

Before I ask unanimous consent, I also wish to thank a number of my colleagues, but in particular I thank the chairman of the Veterans' Affairs Committee, who has worked side by side with me to make certain this legislation ultimately becomes law. In fact, the chairman and the ranking member, the Senator from Connecticut, Mr. BLUMENTHAL, have committed to me that on every occasion, should the House not pass this bill—I will say it this way: Three options can occur. If we pass this by unanimous consent today, the House picks it up, passes it, sends it to the President, the President signs it, and that would be a great outcome. Secondly, we pass this bill, the Department of Veterans Affairs realizes they can do this on their own, and that would be a great outcome. Thirdly, if neither one of those things happens, the chairman has committed to me that he will work side by side with all of us on the Committee on Veterans' Affairs and with other Senators to make sure, at every opportunity, the language included in this bill is included in every bill related to veterans affairs that is on its way to the White House. The chairman will work with me to make sure this language is enacted into law.

I ask, through the Chair, the Senator from Georgia, Mr. ISAKSON, if what I am indicating is accurate and have him explain his thoughts on this topic in the few moments we have.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, responding through the Chair to the Senator from Kansas, his language is precisely the language that was introduced by the committee in the Senate, which we were going to send to the House, but it got lost in the negotiations on the extension of the authorization in the House. A technical difficulty is the only reason it wasn't already a part of it.

I wholeheartedly endorse everything the Senator from Kansas said and pledge to him that if for some reason the House does not adopt the language, we will take it up immediately in the Senate when we have our next markup meeting in the Veterans' Affairs Committee and take care of it.

I personally wish to acknowledge Senator BENNET and Senator GARDNER for all the work they have done. We went to Colorado together to visit the VA hospital, which is the genesis of where this motion comes from. They have been champions for this, and I am glad we are reaching a resolution in the motion that will be made shortly to adopt the House position on the authorization. We will see to it that the hospital in Denver remains open until we can solve the problems we have in the Denver hospital.

I thank the Senator from Kansas for his cooperation, and I commend him on his language. I confirm everything he said as being accurate, true, and correct.

Mr. MORAN. Mr. President, I thank the chairman and very much appreciate his commitment to veterans. This is not about a specific piece of legislation, it is about keeping our commitment to those who served our country, always, every day but especially in advance of Memorial Day.

Therefore, Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1463, introduced earlier today.

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

The senior assistant legislative clerk read as follows:

A bill (S. 1463) to amend the Veterans Access, Choice, and Accountability Act of 2014 to modify the distance requirement for expanded availability of hospital care and medical services for veterans through the use of agreements with non-Department of Veterans Affairs entities.

There being no objection, the Senate proceeded to consider the bill.

Mr. MORAN. Mr. President, I ask unanimous consent that the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The bill (S. 1463) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1463

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Access to Community Care for Veterans Act of 2015".

SEC. 2. MODIFICATION OF DISTANCE REQUIREMENT FOR EXPANDED AVAILABILITY OF HOSPITAL CARE AND MEDICAL SERVICES FOR VETERANS THROUGH THE USE OF AGREEMENTS WITH NON-DEPARTMENT OF VETERANS AFFAIRS ENTITIES.

(a) IN GENERAL.—Subparagraph (B) of section 101(b)(2) of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113-146; 38 U.S.C. 1701 note) is amended to read as follows:

"(B) resides more than 40 miles (calculated based on distance traveled) from a medical facility of the Department, including a community-based outpatient clinic, that is the closest such medical facility to the residence of the veteran that is able to provide to the veteran the hospital care or medical services that the veteran needs;"

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 60 days after the date of the enactment of this Act and shall apply with respect to care and services provided under section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113-146; 38 U.S.C. 1701 note) on and after such effective date.

(c) EMERGENCY DESIGNATIONS.—

(1) IN GENERAL.—The amendment made by subsection (a) is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(g)).

(2) DESIGNATION IN SENATE.—In the Senate, the amendment made by subsection (a) is designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

Mr. MORAN. Mr. President, I yield the floor to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

CONSTRUCTION AUTHORIZATION AND CHOICE IMPROVEMENT ACT

Mr. BENNET. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2496, which was received from the House.

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

The senior assistant legislative clerk read as follows:

A bill (H.R. 2496) to extend the authorization for the replacement of the existing Department of Veterans Affairs Medical Center in Denver, Colorado, to make certain improvements in the Veterans Access, Choice, and Accountability Act of 2014, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. BENNET. Mr. President, I ask unanimous consent that the bill be read a third time.

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

The bill was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. Is there further debate on the measure?

If not, the bill having been read the third time, the question is, Shall the bill pass?

The bill (H.R. 2496) was passed.

Mr. BENNET. Mr. President, I ask unanimous consent that the motion to reconsider be considered made and laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

Mr. BENNET. Mr. President, I want to take this opportunity to thank my colleagues for lifting the authorization cap to allow construction to continue on the VA hospital in Aurora, CO. This project has been an absolutely shameful display of mismanagement from the very beginning. And the Colorado delegation has been screaming from the hilltops about a flawed strategy on the part of the VA for years now. But with the right accountability and transparency reforms, we have all concluded that the right thing to do is to move forward and complete this facility. And today, we have acknowledged that the worst possible thing we could do is to stop work on the construction site again. Doing so would add hundreds of millions of dollars in extra costs to the project and would be a grave disservice to veterans throughout Colorado. This is an important step, but we have a long way to go.

The VA and Congress are going to have to work together to get this project back on track. And finding the money to do this will be painful, which is why we need to ensure strong accountability and that we protect critical programs and services for our veterans. Failing to complete this hospital, though, simply is not an option.

Having a half-finished hospital in Colorado would be a national disgrace. And the hundreds of thousands of veterans across the Rocky Mountain region that this hospital would service deserve better.

I especially want to thank Chairman ISAKSON and Ranking Member BLUMENTHAL for their work on this project and for their commitment to finishing the hospital. And, I want to thank my colleague Senator GARDNER for his work—especially in the last hours—to avoid a shut down.

Mr. President, before I turn this over to my colleague from Colorado, I thank Chairman ISAKSON for his extraordinary leadership in getting this done. It was very difficult to do.

Senator ISAKSON and Senator BLUMENTHAL came to Colorado. They are both men of their word, and I have never doubted that for an instant. The chairman has set an incredible example for this body.

I also thank the Senator from Kansas for his work on this legislation.

My colleague, Senator GARDNER, from Colorado, has been a true champion for our veterans. He has helped us keep our delegation together as we have gone through a rough patch here and, through the Chair, I thank him for his leadership.

I yield the floor to my colleague from Colorado.

Mr. GARDNER. Mr. President, I reiterate the thanks my colleague from Colorado has given to Chairman ISAKSON of the Veterans' Affairs Committee as well as to the Senator from Kansas who worked closely with us to make sure we could all get behind two measures we support, both of which would provide greater care and support for our veterans.

To my colleague Senator BENNET from Colorado, through the Chair, I thank him for the work we have been able to do. This has been a tireless effort in the hours leading up to Memorial Day to make sure we provide the resources necessary to continue a hospital project in Denver that has been, no doubt, beleaguered by problems, but something we must fulfill and must continue to fulfill to complete the project, to get this thing built, and to make sure it does not result in even higher costs than it has already undertaken.

This is an effort that is going to take continued cooperation, not only by the Colorado delegation but by the Veterans' Administration itself. Over the next 3 weeks, we have been given a reprieve to make sure we can find the policies and a viable path forward to get this job done that results in a hospital that will complete and fulfill the promises we made to the veterans in Colorado.

Through the Chair, I say to my colleague Senator BENNET great thanks for his leadership on all accounts, and I thank Chairman ISAKSON on behalf of veterans across Colorado for his leadership and work in making this happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. BLUMENTHAL. Mr. President, I thank all of my colleagues for the progress we have been making on a very bipartisan basis.

I particularly wish to thank the chairman of the Veterans' Affairs Committee for working so diligently on an immediate and temporary solution to advance the Aurora project and enable us to keep it going. Our visit out there illustrated to us the importance of this project which my two colleagues and friends from Colorado have described so well and eloquently.

I thank my friend from the great State of Kansas. He and I have worked to make sure veterans are really served by the CHOICE program, along with the chairman, who has understood and enabled us to work together on a bill which will be passed by unanimous consent, I hope, and will be passed by the House of Representatives, I hope, by unanimous consent. But if not, as I have committed to him, I will continue to work to make sure the 40-mile rule and choice mean veterans are served by a facility that can give them the care they need and deserve. Our heroes ought not to have to travel great distances or wait an inordinate amount of time to receive medical care that is so vital and so well deserved by them. They have earned it, and they ought to have it.

I thank my colleagues for working so well and diligently on this effort.

I yield the floor.

ENSURING TAX EXEMPT ORGANIZATIONS THE RIGHT TO APPEAL ACT—Continued

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Judge Stephen Schwebel, who is both a dispute arbitrator and president of the International Court of Justice. This letter provides a useful perspective on the investment matters that have been discussed this week.

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

MAY 5, 2015.

Senator RON WYDEN,
Senate Finance Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR WYDEN: I have been asked to comment on statements that have recently been circulated that oppose inclusion in the projected Trans-Pacific Partnership (TPP) of provision for investor-State dispute settlement (ISDS). Please permit me to note that I addressed criticism of ISDS a year ago at some length in a speech to the Congress of the International Council for Commercial Arbitration. A copy of that speech is attached. I believe that it is of current pertinence.

For my part, as a former Judge and President of the International Court of Justice, with experience going back to 1954 in international arbitration between States, be-

tween corporations and States, and in international commercial arbitration, I remain convinced that investor-State dispute settlement is a progressive development in international law and relations that should be preserved and nurtured. It should certainly be included in the TPP and in the comparable transatlantic treaty under negotiation as it has been in more than 3000 bilateral investment treaties, and in important multilateral treaties, notably NAFTA and the Energy Charter Treaty.

A letter of April 30, 2015 written to leaders of the Senate and House by five distinguished professors of law and economics and a former Circuit Court Judge criticizes ISDS because it allows foreign investors to avoid U.S. courts by resorting to arbitral tribunals. The letter fails to take account of the fundamental fact that treaties are reciprocal. If the United States seeks to have disputes that arise between American investors and foreign governments not resolved by foreign courts, some of which may be less than objective in their treatment of foreign investors; if the United States seeks to substitute the rule of law for its exercise of diplomatic protection which if and when episodically extended is often ineffective; if the United States seeks to avoid the gunboat diplomacy of earlier era, then it must be ready to extend to foreign investors investing in the United States the option of recourse to international arbitration which their governments reciprocally extend to U.S. investors. It is of course true that U.S. courts generally have high standards in their treatment of foreign parties. It is also true that the substantive provisions of treaties providing for investor/State arbitration are consistent with U.S. Constitutional guarantees. In point of fact, few arbitral cases have been filed against the United States in ISDS proceedings and so far the United States has won them all.

A report of the Transnational Institute of 2012 charges that a small group of arbitrators has decided a majority of investor/State disputes, that this group is "riven with conflicts", and that they exhibit a "strong market orientation". An example cited is that of Marc Lalonde "who has served on the board for energy and mining company Sherritt International" while energy and mining cases "account for half of the 30 cases in which he has served as arbitrator". But in fact Mr. Lalonde earlier was a very senior official of the Government of Canada for some 20 years, serving as a Minister of the Crown—a cabinet officer, in American parlance—for Health and Welfare, Status of Women, Federal-Provincial Relations, Justice, Energy, Mines and Resources, and Finance. By parity of reasoning, he should exhibit not a strong market orientation but a strong pro-State orientation. In point of fact, Mr. Lalonde exhibits an impartial orientation and has the confidence of both governments and investors, as his colleagues in the field do as well. If they did not, the system of investor/State arbitration would not have flourished as it has.

Charges by groups and individuals that the ISDS process manifests "a serious pro-company tilt" are contrary to fact. Of 144 publicly available arbitral awards, as of January 2012, where arbitrators resolved a dispute arising under a treaty, States won 87 cases, and investors won 57. ICSID statistics show that of its disputes decided in 2013, jurisdiction was declined in 31%, the award dismissed all claims in 32%, and an award upholding claims in part or in full issued in 37%. These figures in the large hardly support the allegation of a bias against States. If investment arbitrators were truly influenced by the prospects of remuneration for extended proceedings and for further appointments, why would they terminate so