with whom we can build a strong and trusting relationship.

Let me just say one thing that is important. It is very important that the Intelligence Committees in both of these Houses have that relationship with the Director of the CIA, so that with a bond of trust there can be a sharing of information which enables our oversight to be more complete. Without that, our oversight is not complete, and it certainly is not as rigorous as what is required.

In nominating John Brennan, President Obama spoke of his ''commitment to the values that define us as Americans.'' DNI Clapper, in a letter of support to the committee, noted John's ''impeccable integrity'' and that his ''dedication to country is second to none.'' He has been called the administration's ''conscience,'' and I believe he will be a straight shooter, which is extraordinarily important to me. I want the truth whether it is good or bad. I want the truth. I believe every member of my committee feels the same way.

Mr. Brennan has been straightforward with the committee throughout the confirmation process. He has pledged to be open with us if confirmed. We will take him up on that pledge. In his opening statement at the committee's public confirmation hearing, Mr. Brennan said: If confirmed, ''I would endeavor to keep this committee fully and currently informed, not only because it is required by law, but because you can neither perform your oversight function nor support the mission of the CIA if you are kept in the dark.''

He acknowledged that the ''trust deficit has at times existed'' between the Intelligence Committee and the CIA, and he pledged to make it his goal to strengthen the trust between our institutions. I look forward to giving him that opportunity. To be sure, I will hold him to these words.

I recognize that building a relationship and trust requires two willing partners. We are willing. I believe he will be willing. We will find out.

In fact, there is a broader issue on the interaction between the executive branch and the Congress on intelligence matters. It goes well beyond Mr. Brennan, and I wish to speak about it.

I have served on the Intelligence Committee for more than 12 years. This is actually a lot more unusual than it sounds. From the committee's establishment in 1976 to the end of 2004, there were term limits on committee membership. Senators rotated off the committee just when they had served for long enough to understand what the intelligence community is doing and, most important, how it operates.

Senators ROCKEFELLER, WYDEN, MIKULSKI, and I have all served on the committee for more than a decade, and Senators CHAMBLISS and BURR are near that total. Both served on the House committee before coming to the Senate.

So now we have veterans on the committee who have watched and listened. We spend a minimum of 2 hours in a committee meeting twice a week and often longer. We cannot take home notes. Notes go in the safe and we cannot take home classified information. It means a lot of reading whenever we are able to find the time to go to a SCIF to read the classified information

which daily is quite voluminous. We see everything except the President's PDB; that is, the President's Daily Brief. All the other information from all the other agencies stream through this committee. It is vital we read it because this is where we find out where the threats are.

We have been able to truly understand the relationship between the Intelligence Committee, the intelligence community, and the importance of having the committee kept fully and currently informed of intelligence matters. That is not our wish. That is a requirement of the National Security Act. We have seen what happens when this is not the case, when the committee doesn't have access to full knowledge of intelligence, as with the weapons of mass destruction weapons before the war or with the CIA's detention and interdiction program through the past administration.

By contrast, when we are briefed, we can provide input and advice. We work to put an end to ill-advised plans, and we give the intelligence community a measure of support and defend its actions.

There is a very strong feeling on both sides of the aisle that the committee is not receiving the information it needs to conduct all oversight matters in the manner in which we should. There is the matter of Office of Legal Counsel opinions concerning the targeted killing of Americans. The committee needs to understand the legal underpinning of not only this program but of all clandestine programs, of all covert actions, so we may ensure the actions of the intelligence community operate according to law. Absent these opinions, we cannot conduct oversight that is as robust as it needs to be.

During the confirmation process, we were able to reach an agreement with the administration to receive these opinions, with staff access and without restrictions on note taking.

I want to thank the administration. I think increasingly they understand this problem of the need for us to access more information. It is not a diminishing one, it is a growing one, and it is spreading through this House—and I suspect the other House as well.

It needs to be this way. We need to know the legal basis for very serious actions taken in a secretive way by the intelligence community. Therefore, we can defend it. If we don't see it, we don't know.

I also wish to address the drone issue once more, mainly to discuss the hypothetical examples offered yesterday by the Senator from Kentucky. On Fox News this week, he mentioned—and I began with this ''what we are talking about is eating dinner in your house, you are eating in a cafe or walking down the road, and a drone strike can occur. It is not about people involved in combat, it is about people who they think might be.''

A drone strike against someone eating in a cafe or walking down the road will never happen in the United States of America. This is not permitted in the United States of America. The Attorney General, in his letter to Senator PAUL, has said just that. It will not happen.

I hope this puts this issue to an end. It is one thing to target a terrorist in an isolated country where there are isolated mountains and valleys and where we cannot get to them to capture them, but we know terrorists and terrorist leaders are plotting against the United States.

The United States of America is a different place. There is access to the court system, access to police, access to FBI, access to warrants, access to arrests, access to be able to find and ferret out individual terrorists. Drones will never be used in the United States of America to kill innocent Americans, not if I have anything to do with it.

Yesterday, in the Judiciary Committee while I was present, Senator CRUZ followed up on Senator PAUL's concerns, asking Attorney General Holder if an American eating in a cafe—who doesn't pose an imminent threat—could be killed by a drone. I don't believe the Attorney General, at the time he heard the question or recognized the simplicity of the facts presented by the hypothetical. When he did, he said no. My view is the Attorney General's letter to Senator PAUL is correct. The only case in which the use of lethal force against Americans in the United States could be contemplated or constitutional would be an extraordinary circumstance such as the attack on Pearl Harbor or the terrorist attacks on September 11, where four big commercial airliners were hijacked and flown into three large buildings, with the fourth crashing into a field in Pennsylvania.

Another issue, where the committee has sought documents, is related to the Benghazi terrorist attack.

I notice that the vice chairman is on the floor. He and I have worked to bring the additional documents his side wanted on the Benghazi attacks. We have a commitment from the administration that all those documents, if they haven't already been forthcoming—and it is my understanding from the Senator most have been forthcoming—the remaining ones will be forthcoming as well.

My view is the committee has received the information we need in order to render a judgment about what happened in Benghazi before the attacks of last September 11 and 12, during, after, and before. My view, quite simply stated, is there was strategic warning about the conditions in Eastern Libya. And based on the previous attacks in the area, it was likely this mission not it was not a consulate—but this mission could well be a site of attack. Members have asked legitimate intelligence questions within our jurisdictional lane about Benghazi, and they deserve answers to their questions.

Many Senators on both sides of the aisle in the committee see the need for a better relationship and a better appreciation of what we need in order to do our work. As I discussed previously, we are very different from other congressional bodies which do oversight. Our efforts aren't supplemented by the press, GAO or by nonprofit and advocacy groups in the same way they are in the other committees of the Congress. The Intelligence Committees in the House and the Senate need to receive information from the executive branch in order to exercise robust oversight.

I have spoken directly to the President, the President's Chief of Staff, the National Security Adviser, and the Director of National Intelligence about this. I believe they are truly beginning to understand what is at stake. I am told they have an open view and are discussing increased transparency with us at this time.

I strongly believe John Brennan will be part of the solution, and he will be someone with whom we may work closely. He is well qualified. His leadership and management are sorely needed, and he has strong bipartisan support in the committee.

I urge a ''yes'' vote.

I yield the floor to the distinguished vice chairman from Georgia, with whom it has been a great pleasure for me to work. We haven't disagreed on a lot—we have disagreed on a few things—but I want the Senator to know I wish to continue our relationship.

We need to put together another authorizing bill. I look forward to working with you, Mr. Vice Chairman, in that regard, and I thank you.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I rise to explain why I am opposing the nomination of John Brennan to be the next director of the Central Intelligence Agency.

First, I wish to say I thank the chairman for her kind comments. Let me state, as they had reiterated, we had 2 great years where we accomplished a great deal. She is one tough gentle lady, particularly when it comes to the national security of the United States.

It has been a pleasure to work with her. It is rare we ever disagree, because we both have the same end result in mind, which is to make sure America and Americans are safe, secure, and the intelligence community is doing its part to ensure that happens.

Her leadership has just been amazing. We have produced authorization bills over each of the last 2 years—we have actually done four in 2 years, which indicates there was a backlog of those authorization bills.

We have also reauthorized FISA and some other measures which equip our intelligence community as well as our law enforcement community with the tools they need to combat terrorism. It is because of her leadership we have been able to do that.

When we do disagree, it is kind of an unusual situation. We may have disagreements in a bipartisan way within our committee. This is good. It is healthy.

Sometimes Democrats will side with me or Republicans will side with the chairman on an issue. This shows us people are voting with their hearts and what they think is in the best interests of America, not from a partisan standpoint.

I attribute that to the leadership of Chairman FEINSTEIN because of her openness and for allowing bipartisan participation in a fine way.

I expect Mr. Brennan is going to be confirmed by the Senate. I would have liked to have supported his nomination.

Unfortunately, I have significant concerns about several matters I simply cannot put aside. If confirmed, Mr. Brennan will interact extensively with the Senate Intelligence Committee and in particular with Chairman FEINSTEIN and with myself as the vice chairman. He will have many opportunities over the next several years to alleviate my concerns, and I hope he does so. At this time, I cannot support placing him in a position so vital to our national security mission.

During the confirmation process, including during the open hearing, I, along with other members, asked Mr. Brennan questions about the leaks of classified information, issues involving congressional oversight, interrogation, and detention matters. His responses to many of these questions were very troubling and raised new concerns about Mr. Brennan's judgment, his reluctance to commit to transparency with Congress, and ultimately his candor. Let me describe these concerns more fully.

First, I am deeply disturbed by Mr. Brennan's responses to the committee regarding leaks of classified information, especially the disclosure relating to the AQAP underwear bomb plot thwarted in May of 2012. Mr. Brennan acknowledged to the committee he had told four media commentators we had ''inside control'' of this bomb plot but disputed assertions that this disclosure resulted in the outing of a source. It is undeniable that the day after his disclosure, there were dozens of stories in the media stating the plot was foiled by a ''double agent'' or ''undercover agent'' who posed as a willing suicide bomber.

Mr. Brennan is poised to serve as the head of the Nation's leading spy agency where he will be privy to some of the most sensitive, if not all of the most sensitive, and highly classified operations being conducted by the intelligence community. That he apparently thinks he did nothing wrong in this disclosure is very troubling, to say the least.

We all know there is a big problem with leaks of classified information. We constantly deal with it in the committee and seek to eliminate it. We cannot effectively hold accountable those responsible for such leaks if a senior government official appears to shrug off his own damaging disclosure. I hope Mr. Brennan will reconsider his position on this case and convey to those he expects to lead, not just in words but by his own example, the importance and necessity of maintaining the secrecy he will be sworn to uphold.

Second, Mr. Brennan appears to be one of the architects of the administration's current detention policy—or better stated, lack thereof. Since the President signed the Executive orders in 2009 disbanding the CIA's detention and interrogation program and ordering the closure of the Guantanamo Bay detention facility, many of us have been asking the administration to tell us what their new detention policy is. Unfortunately, in the years since, we have seen a most unsatisfactory response play out in ways that I believe are detrimental to our collection of timely intelligence and, ultimately, to our national security.

We have seen a disturbing trend of returning to the pre-9/11 days when bringing criminal charges against terrorists was a preferred course rather than long-term detention, which allows for greater intelligence collection. Because of this preference, the 2009 Christmas Day bomber, Umar Farouk Abdulmutallab, was read his Miranda rights 50 short minutes after being pulled off the airplane that he had just tried to bomb. It took 5 weeks before he would again cooperate and no one knows what intelligence might have been lost during that delay.

Somali terror suspect Ahmed Abdulkadir Warsame was held on a naval ship and interrogated for 60 days before being brought to a Federal Court, all because the administration refused to send any more detainees to Guantanamo Bay.

Even in the months before the Osama bin Laden raid, other than saying Guantanamo Bay was off the table, administration officials could not tell Congress where bin Laden would be held if he were captured.

Most recently, Ani al-Harzi, the only person held in connection with the September 11, 2013, attacks in Benghazi that claimed the lives of four Americans, was released by the Tunisians and is now roaming about free because this administration would not take custody of him unless criminal charges could be filed here in the United States.

Mr. Brennan is not merely a staunch and unapologetic advocate of this misguided policy, he is the driving force behind it.

By criminalizing the war on terrorism, this administration has tied the hands of our intelligence interrogators and appears to be avoiding opportunities to capture terrorists in favor of just killing them or relying on our foreign partners to do our intelligence collection for us. Mr. Brennan disputes this assertion and testified that he was not aware of any instance in which we had the opportunity to capture a terrorist but took a lethal strike instead. But his testimony on this point appears to be particularly incredible. While reasonable minds may differ as to whether bin Laden should have been taken alive, to argue that he could not have been taken alive and captured is not believable when his wives and children were left behind during the raid. The truth is the administration simply had no plan to capture him.

Now, while in this case of UBL, killing him probably was the best option, I believe that all options have to be on the table and utilized when appropriate; otherwise, we are potentially losing valuable intelligence. Yet Mr. Brennan's testimony before the Intelligence Committee made clear that he is fully satisfied with how detainees are currently being handled and he is insistent the CIA remain out of the detention business, even if it means we do not get direct or timely access to detainees.

Thirdly, Mr. Brennan continues to insist that he conveyed to colleagues at the CIA his personal objections to the CIA's interrogation program. Yet not a single person has come forward to validate that claim. And Mr. Brennan still refuses to identify those colleagues, in spite of several direct requests by the Intelligence Committee. During the time in question, Mr. Brennan served as the CIA's Deputy Executive Director. We know he was privy to information about the program, as we have seen numerous documents he received during and after the interrogation of Abu Zubaydah.

It is not just reasonable, it is expected our intelligence professionals, especially those in leadership positions, will speak up when they see actions they believe are harmful to the agency or to others. Yet by Mr. Brennan's own account, he stood by and let the CIA proceed down a path that he says he believed to be morally wrong and likely to harm the long-term reputation of the CIA. This is not the moral courage we expect, especially from those who are in a position to influence policy and operations. Unfortunately, Mr. Brennan continues to insist that his official silence was entirely appropriate, and I could not disagree more.

I am also troubled by Mr. Brennan's apparent willingness to scuttle years of belief in the value of the information obtained from the CIA's interrogation program simply because the recent interrogation study conducted by the committee's majority staff found otherwise. In my view, the study is significantly flawed, not the least of which being that not a single intelligence community witness was interviewed. I am worried about the impact Mr. Brennan's reversal will have on the morale of those current CIA employees who were involved in the program and whose own judgment and reputations are called into question by this study.

I expect when the CIA returns its comments to the Intelligence Committee about the accuracy of the report that Mr. Brennan will not let his personal views of the program interfere with the professional assessment and analysis of CIA employees.

Finally, underlying all of these issues are the principles of candor and transparency with Congress. Our Nation was founded with three coequal branches of government, each one providing checks and balances over the other in a manner specified in the Constitution. Federal law also imposes explicit obligations on the intelligence community, such as keeping Congress fully and currently informed of significant intelligence activities. Ordinarily, during confirmation hearings, nominees unequivocally pledge their cooperation to Congress. Yet during his confirmation process, Mr. Brennan refused to give affirmative answers when asked to commit to such cooperation.

For example, he pledged to only give ''full consideration'' to any request that the committee be provided with raw intelligence, even though the committee has been given such intelligence in the past. When asked about the inexcusable problems the committee has faced in trying to obtain documents about the Benghazi attacks, Mr. Brennan promised only to try to reach an accommodation with the committee if a similar situation should ever arise again. This is hardly encouraging. Some may say that Mr. Brennan was simply being honest and not overpromising. I might agree but for the fact this pattern of obstruction and lack of cooperation is becoming all too familiar to the committee, and Mr. Brennan has been involved in many of the decisions to withhold information from Congress.

For example, when the National Counterterrorism Center was created, Congress gave it specific responsibility to serve as the primary organization for strategic operational planning for counterterrorism. For too long the committee has been refused full access to the resulting counterterrorism strategies, a decision for which Mr. Brennan is directly responsible. Rather than give us the strategies, the administration has proposed an ''accommodation'' to simply brief the committee, but as of today we still have not been briefed, even though we are asked to fund the strategies as well as their implementation.

There are other examples, including the absurd restrictions that were recently placed by the White House on the review of the OLC opinions regarding lethal strikes on U.S. citizens. It is incomprehensible that Congress is being denied unfettered insight into matters concerning the intentional killing of U.S. citizens.

During the confirmation process, Mr. Brennan called on the Intelligence Committee to be the protector and defender of the CIA. That is not an accurate description of the committee's role. Given the classified nature of intelligence activities, the committee serves as the eyes and ears of the American people, and our responsibility lies first and foremost to them. That is not to say we will not defend the CIA or the rest of the intelligence community against unjust attacks. We will. But the committee's primary role is to conduct oversight, and we cannot do that effectively without full cooperation from the intelligence community as well as the administration. I hope and expect Mr. Brennan will now give us that cooperation rather than just what he views as an accommodation.

The Director of the CIA has extensive and direct interactions with Members of Congress, especially those of us on the Intelligence Committee. During sensitive operations or times of crisis, the Director is often one of the first to communicate with Members. There have been too many instances in the past—under administrations of both parties—in which facts were withheld from Members or information was painted in a particular light to suit messaging needs, as we saw with the Benghazi talking points. That is simply unacceptable.

If confirmed as the CIA Director, Mr. Brennan's credibility must be unquestionable. We expect our spy agencies to be very good at hiding the truth—but not with Congress. Here too Mr. Brennan will be an example that all CIA employees look to, and his own standards of honesty and credibility in dealing with Congress must be above and beyond all reproach.

In conclusion, let me say that I have great confidence in the men and women at the CIA. Each and every day they give this Nation their best, and for that we are most grateful. They are the most professional, best educated, and best operational intelligence agency in the world. They are unbelievable men and women. My vote today is not a message to them nor is it an indication of the faith I have in the CIA. My vote is not personal toward Mr. Brennan; rather, it simply reflects my belief that the unauthorized disclosure of classified information is wrong regardless of whether you are on the front lines or you are an adviser to the President.

My vote also reflects my belief, especially at this time in our history, that the Director of the CIA should not support detention and interrogation policies that are returning us to the pre-9/11 days of elevating criminal charges over intelligence collection. In my view, Mr. Brennan is on the wrong side of both of these issues.

I also believe Congress must be an equal branch of the government, and this growing trend of refusing to cooperate with Congress must end. The future and security of our country depends on all of us working together. To do that well, there must be transparency and honesty. If confirmed as the CIA Director, Mr. Brennan has a tough job ahead of him. If he abides by these principles, he will find his job will be much easier, as he will have earned the support and the trust of Congress, and the country will be better off for it. Assuming confirmation of Mr. Brennan, he will have my full cooperation and support, I expect nothing less from him, and I hope that all of my concerns will be put to rest.

With that, Madam President, I yield the floor.

Mr. UDALL. Madam President, I am voting today for the confirmation of John Brennan to head the Central Intelligence Agency, CIA. He is a qualified nominee, and this position is too important to our national security to remain vacant. Mr. Brennan is a 25-year veteran of the Central Intelligence Agency. He has been an able adviser to President Obama and part of some of the most important national security decisions made during the last 4 years, including the raid that killed Osama bin Laden.

John Brennan should be confirmed as CIA Director. While I am supporting his nomination, I want to make one thing clear: I am not satisfied by the administration's limited disclosure of documents outlining the legal justification for an extraordinary authority—to target and kill American citizens in the course of counterterrorism operations. I first called on the administration to provide Congress with its legal justification in September 2011. This was after a remotely piloted aircraft strike in Yemen killed Anwar al-Awlaki, an American-born citizen. It was clear that al-Awlaki was a senior al-Qaeda leader who posed a threat to American lives and deserved his fate. Nevertheless, we are a nation of laws. Congress has a vital oversight role and shared national security responsibility. We are entitled access to full legal justifications for the President's authority to target and kill an American citizen, and an explanation of what limits there are to that authority. These legal precedents are constitutional issues of the highest order.

Last month, eleven United States Senators from both parties—including myself—sent a letter to the President requesting the release of all legal opinions justifying his authority to authorize the killing of American citizens as part of counterterrorism operations. There has been some progress. The Justice Department recently provided many of these documents to members of the Senate Select Committee on Intelligence. However, I believe all of us in the Senate should be able to review these documents and fulfill our constitutional duty to conduct rigorous congressional oversight. While I will support John Brennan's confirmation today, I will continue to seek access to these legal opinions so that the Senate can fulfill its responsibility.

Since the attacks on September 11, 2001, both Presidents Bush and Obama have claimed expansive wartime executive authorities that have been supported in Justice Department legal

opinions. We saw this in the previous administration with the issues of detainee interrogation methods and extraordinary renditions. While we recognize the administration's authority to target and kill enemy combatants, the targeting of American citizens in counterterrorism operations raises important constitutional questions. Congress shares constitutional authority for national security matters, and we must be allowed to conduct oversight, which, in this case, includes reviewing the legal justifications of the executive branch. When there is no oversight, abuses can occur. And I believe that every administration must be held accountable, regardless of which party controls the White House.

Mr. LEVIN. Madam President, I continue to have some concerns about John Brennan, the President's nominee to serve as the next Director of Central Intelligence.

First, I am troubled by Mr. Brennan's unwillingness to state unambiguously that waterboarding is torture. At his hearing before the Intelligence Committee, I asked Mr. Brennan this question three times without getting a direct answer:

SENATOR LEVIN: You've said publicly that you believe waterboarding is inconsistent with American values. It's something that should be prohibited, goes beyond the bounds of what a civilized society should employ.

My question is this, in your opinion does waterboarding constitute torture?

MR. BRENNAN: The attorney general has referred to waterboarding as torture. Many people have referred to it as torture. The attorney general, premiere law enforcement officer and lawyer of this country.

And as you well know and as we've had the discussion, Senator, the term ''torture'' has a lot of legal and political implications.

It is something that should have been banned long ago. It never should have taken place in my view. And, therefore, it is—if I were to go to CIA, it would never, in fact, be brought back.

SENATOR LEVIN: Do you have—do you have a personal opinion as to whether waterboarding is torture?

MR. BRENNAN: I have a personal opinion that waterboarding is reprehensible and it's something that should not be done. And, again, I am not a lawyer, Senator, and I can't address that question.

SENATOR LEVIN: Well, you've read opinions as to whether or not waterboarding is torture. And I'm just—I mean, do you accept those opinions of the attorney general? That's my question.

MR. BRENNAN: Senator, you know, I've read a lot of legal opinions. I've read an Office of Legal Counsel opinion in the previous administration that said in fact waterboarding could be used.

So from the standpoint of—of that, you know, I cannot point to a single legal document on this issue.

But as far as I'm concerned, waterboarding is something that never should have been employed and—and—and as far as I'm concerned, never will be, if I have anything to do with it.

SENATOR LEVIN: Is waterboarding banned by the Geneva Conventions?

MR. BRENNAN: I believe the attorney general also has said that it's contrary, in contravention of the Geneva Convention.

Again, I am not a lawyer or a legal scholar to make a determination about what is in violation of an international convention.

After the hearing, I wrote to Mr. Brennan, pointing out that the President and senior administration officials, including both lawyers and nonlawyers, had concluded that waterboarding is torture. I asked the question again, and again I got no direct answer. Mr. Brennan replied:

You have asked for my position on whether waterboarding constitutes 'torture.' I understand and appreciate your concern about the use of waterboarding by the prior Administration. As I have made clear, I considered it reprehensible then and now, and I have been an unwavering supporter of the President's decision to ban its use. I have also in the past stated that I believe waterboarding subjects a person to severe pain and suffering, which is a common way of defining 'torture.' In addition, I have indicated in our prior conversations and in my appearance before the Senate Select Committee on Intelligence on February 7, the term 'torture' is a legal term, and I defer to the Attorney General on matters of legal interpretation.

Mr. President, I ask unanimous consent that my letter to Mr. Brennan, and Mr. Brennan's response, be printed in the RECORD immediately after my statement.

Second, I am troubled that, during the time that Mr. Brennan served on the staff of the National Security Council—NSC, senior administration officials consistently declined to provide Congress with access to key legal memoranda relative to the use of targeted strikes against terrorist targets. Indeed, we were able to obtain access to these memoranda only after it became clear that Mr. Brennan might have trouble being confirmed if they were not made available.

Third, I am troubled that, during the time that Mr. Brennan served on the NSC staff, senior officials in the intelligence community and the NSC staff apparently did not protest when U.N. Ambassador Susan Rice was rejected for the position of Secretary of State on the basis of her public comments on the Benghazi attacks, even though those comments were based on talking points produced by, reviewed by, and edited by those same officials.

My concerns about Mr. Brennan's unresponsiveness in these three areas are not sufficient to overcome the fact that he is qualified to be Director of Central Intelligence. But it is my hope that he will learn from this confirmation process and be more responsive to congressional requests for information in the future.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, February 20, 2013.

JOHN O. BRENNAN,
Assistant to the President for Homeland Security and Counterterrorism, The White House, Washington, DC.

DEAR MR. BRENNAN: I am troubled that, during your confirmation hearing on February 7th, you chose not to express your personal opinion as to whether waterboarding constitutes torture. As the Senate Select Committee on Intelligence continues to consider your nomination to be Director of the Central Intelligence Agency (CIA), I would appreciate your answers to the following questions for the record.

In a November 2007 interview with CBS News, you stated, ''I think it [waterboarding] is certainly subjecting an individual to severe pain and suffering, which is the classic definition of torture.''

Do you still hold that view today?

During his January 2009 confirmation hearing, Attorney General Holder stated ''waterboarding is torture'' and pointed out ''If you look at the history of the use of that technique used by the Khmer Rouge, used in the inquisition, used by the Japanese and prosecuted by us as war crimes. We prosecuted our own soldiers for using it in Vietnam.''

During a press conference in April 2009, President Obama said ''waterboarding violates our ideals and our values. I do believe that it is torture. I don't think that's just my opinion; that's the opinion of many who've examined the topic.''

In another press conference in November 2011, President Obama said ''Waterboarding is torture. It's contrary to America's traditions. It's contrary to our ideals. That's not who we are.'' He continued, ''If we want to lead around the world, part of our leadership is setting a good example. And anybody who has actually read about and understands the practice of waterboarding would say that that is torture.''

Finally, during his February 2009 confirmation hearing to be Director of the CIA, Leon Panetta said ''I believe that waterboarding is torture and that it's wrong.''

Do you agree with President Obama, Attorney General Holder, and Secretary Panetta that waterboarding constitutes torture?

I would appreciate your prompt response to these questions.

Sincerely,

CARL LEVIN,
Chairman.

THE WHITE HOUSE,
Washington, DC, February 25, 2013.

Hon. CARL LEVIN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you Mr. Chairman, for your letter of February 20, 2013.

You have asked for my position on whether waterboarding constitutes ''torture.'' I understand and appreciate your concern about the use of waterboarding by the prior Administration. As I have made clear, I considered it reprehensible then and now, and I have been an unwavering supporter of the President's decision to ban its use. I have also in the past stated that I believe waterboarding subjects a person to severe pain and suffering, which is a common way of defining ''torture.'' In addition, I have indicated in our prior conversations and in my appearance before the Senate Select Committee on Intelligence on February 7, the term ''torture'' is a legal term, and I defer to the Attorney General on matters of legal interpretation.

In closing, let me assure you that I fully appreciate that the humane treatment of detainees is both a national security and a humanitarian imperative. If I am confirmed to serve as Director of the Central Intelligence Agency, I will never approve the deployment of waterboarding under any circumstance, and will do everything in my power to prevent its use.

Sincerely,

JOHN O. BRENNAN,
Assistant to the President for Homeland Security and Counterterrorism.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I yield myself 10 minutes.

I would first associate myself with the remarks of the Senator from Georgia, Mr. CHAMBLISS, who is the ranking member on the Intelligence Committee and has looked into this much deeper than I would ever be able to. I appreciate the comments, the depth, and knowledge he has imparted on that.

So I would be in opposition of the nomination of John Brennan for CIA Director.

The administration hasn't been forthcoming in answering a vitally important question of whether Americans could be killed by a drone on American soil without first being charged——

Mr. REID. Madam President, would the Senator from Wyoming yield for a unanimous request?

The PRESIDING OFFICER. Would the Senator yield?

Mr. ENZI. I yield to the Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that the time on the Republican side be limited to 15 minutes, with Senator PAUL—and how much time does my friend from Wyoming need?

Mr. ENZI. I asked for 10, but I could do it in 8.

Mr. REID. Eight minutes. Everybody else is gone.

I ask unanimous consent that the time on the Republican side be limited to 15 minutes for Senator PAUL and 8 minutes for Senator ENZI; that following the use or yielding back of time on the nomination, the mandatory quorum under rule XXII be waived; the Senate proceed to vote on the cloture motion; that if cloture is invoked, the Senate proceed to vote on confirmation of the nomination, without intervening action or debate; further, that the motion to reconsider be considered made and laid on the table, with no intervening action or debate; that no further motions be made in order to the nomination; that President Obama be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there any objection?

Without objection, it is so ordered.

Mr. REID. Madam President, I extend my appreciation. There is no one in the Senate who is more courteous and thoughtful than Senator ENZI, and I appreciate his assistance.

Mr. ENZI. I thank the Senator very much.

As I was mentioning, this administration hasn't been forthcoming in answering the vitally important question of whether Americans could be killed by a drone on American soil without first being charged with a crime or being found guilty in a court of law. This should have been a very simple answer.

White House Press Secretary Jay Carney stated today that the administration does not have the authority to kill Americans on American soil. That is great news. However, it shouldn't have taken a U.S. Senator 12 hours of nonstop talking for the administration to acknowledge the simple fact that it can't kill Americans on American soil without a trial.

I wish to applaud Senator PAUL's courage and conviction last night as he stood on the Senate floor for nearly 13 hours defending our rights under the Constitution. Senator PAUL deserves recognition for standing up for the American people and bringing this issue to light. And it is an issue that I and many of my constituents in the State of Wyoming find very troubling.

In fact, as I traveled around Wyoming a couple weeks ago, it became abundantly clear that people are very concerned over the administration's disregard for constitutionally guaranteed individual rights.

Drones—unmanned aerial vehicles—have been made famous by their use in our war on terrorism. For a number of years these weapons have served in operations in Iraq and Afghanistan with success. However, the use of drones for both military and civilian purposes abroad and domestically is increasing.

According to the Congressional Research Service, the Federal Aviation Administration predicts 30,000 drones will fill the skies in less than 20 years. Although many of these uses will likely be for civilian purposes—disaster relief, border control, crime fighting, and agricultural crop monitoring—the use of drones raises new privacy and civil liberty questions for U.S. citizens.

The first concern raised by the use of drones is how it may impact on our fourth amendment rights: U.S. citizens have the right to be free from unreasonable searches and seizures. Drones push the limits of what could be considered reasonable. Courts generally recognize that U.S. citizens have substantial protections against warrantless government intrusions into the home, and that the fourth amendment offers less robust restrictions on public places. However, drones begin raising the question of what is reasonable when it comes to the expectation of privacy in one's driveway or even backyard.

In a speech last night, Senator PAUL reiterated additional constitutional concerns that he has been seeking an answer on for a number of weeks. The administration just now responded, but it raises the concern about the willingness of the White House to act transparently.

When it comes to important matters of national security and constitutional liberties, we should all be asking ourselves why it took a U.S. Senator 12 hours of nonstop talking for the Department of Justice to acknowledge the simple fact that it cannot kill American citizens on American soil without a trial. Senator PAUL asked a straightforward question and deserved a straightforward answer in a timely manner. His question hit right at the heart of the fifth amendment—rights as U.S. citizens, particularly ''no person shall . . . be deprived of life, liberty or property without due process of law.''

The first response Senator PAUL got back was everything short of a straightforward answer. This administration did not rule out the possibility of using drones against Americans on U.S. soil. This is particularly problematic, because our Constitution does not say the fifth amendment applies when the President or Attorney General thinks it applies. But it raises the concern about the willingness of the White House to act transparently.

There is no reason why it should have taken so long for the administration to acknowledge they don't have the authority to kill Americans on U.S. soil without due process of law—specifically to deny someone the right to a judge and jury and a trial. The fifth amendment was written with this particular form of government abuse in mind and it was more than appropriate for Congress to ask this question in its oversight role.

We know, and our legal system recognizes, that you don't get due process when you are actively attacking our soldiers or our government. However, that wasn't the question Senator PAUL posed. Congress needed clarification from the administration on this nomination. In order to build faith and confidence in our Nation's military and intelligence community, we also need transparency and responsiveness in the questions raised by Congress.

I will not be supporting John Brennan's nomination because of the lack of transparency and timeliness on this important matter, and the reasons given by the Senator from Georgia.

Madam President, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. PAUL. Madam President, yesterday I spent a considerable amount of time on the floor talking about the idea of whether Americans are protected by the fifth amendment always—whether you can be targeted for drone strikes in America without your due process rights; whether you get your day in court if you are accused of a crime in America. I asked this question directly to the President, and I am pleased to say that we did get a response this morning. The response from the Attorney General reads:

> It has come to my attention that you have a 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.

So it has taken a while, but we got an explicit answer. I am pleased we did. And, to me, I think the entire battle was worthwhile, one, because we got to have a lot of discussion about when can drones be used—particularly when can a drone strike be used against an American on American soil?

The reason this is important is often drones are used overseas toward people

who are not actively engaged in combat. I am not saying they are not bad people or they might have previously been in combat. But the thing is, we have to have a higher standard in our country. We can't have an allegation from the country that says you are an enemy combatant or that you are associated with terrorism. That is an allegation.

If you are e-mailing somebody who is a relative of yours in the Middle East, and they may or may not be a bad person, it doesn't automatically make you guilty; if we label you an enemy combatant and say you are guilty, you don't get your day in court, and that is just not American.

We have many soldiers from my State, from Fort Campbell and Fort Knox, who fight overseas for us. They are fighting for the Bill of Rights. They are fighting for the Constitution. So I consider it to be our duty to stand and fight for something we all believe in, and that is that the protections of the Bill of Rights are yours. When you are accused of something, you get your day in court.

So I am very pleased to have gotten this response back from the Attorney General of the United States. I think that Americans should see this battle that we have had in the last 24 hours as something that is good for the country, and something that should unite Republicans and Democrats in favor of the Bill of Rights.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. WARREN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Madam President, I yield back all time.

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

CLOTURE MOTION

Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of John Owen Brennan, of Virginia, to be Director of the Central Intelligence Agency.

Harry Reid, Dianne Feinstein, John D. Rockefeller IV, Debbie Stabenow, Sherrod Brown, Jack Reed, Benjamin L. Cardin, Thomas R. Carper, Christopher A. Coons, Robert P. Casey, Jr., Mark L. Pryor, Bill Nelson, Mark Begich, Barbara A. Mikulski, Patty Murray, Carl Levin, Joe Manchin III.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of John Owen Brennan, of Virginia, to be Director of the Central Intelligence Agency shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Ms. BOXER) and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Louisiana (Mr. VITTER).

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

The yeas and nays resulted—yeas 81, nays 16, as follows:

[Rollcall Vote No. 31 Ex.]

YEAS—81

Alexander	Flake	Mikulski
Ayotte	Franken	Murkowski
Baldwin	Gillibrand	Murphy
Baucus	Graham	Murray
Begich	Hagan	Nelson
Bennet	Harkin	Paul
Blumenthal	Hatch	Portman
Blunt	Heinrich	Pryor
Brown	Heitkamp	Reed
Burr	Hirono	Reid
Cantwell	Hoeven	Rockefeller
Cardin	Isakson	Rubio
Carper	Johanns	Sanders
Casey	Johnson (SD)	Schatz
Chambliss	Johnson (WI)	Schumer
Coats	Kaine	Scott
Coburn	King	Shaheen
Collins	Kirk	Stabenow
Coons	Klobuchar	Tester
Corker	Landrieu	Thune
Cornyn	Leahy	Toomey
Cowan	Levin	Udall (CO)
Cruz	Manchin	Udall (NM)
Donnelly	McCain	Warner
Durbin	McCaskill	Warren
Feinstein	Menendez	Whitehouse
Fischer	Merkley	Wyden

NAYS—16

Barrasso	Heller	Roberts
Boozman	Inhofe	Sessions
Cochran	Lee	Shelby
Crapo	McConnell	Wicker
Enzi	Moran	
Grassley	Risch	

NOT VOTING—3

Boxer	Lautenberg	Vitter

The PRESIDING OFFICER. On this vote the yeas are 81 and the nays are 16. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. Under the previous order, the question is on confirmation of the Brennan nomination.

Mrs. FEINSTEIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of John Owen Brennan, of Virginia, to be Director of the Central Intelligence Agency?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER) and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Louisiana (Mr. VITTER).

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

The result was announced—yeas 63, nays 34, as follows:

[Rollcall Vote No. 32 Ex.]

YEAS—63

Alexander	Flake	Mikulski
Baldwin	Franken	Murkowski
Baucus	Gillibrand	Murphy
Begich	Graham	Murray
Bennet	Hagan	Nelson
Blumenthal	Harkin	Pryor
Brown	Hatch	Reed
Burr	Heinrich	Reid
Cantwell	Heitkamp	Rockefeller
Cardin	Hirono	Rubio
Carper	Johnson (SD)	Schatz
Casey	Kaine	Schumer
Coats	King	Shaheen
Coburn	Kirk	Stabenow
Collins	Klobuchar	Tester
Coons	Landrieu	Udall (CO)
Corker	Levin	Udall (NM)
Cowan	Manchin	Warner
Donnelly	McCain	Warren
Durbin	McCaskill	Whitehouse
Feinstein	Menendez	Wyden

NAYS—34

Ayotte	Heller	Portman
Barrasso	Hoeven	Risch
Blunt	Inhofe	Roberts
Boozman	Isakson	Sanders
Chambliss	Johanns	Scott
Cochran	Johnson (WI)	Sessions
Cornyn	Leahy	Shelby
Crapo	Lee	Thune
Cruz	McConnell	Toomey
Enzi	Merkley	Wicker
Fischer	Moran	
Grassley	Paul	

NOT VOTING—3

Boxer	Lautenberg	Vitter

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

VOTE EXPLANATIONS

● Mrs. BOXER. Madam President, I was unavoidably absent from the votes related to the nomination of John Brennan to be Director of the Central Intelligence Agency. Had I been present, I would have voted yea on the motion to invoke cloture and yea on the nomination.●

● Mr. VITTER. Madam President, I could not participate in the nomination of John Brennan to be Director of the CIA because of a family obligation in Louisiana.

I strongly support Senator PAUL's filibuster, oppose the use of drones in this country, and oppose both cloture and the confirmation of John Brennan.●

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

MORNING BUSINESS

Mrs. MURRAY. Madam President, I ask unanimous consent that the Senate proceed to a period of morning

business until 6 p.m., with Senators permitted to speak for up to 10 minutes each.

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

Mrs. MURRAY. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WHITEHOUSE. 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. WHITEHOUSE. I ask unanimous consent to speak for 15 minutes.

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

CLIMATE CHANGE

Mr. WHITEHOUSE. I am back to again urge my colleagues to wake up to the stark reality of climate change. We often hear in this Chamber colleagues extolling the virtues of the marketplace. Indeed, a fair and open marketplace is the cornerstone of our economy. Markets work—not perfectly always but better than any other mechanism.

Paraphrasing Winston Churchill, one might say that markets are the worst form of setting prices and exchanging goods, except all of the other methods that have been tried. But markets only work when they are fair. Markets are not fair if the price of goods does not take all the costs into account.

A grocery store, for instance, has to pay to have its garbage removed. It has to build that garbage removal into its prices. And that is the right thing. That is the market working. If that grocery store can recycle or compact or composite its trash and make removal cheaper and lower its prices, then that is right too. That is the market working. But if a second grocery store down the street breaks the law and throws its garbage into the park next door and then competes with lower prices, that is not a market in proper operation. That is not a fair market. That is just one person cheating another.

If a factory makes a product and treats its waste, that is part of its cost. That is good. That is how it is supposed to be. If the factory can figure out how to treat its waste more efficiently and lower prices, terrific. That is also the market at work. But a factory down the river that breaks the law by dumping its waste into the river may have better prices as a result, but that is not a fair market.

The value of open and fair markets is lost when people cheat, when they offload their costs onto the general public. The garbage in the park, the waste in the river—the grocery store down the street and the factory down the river—does not reduce costs; businesses just offloaded them onto their neighbor, onto the rest of us. They may actually have even made it more costly for everyone, but they have managed to impose that cost on the public.

There is even a word for these offloaded costs. They are externalities, the harms that are caused that are external to the company. This is not complicated. It is econ 101. It is also law 101.

Seventy years ago a soda bottle exploded and injured the hand of a waitress named Gladys Escola. Ms. Escola sued the bottler. The court decision has been in most every law student's first-year classes ever since.

In a famous concurrence, Justice Traynor ruled in the case of Escola v. Coca-Cola Bottling Company that the cost of Ms. Escola's injury should fall on the bottler. His logic was simple and clear: They made the bottle. If they did not have to pay for the injuries exploding bottles caused, they would just keep making exploding bottles. If you made them responsible for the exploding bottles they made, they would have a big incentive to improve their bottles and everyone would be safer.

As Judge Traynor said 70 years ago, ''Public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards.''

This idea that you shouldn't be able to offload your costs and have the park, the river, or Ms. Escola's hand pay the price is not new, and it is not unusual. Frankly, we see it in our own lives. It is also fairness 101, as well as econ 101 and law 101. You may not rake your lawn and throw the leaves over the fence into your neighbor's yard. The principle is the same—they are your leaves, and you clean them up.

What do soda bottles and yard work have to do with climate change? The very same principle applies. We now know how much harm carbon pollution is causing. We see the costs all around us in storm-damaged homes, flooded cities, in drought-stricken farms, raging wildfires, in dying coral and disappearing fish, in shifting habitats and migrating diseases, in changed seasons and rising seas, in vanishing glaciers and melting icecaps. These are costs. In some cases they are economic costs. People lose money. The owner of a ski lodge, for example, losses money when the ski season gets shorter and shorter. In some cases they are personal costs, such as not being able to take your granddaughter to the stream near where you grew up because it is dried up or the beach island you used to explore as a kid because it is underwater. In some cases the cost is life-and-death. Powerful storms and severe heat waves take a deadly toll. These are real costs, and they come as a result of carbon pollution.

These costs, however, are not factored into the price of the coal or oil that is burned to release the carbon. The big oil companies and the coal barons have offloaded those costs onto society.

There is nothing inherently wrong with producing energy. There is nothing inherently wrong with bottling soda or running a grocery store. What is wrong is when you knowingly pass on the cost of your exploding bottle, your waste disposal, or your carbon pollution to everybody else.

Oil and coal companies have been sending carbon pollution into the atmosphere since the Industrial Revolution. When these industries started, the risks were poorly understood. Today they know better. They know what the harm is that they are doing, and they continue. When they lie and pretend those costs aren't out there—leaves? What leaves? There is no garbage in the park. Your hand is just fine, Mrs. Escola—and when they pay people to lie and pretend those costs aren't out there, well, that is all just flat wrong. And when they do it with fat campaign contributions, slick lobbyists, and marauding super PACs, that makes it worse. That is dirty pool. It is a market failure. It takes unfair advantage of competing energy sources that don't pollute so much, and it makes the competition between them unfair. The big oil companies and the coal barons are no different than the grocery store dumping its garbage in the park or the factory spilling its waste into the river. They are not bearing the costs of their product, and they are cheating on their competitors. There is a right way to do it. They figured out how to do it the wrong way and have other people pick up the tab.

When it comes to carbon pollution, economists can estimate the true cost of dirty energy. It is often called the ''social cost of carbon.'' The social cost of carbon includes the financial consequences of a change in climate, such as property loss, increased health care costs, and loss of productivity that come with heat waves, drought, heavy rains, sea-level rise, habitat shifts, ocean warming, and acidification.

We recently learned from NOAA that their scientists predict that worldwide, the average summertime loss in labor capacity will double by 2050, as the climate warms and periods of extreme heat become more frequent and more intense, affecting labor-intensive outdoor work such as construction and farming. That is a social cost of carbon.

Of course, certain costs can be hard to predict. How do you calculate the cost of an extinct species? What does it cost to leave to our children and grandchildren warmer, more acidic, less biodiverse oceans? These calculations may not always be perfect, but that doesn't make the costs any less real. For instance, in my home State of Rhode Island, the costs to our fishermen of these changes is very real.

In the final tally, economists tell us that big carbon emitters are unloading a big cost onto the public and onto future generations. On average, estimates of the social cost of carbon are about $48 per ton of carbon dioxide—$48 per ton that these big businesses dodge and that we all pay for.