EXECUTIVE SESSION

NOMINATION OF KENT YOSHIHO HIROZAWA TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read as follows:

Nomination of Kent Yoshiho Hirozawa, of New York, to be a Member of the National Labor Relations Board.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 Kent Yoshiho Hirozawa, of New York, to be a Member of the National Labor Relations Board.

Harry Reid, Tom Harkin, Jack Reed, Sheldon Whitehouse, Christopher A. Coons, Robert P. Casey, Jr., Benjamin L. Cardin, Patrick J. Leahy, Joe Manchin III, Elizabeth Warren, Debbie Stabenow, Carl Levin, Angus S. King, Jr., Richard J. Durbin, Charles E. Schumer, Amy Klobuchar, Richard Blumenthal.

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 Kent Yoshiho Hirozawa, of New York, to be a member of the National Labor Relations Board for the term of 5 years, expiring August 27, 2016, 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 North Dakota (Ms. HEITKAMP) is necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from New Jersey (Mr. CHIESA).

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

The yeas and nays resulted—yeas 64, nays 34, as follows:

[Rollcall Vote No. 189 Ex.]

YEAS—64

Alexander	Coons	King
Ayotte	Corker	Klobuchar
Baldwin	Donnelly	Landrieu
Baucus	Durbin	Leahy
Begich	Feinstein	Levin
Bennet	Flake	Manchin
Blumenthal	Franken	Markey
Blunt	Gillibrand	McCain
Boxer	Graham	McCaskill
Brown	Hagan	McConnell
Cantwell	Harkin	Menendez
Cardin	Heinrich	Merkley
Carper	Hirono	Mikulski
Casey	Johnson (SD)	Murkowski
Collins	Kaine	Murphy
Murray	Schatz	Warner
Nelson	Schumer	Warren
Pryor	Shaheen	Whitehouse
Reed	Stabenow	Wicker
Reid	Tester	Wyden
Rockefeller	Udall (CO)	
Sanders	Udall (NM)	

NAYS—34

Barrasso	Grassley	Portman
Boozman	Hatch	Risch
Burr	Heller	Roberts
Chambliss	Hoeven	Rubio
Coats	Inhofe	Scott
Coburn	Isakson	Sessions
Cochran	Johanns	Shelby
Cornyn	Johnson (WI)	Thune
Crapo	Kirk	Toomey
Cruz	Lee	Vitter
Enzi	Moran	
Fischer	Paul	

NOT VOTING—2

Chiesa	Heitkamp

The PRESIDING OFFICER. On this vote, the yeas are 64, the nays are 34. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Cloture having been invoked, pursuant to S. Res. 15 of the 113th Congress, there will now be up to 8 hours of postcloture consideration of the nomination equally divided in the usual form.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I understand we are now in postcloture debate on this nominee. I understand there is up to 8 hours that can be consumed for that purpose, if I am not mistaken.

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. I certainly hope we don't have to take that much time. For this nominee and the other four to follow, I am hopeful we can get through them today and get the nominees to the President before we leave here this evening.

Today is a day that I and many of my colleagues have long waited for. Because of the bipartisan deal reached on the President's nominees, it looks as though we finally have a path forward to confirm a full slate of nominees to the National Labor Relations Board. A fully confirmed, fully functional board will be a huge step forward for workers and employers in our country, and this will be the first time in over a decade this has happened.

Over 75 years ago Congress enacted the National Labor Relations Act, guaranteeing American workers the right to form and join a union and to bargain for a better life. For both union and nonunion workers alike, the act provides for essential protections. It gives workers a voice in the workplace, allowing them to join together and speak out for fair wages, good benefits, and safe working conditions. These rights ensure that the people who do the real work in this country see the benefits when our economy grows and aren't mistreated or put at risk on the job.

The National Labor Relations Board is the guardian of these fundamental rights. Workers themselves cannot enforce the National Labor Relations Act; the Board is the only place where people can go if they have been treated unfairly and denied the basic protections the law provides. Thus, the Board plays a vital role in vindicating workers' rights. In the past 10 years the NLRB has secured opportunities for reinstatement for 22,544 employees who were unjustly fired. It has also recovered more than $1 billion on behalf of workers whose rights were violated in the last decade.

The Board does not just protect the rights of workers and unions; it also provides relief and remedies to our Nation's employers. The Board is an employer's only recourse if a union commences a wildcat strike or refuses to bargain in good faith during negotiations. The NLRB also helps numerous businesses resolve disputes efficiently. For example, when two unions picketed Walmart in 2012, Walmart filed a claim with the NLRB, and the NLRB negotiated a settlement. So by preventing labor disputes that could disrupt our economy, the work that the Board does is vital to every worker and every business across the Nation.

Earlier this year I received a letter from 32 management-side and 15 union-side labor attorneys from across the country who made this point particularly well. It urged the swift confirmation of a full package of five NLRB nominees and said:

While we differ in our views over the decisions and actions of the NLRB over the years, we do agree that our clients' interests are best served by the stability and certainty a full, confirmed Board will bring to the field of labor-management relations.

I could not agree more. Confirming these nominees swiftly is vitally important because the National Labor Relations Board must have a quorum of three Board members to act. If there are less than three Board members at any time, the Board cannot issue decisions and essentially must shut down. Although the Board currently has three members, Chairman Pearce's term expires on August 27—next month. At that point the Labor Board would be unable to function unless we confirm additional members. Now, that is more than just an administrative headache. It would be a tragedy that denies justice to working men and women across the country. So it is imperative that we act to avoid this and keep the Board open for work.

Up until recent times, all of us in Congress agreed that the Board should function for the good of our country and our economy, but in the last few years that understanding has broken down. As I said, it has been a decade since the Board has had five Senate-confirmed members. It is not that qualified people have not been nominated, because they have. The problem is that a few of my colleagues on the other side of the aisle—I am not saying everyone, but a very vocal minority—have been trying to use the nominations process to undermine the mission of the National Labor Relations Board.

They, first of all, do not like the National Labor Relations Act, but they

know they could never repeal it outright. So what is their solution, this vocal minority on the Republican side? Keep the NLRB inoperable by refusing to confirm nominees regardless of their qualifications. In this case, one of my Republican colleagues announced his intention to filibuster the NLRB nominees 6 days before the nominations were announced, and he openly admitted his intention was to shut down the agency.

We have seen lots of nominees deemed unacceptable simply because they have worked on behalf of workers or unions and they support our system of collective bargaining. These nominees have been accused of being biased and called unfit to serve because they worked for labor unions or were lawyers for labor unions. But I would like to point out what the National Labor Relations Act—the law—actually says. I have often quoted from the National Labor Relations Act on this point, and I will do so again right now. Here is what the law says:

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

That is what the law says. The purpose is, again, to encourage ''the practice and procedure of collective bargaining'' for the good of our workers, for the good of our economy, and for the good of our Nation.

So if we have a nominee who comes up for the Board who supports collective bargaining, I would think that nominee would be more qualified, not less qualified, to serve on the Board because that nominee understands what the law says. So we should be seeking nominees who are, in the words of one of the nominees before us today, not pro-union, not pro-worker or pro-management, but ''pro-Act''—''pro-Act.'' If you are pro-act, the act says that we should be ''encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing.'' That is what the law says.

I am optimistic that the nominees before us today will bring this perspective to their work at the Board. All five nominees have diverse backgrounds and are deeply steeped in labor and employment law. While I certainly do not agree with the politics or perhaps the ideology of each nominee, it cannot be disputed that this is a competent and experienced group of lawyers. Given their diverse backgrounds and qualifications, there is no reason this package of nominees should not be confirmed with strong bipartisan support.

All five of these nominees have been thoroughly vetted. For the two most recent nominees—Kent Hirozawa and Nancy Schiffer—the vetting process has been quick, but it has been thorough. They have submitted all of the paperwork that we receive for our nominees. They have appeared before our committee in a hearing, answered any questions. They have met with staff for both sides, and they have answered all the written questions posed by members of my committee. They have demonstrated themselves to be impressively qualified and capable, and I look forward to their future service on the Board.

So I believe the time has come to start a new chapter for the NLRB. It is time to ratchet down the political rhetoric that has recently haunted this agency and let the dedicated public servants who work there do their jobs. Indeed, I hope today's votes mark a new beginning for the Board, with a new energy and vitality, a new spirit of collaboration. A revitalized NLRB is a critical part of our continued efforts to build a strong economy and a strong middle class. It is long past time to put the Board back in business and to tone down the rhetoric.

I say to my friends on the other side—again, a vocal minority—certainly they can vote against the nominees. That is their right. That is their privilege. But do not use the nomination process to try to shut down the Board or to thwart the implementation of the National Labor Relations Act.

I am sure there were times when a majority of the Board was appointed by Republican Presidents and they were probably more promanagement. I cannot think of one right now, but I am sure they probably made some decisions that I would not be in favor of. But they did it openly. There are also times under a Democratic President when the Board would probably have three members who would be more from the labor side than management side. But that is the ebb and flow.

Quite frankly, for most of the times in the past, even though Republican Presidents had put nominees on the Board who were probably more promanagement or came from the management side—they would have three of those and then two from the worker or labor side—they still ran the Board in a nonpartisan fashion and reached agreements in an open fashion that were implementing the National Labor Relations Act. I would be hard pressed to think of a time when the Board acted in contradiction to what the act actually says.

Until recently—and this has just broken down in the last few years when President Obama's nominees to the Board, in the first instance, were filibustered when the President had to give recess appointments to nominees. Of course, a recess appointment can only last so long, and then that person has to leave the Board. As I said, there was a threat by a Member on the Republican side to filibuster nominees before they were even sent down. That means the Board would have been unable to operate. So the President then gave a recess appointment to two nominees to keep the Board functioning. That then found its way into the courts.

We have a couple of courts that decided the President did not have the power to do a recess appointment the way he did it. Other courts have taken different pathways. So that set of facts in that case is winding its way to the Supreme Court. It probably will be decided some time next year. But that is what happens when people do not let nominees who are fully qualified—fully qualified—come to the floor to get an up-or-down vote.

So I am very pleased this agreement that was reached a couple weeks ago to not filibuster nominees included the National Labor Relations Board. So we have an agreement from the Republican side that they will not filibuster these nominees. We have five of them. This is the first, Mr. Hirozawa. I am hopeful that, again, since they have been thoroughly vetted, we can move ahead expeditiously to vote on them and that we will not take the full 8 hours to debate these nominees and that each one of them—each one would have 8 hours. But, hopefully, we can collapse that and have the votes on the nominees at some time later this afternoon, and, as I said, turn a new chapter in the NLRB. Put them down there on the Board and let them do their work, and tone down the political rhetoric a little bit on the National Labor Relations Board.

Mr. President, I ask unanimous consent that time during all postcloture quorum calls on the Hirozawa nomination be charged equally to both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. JOHANNS. Mr. President, I ask unanimous consent that I be allowed to speak for 5 minutes as in morning business.

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

BUDGET CONTROL ACT

Mr. JOHANNS. Mr. President, as we begin our final week of legislative activity prior to the August work period, I rise today to discuss the fiscal challenges that will await us on our return. When the Senate gavels back into session on September 9, we will be only 3 short weeks away from the end of the fiscal year. We will have only 15 business days to reach an agreement on all 12 appropriations bills and avoid a government shutdown.

Unfortunately, our progress toward reaching this goal has been less than stellar. The transportation-housing appropriations bill we are currently considering is the first of 12 bills that has even been brought to the Senate floor. Consider this: We cannot even agree to comply with the spending limits mandated under current law. We are headed for a big multitrain pileup.

Last Congress, the Senate and the House made a promise to the American people—made a promise about a basic level of fiscal constraint on our appropriations process; not enough, but a step in the right direction. As a part of the Budget Control Act, which passed with bipartisan support and was signed by the President, we committed to capping appropriations spending at certain levels for each of the next 10 years.

Less than a year ago, the majority leader emphatically proclaimed them binding when he said:

> We passed the Budget Control Act. We have agreed to all of those numbers. They are done. They are agreed to.

In only the second year of this 10-year schedule, the 12 appropriation bills are mandated to spend no more than $967 billion. That is a huge number to almost everyone. It is simply a whole lot of spending, almost $3 billion a day. But my colleagues on the other side want to spend even more. In fact, they want to spend well over $1 trillion this year.

You see, they want to pretend the Budget Control Act never passed and was never signed into law. They want to keep on spending as if there is some kind of alternative reality. But sadly that is not the case. Our Nation's deficit is still too large. We are still miles away from a balanced budget. The national debt continues on a course toward disaster. Yet, apparently, we are going to ignore the appropriations caps we all agreed to 2 years ago—not by an insignificant amount, an additional $91 billion above the legal limit in the next fiscal year alone.

As a new member of the Appropriations Committee, I have been surprised to watch week after week bills being advanced that simply ignore current law. With a $17 trillion national debt, we cannot simply imagine our way out of this crisis. But by ignoring the Budget Control Act, that is exactly what we are attempting to do.

I continue to believe very strongly that we should be preparing bills that are consistent with current law, abiding by the spending caps we voted for and were signed by the President. I think we should even do more than that, but complying with the current law is the bare minimum.

What does all of this mean? Who gets hurt if we ignore the BCA caps? Well, ignoring the BCA spending levels is not free money we can print down at the Treasury Department. Spending over the BCA caps simply sets the stage for yet another round of sequester cuts. We all remember how popular that was beginning this year. The administration officials claimed our health, our safety, our well-being, were in the balance as they traveled the country, threatening services such as Head Start, food safety inspectors, and massive delays at airports because of the indiscriminate, across-the-board spending cuts.

That is exactly what we are going to see in a few weeks because the majority would rather wash their hands of the responsibility to honor the caps and continue spending as though actions do not matter. But that is exactly the Senate's plan, spend $91 billion over what the law allows. When $91 billion worth of across-the-board cuts kick in, they hope the outcry from the American people is loud enough to convince us here in Congress to add the additional spending to our national debt. In my judgment, that is no way to run a railroad, but that seems to be the plan: keep spending us right into another sequester, ignore the consequences, and hope for the best.

It simply boggles the mind, especially when you consider all but two Senate Democrats on the Appropriations Committee supported—I emphasize supported—the increased level of spending restraint in the BCA.

Instead, we should have been using this time as an opportunity to more thoughtfully reduce spending before the end of the fiscal year. That is exactly what President Obama says he wants, when he says Congress should use a scalpel to tame our budget problems, not an axe, in across-the-board spending cuts. We can responsibly meet the $967 billion spending target in current law, but we have to try. But instead of seizing the opportunity, we are once again shirking our responsibility in the hopes that no one will notice. That is disappointing to the American people. By exceeding the caps, we are violating yet another commitment we have made to them to get our fiscal house in order. You see, the American people figured this out long ago. Washington simply spends too much and, most importantly, spends too much of their own money. As their elected representatives, we should not ignore this. I am hopeful we can change course, take this opportunity and ensure that our spending bills total no more than what we promised months ago.

Come October 1, the American people will have the opportunity to see whether we have met that challenge. I hope for the sake of the country they get better news than what appears today.

I yield the floor and I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

Mr. ALEXANDER. I ask unanimous consent to speak as if in morning business.

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

PRESIDENTIAL NOMINATIONS

Mr. ALEXANDER. Mr. President, this week the Senate is voting on five of the President's nominations for membership on the National Labor Relations Board. I expect all five to receive up-or-down votes, as they generally do, and I expect all five to be confirmed. The Board will then have a full complement, with a Democratic majority of three and two Republican members.

I would like to review for a moment what has happened and how we got to this spot because it is an important moment in the history of our ability as a country to maintain the checks and balances and certain separations of power among the various branches of government and especially to restrain the Executive, which has been an important part of our country's history.

In January 2012 the President nominated two individuals to be members of the National Labor Relations Board using his recess-appointment power. He has that power in the Constitution. The only problem was that the Senate wasn't in recess—at least that was our view. The Senate was in a 3-day pro forma session. A 3-day pro forma session is a device that was employed by Senator REID, the distinguished majority leader, when Bush was President, and he did it to keep President Bush from using his recess-appointment power when the Senate was in recess.

Most of our Presidents have chafed under the restraints we have placed upon our Executive. President Bush didn't like that, but he respected it, and President Bush never made recess appointments while the Senate was in session. But President Obama did—on January 4, 2012. Senate Republicans objected strongly to that. After a great deal of discussion, we decided to support a lawsuit challenging the appointments. That lawsuit went before the DC Circuit Court of Appeals, and the Circuit Court of Appeals agreed with our position and said in effect that the President could not make a recess appointment when the Senate itself had determined it was in session.

Since then there have been two other decisions by other federal courts of appeals that have said what the President did on January 4, 2012, was unconstitutional. The case will come before the Supreme Court this next term. No one knows what decision the Supreme Court will make, but my sense would be that the Supreme Court will say to this President or to any President that, Mr. President, you can't use your constitutional power to make a recess appointment at a time when the Senate is not in recess.

I said earlier that Presidents have chafed under these restraints on the executive branch. That has been true ever since the days of George Washington. George Washington imposed his own modesty and restraint upon the American character when he resigned

his commission after the Revolutionary War, when he stepped down after two terms as President and went back to Mount Vernon, when he asked to be called Mr. President instead of Your Excellency. Ever since then we have had many strong Presidents. They haven't all liked the idea that Washington also helped write a constitution that created a congress and a bill of rights, and the whole purpose of that was to restrain the Executive. After all, our revolution was against a king, and most of our Founders—not all of them, but the majority of the drafters of the Constitution didn't want a king of the United States, they wanted a president of the United States.

One of the most important checks upon the power of the Executive is the Senate's power to advise and consent, the power to review. About 1,000 Presidential nominations come to us, and it takes a while to confirm them. Sometimes it takes longer than the nominees think it should. I have repeated many times on this floor that when the first President Bush nominated me to be Education Secretary and the Senator from Ohio held up my nomination for 3 months, I didn't think that was such a good idea, but the Senate had the power to do it because the Constitution restrains the Executive. Unfortunately, this President didn't seem to read that chapter in American history because we have seen during this President's time repeated efforts to circumvent the constitutional checks on the Executive.

This administration has appointed more czars than the Romanovs had. That is the way you get around the nomination process. This administration's excellent Education Secretary has used a simple waiver authority in effect to create a national school board. When Congress says we don't want to appropriate money to implement ObamaCare, the Health and Human Services Secretary says: Well, if Congress won't do it, I will do it anyway; I will just go out and raise private money and do it. Then we have recess appointments being made when the Senate is not in recess. That is unconstitutional. If that could happen, the Senate could adjourn for lunch and come back and we would have a new Supreme Court Justice because the President said we were in recess.

So what is happening this week with these National Labor Relations Board nominees has a special significance in our constitutional history because not only did Republicans support a lawsuit challenging the appointments, which we are winning and the case has been won in two other Federal courts—but the President, after much discussion, has withdrawn his two unconstitutionally appointed nominees.

I suggested that he do this in May when we had a markup of the five nominees the President sent. I voted for three—the Democratic Chairman and the two Republicans—and I voted against the two who were unconstitutionally appointed. They were well-qualified people. That wasn't the issue. The issue was that the Senate needed a way to express its objection to this unconstitutional action by the Executive.

I suggested that what the President should do is withdraw those two nominees and send us two new ones in the normal process—people who had not stayed on after a Federal court decided they were unconstitutionally there. These two unconstitutionally appointed nominees have participated in more than 1,000 cases. These cases are all subject to being vacated because there was no constitutional quorum.

It leaves quite a mess in our labor laws. But the President withdrew those two and now we are, this week, doing what the Senate normally does. We are considering in the normal process his new nominees.

I am voting, as I said, for the two Republicans and the Chairman. The Chairman was not unconstitutionally appointed. He did not continue to serve as an unconstitutionally appointed person, since he was not so appointed, so I voted for him in committee. I do not agree with the Chairman and his view of labor laws, but I will have to take that up during the next election. Elections have consequences, and when we elect the President of the United States, he normally appoints people who agree with him.

I am also voting for having an up-or-down vote. We almost always do that with the President's nominees. There have only been a few times in our history when we have not. We have never failed to have an up-or-down vote on a Supreme Court Justice after they have come to the floor. We have never failed to have an up-or-down vote on a district court judge after they have come to the floor; the same in terms of circuit courts. We never did, until Democrats started filibustering President Bush's judges about 10 years ago when I came to the Senate. We all know that story.

But normally we have an up-or-down vote, and we will be doing that this week on the President's five nominees. I am voting against two of the nominees when that up-or-down vote comes, and I wish to explain why.

One is Mr. Hirozawa and the other is Ms. Schiffer. Both of them have excellent legal backgrounds. But the problem is I am not persuaded—I hope I will be proven wrong—that they will be able to transfer their positions of advocacy to positions of adjudication; that they can be impartial when employers come before them.

Employers as well as employees have a right, when they come before the National Labor Relations Board, to expect that all five members, whether Republicans or Democrats, from whatever background they might have, will look at the case and decide it in an impartial way. It may be possible that Mr. Hirozawa and Ms. Schiffer can do that, but I am not persuaded that is true, and so while I am voting that they have up-or-down votes, I am not voting for them.

The President has nominated for the Board three different individuals who were employed directly by major labor unions. The first was Craig Becker, who was counsel for two unions, and whose nomination was rejected by a bipartisan vote in 2010. The second was Mr. Griffin. The third is Ms. Schiffer.

I asked Ms. Schiffer at her hearing if she could remember other examples of an administration stocking the National Labor Relations Board with organized labor employees and she could not think of examples and I could not either. Over the last several years, the National Labor Relations Board seems to have veered away from impartiality. Instead of preserving a level playing field and protecting the carefully balanced rights of all parties, it has shown favoritism toward organized labor leadership and very little interest in the rights of individual employers or individual employees who want to exercise their rights not to join a union.

In fairness, I have to admit this politicization of the National Labor Relations Board has occurred both under Republican and Democratic administrations, but I think appointing a person directly from a high level job within a major labor union is not an example of trying to move away from that trend.

The trend is causing confusion. One labor law professor at a nationally recognized law school recently said she cannot even use her labor law textbook anymore. She has to resort to handing out NLRB decisions to explain the law because they are changing it so much. The NLRB has ventured into rulemaking with two new efforts, both of which have been stalled by the Federal courts.

In August 2011, the Board issued a new rule requiring employers to post a biased employee rights poster in the workplace and making it an unfair labor practice to fail to do so. Two separate Federal courts have struck down the rule because it exceeded statutory authority.

In December 2011, the Board issued a new rule shortening the time in which a union election is held, otherwise known as the ambush elections rule. The DC Circuit Court struck down this rule on the grounds it lacked a quorum, and the NLRB is appealing the decision.

So far, this administration's NLRB has sought to change the rules for determining bargaining units, the process for certifying a representation election, the legal obligation of employers to withhold dues from employees' paychecks, even when there is no valid collective bargaining agreement in place, the validity of arbitration provisions in employment contracts, the legality of numerous well-intentioned employee handbook provisions, the rules governing employee discipline when there is no valid collective bargaining agreement in place, the rules governing the

confidentiality of employee witness statements given during a legitimate investigation, the policy against forcing nonunion member employees to pay for union lobbying expenses, the rules governing employers' rights to limit access to their property, and attempting to create an entirely new employer obligation and unfair labor practice through the poster requirement struck down by multiple Federal appellate courts.

The effect of all of these changes seems to me to tilt the playing field in favor of organized labor instead of impartiality, which is the directive of the statute. So fairness and impartiality is what I am looking for in any NLRB nominee. These two nominees do not pass this test. That is why I plan to oppose their nominations.

But the most important message from this week's debate is this: The Senate is saying, not just to this President but to any President, Republican and Democrat, that you may not abuse your constitutional power of recess appointments by making appointments when the Senate itself determines it is not in recess. To do so is an affront to the separation of powers. It undermines checks and balances that were placed upon the Executive at the beginning of our country as a way of preserving our liberties. That is an important step in the history of constitutional law in this country, and I am glad to see it has been done in this way.

I yield the floor.

I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

Mr. MCCAIN. I ask unanimous consent to speak as in morning business.

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

LITTORAL COMBAT SHIP PROGRAM

Mr. MCCAIN. Mr. President, over the last few years, I have spoken on the floor about how the Department of Defense procures major weapons systems—a system that is, to a large degree, broken, unfortunately. It is now even more important. With defense funding likely to be constrained to reduced levels in the coming years, our role as legislators overseeing major defense acquisition programs to make sure they are efficient and effective is as important today as it has ever been—indeed, even more so.

A recently released Government Accountability Office—GAO—report that is highly critical of the Navy's Littoral Combat Ship Program brings me to the floor today. On that program, the Navy plans to spend over $40 billion to buy a total of 52 seaframes and 64 so-called ''plug-and-play'' mission modules. These are modules that would be moved on and off, depending on the mission in which the Littoral Combat Ship is engaged. The combined capability of those modules with the seaframes is supposed to give these ships their intended lethality.

Until recently, my main concern with this program has been the unbridled growth in the cost to build the seaframes of the lead ships: the Freedom—the steel hull version—and the Independence, which is an aluminum trimaran version. The Navy appears to have addressed that problem. While the cost to build the seaframes for the follow-ships is still about double the program's original, overly optimistic cost estimate—which is not unusual—the cost to complete the construction appears to have stabilized at about $450 million each.

Today I am concerned about another very serious problem: that the Navy will buy too many of these ships before the combination of their seaframes, with their interchangeable mission modules, has been proven capable of performing the missions these ships are supposed to perform. In other words, the Navy will not know whether this Littoral Combat Ship meets the combatant commanders' operational requirements until after it has procured more than half of the 52 planned ships. This is particularly troubling inasmuch as the Littoral Combat Ship fleet will comprise more than one-third of the Navy's surface combatant ships.

The Littoral Combat Ships' stated primary missions are antisubmarine warfare, mine countermeasures, and surface warfare against small boats, especially in the littorals. These three primary missions appear oriented toward countering, among other things, some of the littoral or coastal anti-access/area-denial capabilities that have been fielded in recent years by potential adversaries.

The Navy took delivery of the first of two ships—the Freedom and Independence—more than 3 years ago. But the ship called Freedom actually deployed, albeit with limited capability, to Singapore in March and has experienced many of the technical challenges normally associated with a prototype ship. The decision to deploy the ship Freedom prior to the completion of critical developmental and operational testing may be good salesmanship on the part of the Navy, but the current plan to buy more than half of the total Littoral Combat Ship fleet prior to the completion of operational testing plainly contradicts defense acquisition guidelines and best procurement practices—and amounts to a case of ''buy before you fly,'' to borrow a phrase from aircraft acquisitions.

It also increases the risk that the program will incur additional costs to backfit already built Littoral Combat Ships with expensive design changes identified through late testing and evaluation or, worse, operational use.

As is the case in several other major defense acquisition programs, the problem here is ''excessive concurrency''—that is, an overlap between development and production that exposes the program to a high risk of costly retrofits to earlier units in the production run. It sounds simple, but this is the problem that for years rendered the Joint Strike Fighter Program effectively unexecutable and that led to the terminations of the Army's multibillion-dollar Future Combat Systems Program and the Air Force's Expeditionary Combat Support System Program.

As to the Littoral Combat Ship, the General Accountability Office spelled out this problem in the report it released just a few days ago. According to the GAO:

> There are significant unknowns related to key LCS operations and support concepts and the relative advantages and disadvantages of the two variants. The potential effect of these unknowns on the program is compounded by the Navy's aggressive acquisition strategy. By the time key tests of integrated LCS capability are completed in several years, the Navy will have procured or have under contract more than half of the planned number of ships. Almost half of the planned ships are already under contract, and the Navy plans to award further contracts in 2016, before the Department of Defense makes a decision about full rate production of the ships. The Navy will not be able to demonstrate that mission packages integrated with the seaframes can meet the minimum performance requirements until operational testing for both variants [the Freedom and the Independence] is completed, currently planned for 2019.

I repeat: 2019.

I again voice my concern that the Navy plans to purchase many, if not most, of the Littoral Combat Ships in the program before knowing whether the ships will work as advertised and as needed.

The GAO report's bottom line recommendation is to limit future seaframe and mission module purchases until the LCS Program achieves key acquisition and testing milestones that would help make sure that the program delivers required combat capability. I agree completely with the GAO. GAO's concerns are shared by the Pentagon's independent chief tester and even the Navy itself, in an internal report called the ''OPNAV Report'' or ''Perez Report.'' I highly recommend that anyone who has an interest in the Littoral Combat Ship read these reports.

In terms of the costs to national security and to the taxpayer, we simply cannot afford to continue committing unlimited resources to an unproven program that may eventually account for more than one-third of the surface combatant fleet. The LCS seaframe and mission modules are at different points along the acquisition life cycle. We need to put a pause on additional ship purchases and synchronize the plans for testing the seaframes and the mission modules to make sure the Navy is executing a coherent acquisition strategy that will deliver combat capability responsive to what our operational commanders actually need.

Also, the Navy has to lay out a clear top-level plan on how these ships will be used in response to reasonably foreseeable, relevant threats around the world. In other words, it needs to decide the concept of operation—or CONOPS—that this ship class will support. According to a declassified internal Navy report released last Tuesday, ''There are two options: Building a CONOPS''—that means concept of operations—''to match LCS' current capabilities or modifying the ship to better meet the needs of the Theater Commanders.''

The report goes on to say: ''The ship's current characteristics limit operations to a greater extent than envisioned by the CONOPS. . . .'' The second option is to ''modify the ship to support the warfighting requirements. Our review identified opportunities to modify several of the ships' characteristics to more closely align with the intent of the original CONOPS.''

Right now, it seems as though whatever combat capability LCS can muster is driving its mission, not the other way around, as in most ships. In other words, the Littoral Combat Ship appears to be a ship looking for a mission. But just to perform its three currently intended primary missions, the Navy is looking at significant design changes and increasing Littoral Combat Ships' crew size, even though it has already bought about 30 percent of all of the LCS ships it intends to buy. That could increase its procurement and life cycle operation and support costs well beyond current estimates and strain its affordability. Given how many frigates, minesweepers, and patrol crafts the Navy currently plans to retire over the next 5 years in favor of Littoral Combat Ships, this is particularly troubling.

Notably, the Government Accountability Office also reports: ''Current LCS weapon systems are underperforming and offer little chance of survival in a combat scenario.''

In this regard, the Government Accountability Office appears to agree with the Pentagon's chief independent weapons tester. As this top Pentagon official has noted, before proceeding beyond early production, this program should complete initial operational testing and evaluation to determine that it is effective, suitable, and survivable. But LCS is not doing so. Why not? We need an answer to that. If, for whatever reason, the Navy believes it must deviate from that practice, what plan will it put in place to mitigate the resulting concurrency risk?

Let me be clear. To justify the purchase of the remaining 32 ships in the program, the Navy must first provide credible evidence based on rigorous, operationally relevant and realistic testing and evaluation, that this ship will in fact be able to adequately perform its primary stated missions and meet combatant commander requirements. Congress must, at a minimum, thoroughly review this program before authorizing funding in fiscal year 2015 to buy the next four LCS's and require the Secretary of the Navy to certify, on the basis of sound written justification arising from sufficient initial operational testing and evaluation, that the LCS ships will be able to adequately perform their intended missions and provide our operational commanders with the combat capability they need.

The American people are—quite rightly—tired of seeing their taxpayer dollars wasted on disastrous defense programs such as the Air Force's failed ECSS Program or the Army's Future Combat System Program or the Navy's VH–71 Presidential Helicopter Replacement Program. LCS must not be allowed to become yet another failed program in an already unacceptably long list of amorphous acronyms that—after squandering literally billions of taxpayer dollars—have long since lost meaning.

On the LCS program, the Navy must right its course—today.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate recess until 2:15 p.m. to allow for the weekly caucus meetings and that the time during the recess be counted postcloture, with the time charged equally to both sides.

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

Thereupon, the Senate, at 12:40 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Ms. BALDWIN).

NOMINATION OF KENT YOSHIHO HIROZAWA TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD—Continued

The PRESIDING OFFICER. Who yields time?

The Senator from Georgia.

Mr. ISAKSON. Madam President, I would like to be recognized for the purpose of making brief remarks.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

WORKFORCE INVESTMENT ACT

Mr. ISAKSON. Madam President, I am pleased to come to the floor—and I will be joined shortly by Senator MURRAY from the State of Washington—to announce that tomorrow in the HELP Committee—the Health, Education, Labor & Pensions Committee—we will be introducing the reauthorization of the Workforce Investment Act.

Quite honestly, the Workforce Investment Act was passed in 1998 and has not been reauthorized in the last 15 years. During that period of time, our country—particularly in the last 6 years—has gone through a sustained period of high unemployment. We also have periods where employers cannot find the match of workers who are actually trained for the jobs they have.

Workforce investment and training is important for those with disabilities, those without jobs, those with skill sets that need to be improved, and this bill addresses all of those areas.

Senator MURRAY has been a tireless Senator in working to find common ground on issues that have been critical to both the Democratic Party and the Republican Party but, more important, to the workers of the United States of America.

I wish to pay tribute to her staff who has worked tirelessly with my staff, and I wish to thank Tommy Nguyen on my staff, in particular, for his dedication and hard work.

This bill represents a real step forward, and I am pleased that this morning the Business Roundtable issued a release of their endorsement of the base bill we are putting forward tomorrow in the committee. Hopefully, it will be on the floor this fall when we return from the summer recess and we can move forward on job training, job opportunity, and lowering the unemployment rate in the United States of America.

In particular, I am very pleased this bill provides flexibility to our Governors in terms of transferability of funds. It provides for business majorities on the board and a business member to be a board chairman and the State chairman could also be a businessperson, which means those who are doing the employing will be those who will be guiding the Workforce Investment Act in their State.

I am also particularly proud of the fact that we focus on a regional approach to workforce investment. So often times, you get so many workforce investment boards in one metropolitan area that you have a very individualized focus and not a regional focus. A regional focus is important for workers. It is important for all of us.

So I am pleased to announce today on my behalf—Senator ISAKSON on the HELP Committee—that along with Senator MURRAY, today we are introducing and tomorrow we will mark up in committee the reauthorization of the Workforce Investment Act.

I look forward to the support of all Members of the Senate to help us do a better job providing jobs for working Americans.

I yield back my time and—no, I do not yield back my time. I can brag about Senator MURRAY while she is here now because I have been saying nice things while she was on her way.

I thank Senator MURRAY for her cooperation, the spirit of cooperation she has given us, and the fact that we are