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Senate

The Senate met at 3 p.m. and was called to order by the Honorable CHRISTOPHER A. COONS, a Senator from the State of Delaware.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Creator and Sustainer of our world, every good and perfect gift comes from You. Give our lawmakers the wisdom to use Your generous gifts for the glory of Your Name. May this proper use of Your bounty provide them with the knowledge they need to solve the problems of our time, as they remember that without You they can do nothing.

As You have blessed us in the past, we trust You, Lord, for our future. Give all who labor for freedom a deeper insight and loftier courage that will empower them to work for the coming day of Your kingdom.

We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CHRISTOPHER A. COONS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUYE).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 31, 2011.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHRISTOPHER A. COONS, a Senator from the State of Delaware, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. COONS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will be in a period of morning business until 4:30 today.

At 4:30, the Senate will proceed to executive session to consider the nomination of Stephen Higginson to be U.S. circuit judge for the Fifth Circuit.

At 5:30, there will be a rollcall vote on confirmation of the Higginson nomination.

REBUILD AMERICA JOBS ACT

Mr. REID. Mr. President, today, I join millions of Nevadans in commemorating the day, 147 years ago, that Nevada joined the Union. Granted statehood during the bitter years of the Civil War, in 1864, our mettle was tested from the very beginning.

Today, our State is once again tested. All over the State of Nevada, too many Nevadans are still out of work or underwater in their home mortgages during these tough economic times. But I know by facing our challenges together, we will once again demonstrate the collective strength that comes from being literally ''battle born.''

What is on this chart appeared in last week's New Yorker magazine. ''I've got mine.'' ''Change, Smange.'' ''Leave Well Enough Alone.'' ''Keep Things Precisely as they are.'' ''I'm good, thanks.''

The pictures portrayed are obviously caricatures of very rich people—top hats, vests, cigars. For me, this did not portray people who were rich as much as what is going on with our Republican colleagues. We know all that has been said about the 1 percent—how well they are doing. It was reported last week that during the last 25 years, their percentage of wealth in America has gone up almost 300 percent. So there will be a lot of attention focused on the rich, as it should be.

But also I think it should be directed to the Republicans in the Senate—not to Republicans around the country but those in the Senate—because Republicans around the country don't agree. They don't agree things are just fine. They don't agree we should leave well enough alone. They don't agree that just because the rich are doing so well, things are OK precisely the way they are. The vast majority of Americans disagree with that.

It is true that for a few lucky Americans, things in this country are going just fine. The haves have never had more. My colleagues in the Republican Party in the Senate are singularly focused on making sure it stays that way. Everything on this chart applies to what has happened in the Senate in the last 10, 11 months. The gap between the haves and the have nots has never been bigger. The middle class is falling further and further behind.

That is why, while Republicans advocate for millionaires and billionaires, Democrats are looking out for working Americans.

We have not forgotten that 14 million people are still out of work or millions more are struggling to make ends meet. We have not stopped fighting to get good-paying American jobs.

That is why Democrats will introduce the Rebuild America's Jobs Act tonight, legislation that will create hundreds of thousands of jobs by investing in our Nation's crumbling infrastructure. It would put men and

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

women across this country to work, for example, upgrading 150,000 miles of highways and roads, laying 4,000 miles of train tracks, restoring 150 miles of airport runways and installing a modern air traffic control system that no longer relies on World War II-era technology and will reduce travel time and delays.

Since the economic downturn began, more than 2 million construction workers have lost their jobs. That has happened all over the country. This legislation will send hundreds of thousands of those workers back to job sites to build $27 billion worth of roads, bridges, and other important aspects of our infrastructure.

The plan would fund $250 million worth of projects in my State and millions of dollars in the State of Delaware and other States. It would support about 3,300 badly needed jobs.

Overall, the Rebuild America Jobs Act would invest $50 billion, taking our citizens off the unemployment rolls and putting them back to work, ensuring our Nation has top-notch infrastructure once again.

It will also invest $10 billion to create an infrastructure bank that would leverage public and private capital to fund a wide range of long-delayed projects.

It will do all this without adding one penny to the deficit. Instead, it would require millionaires and billionaires to contribute their fair share—those whose incomes are netting over $1 million. They would be asked to pay a surcharge of less than 1 percent—seven-tenths of 1 percent, to be exact—to get this Nation's economy back on track.

Americans overwhelmingly support the Democrats' plan to invest in roadways, runways, and railways. Seventy-two percent of the American people support the Rebuild America Jobs Act.

I don't know if I have been to Jonesboro, AR. I had a case that took me all over that State on one occasion. But a man in Jonesboro, AR, is quoted in last week's Time magazine. ''The Return of the Silent Majority.'' I believe Drew Ramey qualifies for that. This is what he told Time magazine:

I used to think I was a libertarian. . . . But I like my roads now. I like my public services.

That was Drew Ramey from Jonesboro, AR. He speaks for millions and millions of Americans, Americans of all political persuasions. Even 54 percent of Republicans believe a world-class economy should have world-class roads and bridges. They agree with what we are trying to do.

The U.S. Chamber of Commerce and labor union AFL–CIO rarely agree on anything, but they agree on this. They agree we should pass the Rebuild American Jobs Act to improve the woeful state of America's infrastructure. It is not only labor and business groups but transit officials, mayors, and three-quarters of the American people support our plan—76 percent.

I could quote one dozen of my Senate Republican colleagues who have supported aspects of this in the past. Why aren't they lining up to support our proposal? Two basic reasons. One, Republicans are determined to see President Obama fail, even if it means Americans fail with him—sad but true.

My colleague, the Republican leader, said his No. 1 goal in this Congress is to defeat President Obama. They would rather see Americans continue to struggle, as I have outlined, to find work than work together with the President and with us.

Second, Republicans are more concerned with protecting millionaires and billionaires than they are willing to work with us to put 14 million people back to work.

I heard on the radio this morning, on National Public Radio, that during the Bush years, we lost 8.6 million jobs. We have only gotten a little over 2 million of those back—2½ million, frankly. It wasn't long ago that a President who was in office for 8 years could boast, if he wanted to, about creating 23 million jobs.

That is what Republicans have given us. They refuse to ask the rich to contribute a tiny fraction more to secure our economic future, even if it costs more jobs.

In recent days, Republicans have shown new interest in the gulf between rich and poor that has motivated thousands to occupy parks across the country and make their voices heard. Apparently, they believe America's staggering income inequality makes a good talking point.

Yet while Democrats fight for jobs for the middle class, Republicans fight for tax breaks for the 1 percent of Americans who don't need our help.

I will bet if we could ask these very rich people would they be willing to give seven-tenths of 1 percent more to create millions of jobs, most of them would say yes. Why aren't my Republican colleagues supporting this simple, commonsense legislation?

I say to my Republican colleagues that I hope they will work with us. We want to work with them. If we can do something good, there is a lot of good will to go around. But we have to make sure the speeches we have heard from some of our colleagues about creating jobs amount to doing something about it. We have not seen it yet.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until 4:30 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Hawaii is recognized.

Mr. AKAKA. I thank the Chair.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 1763 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. AKAKA. Mr. President, I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

DEMOCRATIC INACTION

Mr. MCCONNELL. Mr. President, it is no secret that Congress isn't winning any popularity contest these days. Americans are fed up with lawmakers who are either focused on the wrong thing or determined to block any serious reforms that would actually get at the root of the problems we face. That is why Republicans have been focused not only on legislation which we think has a good chance of jump-starting private sector job creation in this country but which also has a good shot at actually becoming law. Put another way, since taking back the majority this year, Republicans in the House of Representatives have focused not only on legislation which avoids the economic missteps of the previous 2½ years of Democratic control but legislation which also has a good shot of making it through a Democratic-led Senate.

You would never know it from listening to the President, but there has actually been a significant amount of bipartisan work that has been going on on Capitol Hill these days. House Republicans have passed bill after bill—many of them with solid bipartisan support—that would help spur private sector job creation and would help get this economy moving again, but the Democrats who have run the Senate for the past 5 years have ignored virtually all of it. Senate Democrats have decided it isn't in the interest of their party for Congress to get anything done right now. They have adopted a strict strategy of inaction. They simply won't take ''yes'' for an answer.

The contrast between Republicans who run the House and Democrats who run the Senate couldn't be starker. Since taking over the House this year, House Republicans have searched for areas of common ground and then invited Democrats who run the Senate to take them up and pass them and send them on down to the President for a signature. Almost every single time, Senate Democrats have said no.

House Republicans now count more than 15 pieces of legislation that would help us chart a very different path from the one the President and his Democratic-controlled Congress have charted over the past few years. This is legislation that would unlock America's energy resources, cut back on excessive regulations that are holding back job creation, and enable businesses, such as Boeing, to make their

own decisions about how and where to expand.

Just last week, the House passed a bill to get rid of an IRS withholding tax on businesses that do work for the government. More than 400 Members of the House voted for this bill, including 170 Democrats. Here is how one prominent Democrat described this bill:

The repeal of this requirement will free up small businesses' cash flow, increasing their ability to add jobs and to bid on new projects.

Republicans support this legislation. Democrats support this legislation. The President included this legislation in his own jobs bill, and he supports the bill that passed the House last week. There is no reason the Senate shouldn't take it up right now. This is one small thing we can do right now to reduce the burden on employers across the country. We came together to help them earlier this month by passing free-trade bills. Let's build on that success and pass this bill the job creators are telling us will help protect and create jobs.

Like Senate Democrats, the President may think he benefits from the appearance of inaction in Congress. That is why he is running around the country reminding people how bad the economy is instead of urging Democrats who run the Senate to work with Republicans who run the House. But with all due respect to the President, the American people already know the economy is in bad shape. That is not news to anybody. They do not need the President to tell them that. They live it. What they need is for the President to get his party to agree to something that helps.

I know Democrats will argue that our proposals for job creation wouldn't be their first choice. My response is that the Democrats had 3 years to do something about jobs and the economy. The President's signature jobs bill cost nearly $1 trillion, and 2½ years later there are 1½ million fewer jobs in this country than on the day that legislation was signed. So why don't we try a different approach? Let's try an approach that actually takes into account the concerns of struggling business owners who are ultimately going to lift us out of this jobs crisis. They have told us what they want. It is not a mystery what we need to do to help these folks create jobs. Temporary fixes and more stimulus bills isn't it.

So our message is this: The Democrats in Washington need to start taking ''yes'' for an answer. Republicans have put forward more than a dozen concrete proposals to spur job creation in this country that avoid the economic mistakes Democrats made over the past few years. We have done the hard work of legislating and looking for areas where the parties overlap on the issues. It is time for the President to signal to Democrats in Congress that it is OK to work with us.

Everyone knows the economy is in bad shape. What Republicans are saying is that higher taxes and more government spending isn't the way to help it. Everyone knows the Federal Government in Washington is spending way too much money, money it doesn't have. What Republicans are saying is that the solution isn't to spend even more. Everyone knows that if the two parties are going to come together and act, we need to design legislation that appeals to both sides, and that is exactly what Republicans are doing.

It is time to put the political playbook aside and actually take action. Republicans in the House are doing their job. It is time for the President and Senate Democrats to do theirs.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

MINIBUS APPROPRIATIONS BILL

Mr. SESSIONS. Mr. President, I thank the Republican leader for his comments and would just say that the time we can borrow from the future to spend today in order to create some sort of sugar high that creates jobs is past. We have tried that. The debt has now reached a level where the debt itself is a threat to our economy. It is a cloud over our economy. It is slowing growth and job creation. I truly believe that. We need to move out of these difficult financial times we are in, but I think the debt itself now is a threat to us.

I wish to speak about the minibus appropriations bill that is before the body and its effect on the budget we have. As the ranking Republican on the Budget Committee, I do believe it is my responsibility to present, as I am able, a straightforward, honest figure about the spending bills that come before our Senate.

H.R. 2112 is the first of several minibus bills that apparently will be used in lieu of the normal appropriations process. This minibus is so named because it contains three appropriation bills put in one—not one as we normally see before the Senate: the Agriculture bill, Commerce-Justice-Science, and the Transportation and Housing bill, all cobbled together in one.

The Democratic majority contends this package will save taxpayers money, but this is just more Washington accounting. We have crunched the numbers and discovered that these bills will not cut spending but will actually increase spending by $10 billion over last year. So I wish to take a moment to explain because this is very important. We had an agreement that we would begin the smallest of reductions this year in spending—not nearly enough, but we reached that agreement, and we should honor that at least. So this is the first appropriations bill the Senate has considered after the discretionary spending caps were established as part of the recent debt limit negotiations.

The Budget Control Act, as you remember, was passed to raise the debt ceiling. As an exchange for agreeing to raise the debt ceiling, as President Obama asked, Congress insisted that there be some curtailment of spending so we wouldn't hit the debt ceiling again so soon. So the Budget Control Act, as the bill was pretentiously named in August, requires that discretionary spending be brought down this year from $1,050 billion to $1,043 billion in fiscal year 2012, an alleged total spending reduction of a paltry $7 billion throughout the entire year. Presumably, the other $6 billion that was required to be saved under this agreement will be saved in other bills to come before the Congress. We haven't seen them yet.

Does the bill that is before us move us toward even this minor goal? That is the question. The majority party says it does. They contend that the bill, the minibus, spends $128 billion—which is $1 billion less than last year when it was $129 billion—a reduction of less than 10 percent, and they are very proud of this. But, remember, as an aside, nondefense discretionary spending alone in the first 2 years of President Obama's Presidency went up 24 percent. So to take a $1 billion reduction is basically to hold in place this surge in spending at a time when this Nation has never, ever faced such a severe debt threat to its future.

Going through the bill and thinking it through, the Budget Control Act also created a new category of spending. The Budget Control Act, if you remember, was cobbled together in the dead of night and brought up on the floor on the eve of a financial crisis and it was demanded that it be passed, and hardly anyone had a chance to read it. Unknown to most of us, it allowed spending above the $1,043 billion limit for disaster assistance. The debt limit deal provided an allowance for disaster spending equal to the average of the 10 prior years of disaster spending, which can be assessed or spent simply by providing the proper words in the appropriations bills that come forward across the floor, as these three do. But the majority contends this money should magically not be counted when you decide how much is spent by the bill. Why? Well, it is a disaster, and disaster spending doesn't count. Don't you know?

As amended on the Senate floor 2 weeks ago, the bill now contains $3.2 billion in new spending above the caps for disaster relief, a further increase of 20 percent to the disaster assistance. Two additional amendments were adopted last week adding to the amount that the committees had produced as disaster assistance.

While there are arguments that the $3.2 billion should not be counted as an expenditure, the CBO, the Congressional Budget Office, our official scorekeeper, includes it as an expenditure. It is included as an expenditure in the CBO score, $3.2 billion. No one has challenged them because it appears they are plainly correct to count the

$3.2 billion as spending. Only in Washington can it be asserted that the government can spend $3.2 billion and it not count. The bill's sponsors contend that the discretionary spending portion of the bill, as I indicated, has gone down from $129 billion to $128 billion, but CBO says it went up to $131 billion. The disaster funding represents a 2-percent discretionary increase, at a time when spending is supposed to be going down.

Further, the bill's sponsors say you should not count the mandatory spending programs that are contained in the bill. They insist that mandatory spending is not under the control of the appropriators. Again, this is logic that only exists in Washington. In truth, it is not unusual for the Appropriations Committee to take actions that impact mandatory programs, and it can be done. But, of course, it was not in this bill.

For example, food stamps, the largest mandatory program by far in this bill—actually larger than any other program in the bill—amounts to 75 percent of total Agriculture appropriations spending. Seventy-five percent. Most people think agriculture programs are bailing out farmers. Those benefits to farmers have been reduced steadily over the years. Now 75 percent of the Agriculture bill is the mandatory programs, food stamps being the largest. And this program, under the legislation before us today, is set to increase by 14 percent next year, $10 billion more than last year, a $10 billion increase in the Food Stamp Program. But that doesn't count, it is contended.

This spending increase results in a doubling of the food stamp budget over the past 3 years—doubling the budget in 3 years—and then quadrupling it four times over the last 10 years. We have got to look under the hood of this program and find out what is happening to it. But nothing is seriously being done. Like welfare reform, responsible changes to the way government operates this program will improve outcomes, help more needy people achieve the goal of financial independence, not dependence, and stop fraud, which most Americans know is pretty common in the Food Stamp Program.

When I offered an amendment to save a modest $10 billion over the next 10 years, a reform that would not have reduced eligibility for any of the needy but only require that the recipients meet the minimum legal requirements of the program—actually be needy and qualify for the program by reducing fraud and abuse—the amendment was defeated right here on the floor of the Senate. It would have saved $10 billion, according to the Congressional Budget Office, by making sure that people make actual, formal applications for their food stamps and sign a document saying they actually qualify for it. Is that too much to ask?

Senator STABENOW, the agriculture authorizing committee chair, rose to explain that we are not to worry because, while we are increasing food stamp funding now, at some other time her committee will recommend and produce a bill perhaps that will reduce it by $23 billion over 10 years. But if that promise were to be fulfilled, the effect on the fiscal year 2012 budget would be that food stamp spending would increase this year approximately $8 billion—or a 10-percent increase—rather than $10 billion, a 14-percent increase. The program has indeed doubled since 2008.

But now we are hearing in reports that this $23 billion in savings is not even in the Food Stamp Program, or most of it is not. We are hearing that 19 percent of it is a further reduction of aid to farmers, and only $4 billion of the reduction in savings would be from food stamps.

Here is the bottom line. When discretionary and mandatory spending are scored in this bill, the overall spending compared to last year went up by $10 billion, or a 4-percent increase, not a cut. Relative to the amount Senators approved for these three bills last year, we are being asked to increase spending, not decrease spending. I believe that is a fair and honest analysis of the bill that is before us. If you were to exclude the mandatory spending, ignore that huge increase in the Food Stamp Program, the SNAP program, and even say disaster assistance should be ignored, the so-called reduction in spending would be only a paltry $1 billion on these three bills combined.

It is time to get serious. Denial in this Congress must end. You can't borrow your way out of debt. We are spending money we do not have. Forty cents of every dollar we spend is borrowed, on which we pay interest every year. It is digging us deeper in a hole. It cannot be contended that this is serious work toward reducing our deficit. It just cannot be.

Our deficit in fiscal year 2011, which ended September 30, was just shy of $1,300 billion. A spending cut of $7 billion for this year is a mere pittance in comparison. In no way is it even close to a significant reduction of the projected deficit we are going to have in this fiscal year, which began October 1. We are now at Halloween. We still haven't passed the appropriations bill for the year we are in. Congress is not performing responsibly. It is not.

We haven't had a budget in over 900 days. The majority leader, Senator REID, said it would be foolish to have a budget. No wonder the American people are unhappy with us. How can this be? We are responsible people. We are proposing to spend next year $1,043 billion, and act as though we are proud to have reduced the spending by $7 billion when we will have over $1,000 billion in debt, $1 trillion plus, next year?

But it gets worse. The bill also contains a number of Washington accounting tricks to sweep new spending under the rug. It is full of the typical gimmicks used to shove more spending into a bill that has already reached its spending limit. We have reached our limit. I remain amazed at the creativity used by spenders to defeat budget limits. Were they to use such creativity to control spending, would we not be so much better off?

I have already talked about the new authority granted by the Budget Control Act to designate an item as a disaster outside and above the budget—it doesn't count if you call it a disaster—and to spend the money without a formal vote by the Senate to declare it a disaster. Indeed, until the Budget Control Act passed, you had to have 60 votes to declare something a disaster to go above the budget. That has been eliminated. That was changed in this Budget Control Act that reduced control of the budget. It reduced the power of the budget to contain spending by eliminating this end run. At least you used to have 60 votes to spend above the budget by calling it a disaster. Now you do not.

When they first floated this idea that they were going to put disaster spending in the budget and it was going to be averaged out with what we normally spend, I thought that was a good idea. We know on average we have been spending this much for disasters. Let's put it in the budget and only spend above that if it meets that standard we have traditionally had. The idea was to arrange the amount of disaster spending and put it in the budget, but in the shell game that is Washington, that is not what the fine print did. The Budget Control Act establishes in effect now a slush fund to spend money above the budget limits, eliminating the 60-vote requirement for emergency designation. There is $3.2 billion in spending under this new authority that is in this bill, the first of multiple minibuses we will see. At the rate we are going, the ceiling of $11.3 billion for disaster established under the Budget Control Act will be exhausted and more emergency spending will be needed to further address legitimate disaster needs, but there will be no need for 60 votes to do so. That vote has been eliminated.

In addition, the bill uses another gimmick to rescind discretionary appropriations provided in prior years that, for one reason or another, can no longer be spent for their intended purposes. That is, the bill rescinds budget authority that CBO estimates will not result in any cash savings over the next 10 years. Rather than letting the appropriations lapse and saving this money and being thankful we got the project done at less than normal, less than the projected cost, this bill, as has been done before, pretends to be responsible and rescinds that money which is then used to pay for the spending that will in fact result in cash expenditures from the Treasury. This one gimmick in this bill would add $131 million in off-the-books spending.

Finally, the bill finds savings in mandatory programs that game the government's cashflow and score as savings

for this bill, but does not actually reduce the cost to the taxpayers. These so-called CHIMPS—we have a name for it now, changes in mandatory program spending—total $8.5 billion in this bill. Of that amount, an astonishing 88 percent, or $7.5 billion, results in no net spending reduction over 10 years.

Some of these CHIMPS have been going on year after year. One example is the Crime Victims Fund. Every year Congress says that the crime victims will get the funds they are due under the law next year which, unfortunately for the Crime Victims Fund, has not yet arrived since the annual deferral began in fiscal year 2000. In other words, it is done every year and there seems to be no prospect that this will not continue. Meanwhile, the appropriators get the amount deferred over and over again, enabling ever higher amounts of discretionary spending. It would be like a family delaying a single $500 home repair for 10 years, and then counting it as $5,000 in savings, $500 for every year the repair did not take place. In this case, over the past 3 years the gimmick used in this bill has enabled $14 billion in higher spending.

The ACTING PRESIDENT pro tempore. The Senator is informed the Senate is in a period for morning business and the time allotted for Senators to speak was 10 minutes.

Mr. SESSIONS. I thank the Chair and ask for 1 additional minute to close.

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

Mr. SESSIONS. I am unable to support this bill. By its own standards it fails. It represents everything that is wrong with Washington today. It crams three bills, which should have been considered individually, into one, creating a process that curtails debate on spending at a time when we need more debate, not less. Further, it does virtually nothing to address the fiscal crisis threatening this country. It treats spending caps established earlier this summer as the most that can be saved, not as the starting point for savings, and then uses gimmicks to spend over and above that advertised limit. It is not a serious response to the explosive growth in Federal spending and falls short of the commitment we must make to handle taxpayer dollars honestly and responsibly. It is business as usual. The American people deserve better.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

DRUG SHORTAGES

Ms. KLOBUCHAR. Mr. President, I rise today to talk about a serious public health crisis facing our Nation and to highlight some of the important progress we have made to date. We are currently confronting unprecedented shortages of critical medications. These drug shortages have impacted people across our country, forcing some patients to delay their lifesaving treatments, or use unproven, less effective, alternatives. In some cases, drug shortages have resulted in patients not getting the kind of treatment they had gotten or being slow in getting their treatment and being left behind. I have been working to address this problem for over a year since I first heard from hospitals, pharmacists, and patients in Minnesota that they were facing shortages of essential medications, particularly chemotherapy drugs. Their urgency led me to send a letter to FDA Commissioner Hamburg, urging the FDA to take action to address this public health crisis.

Over the next few months, I continued to receive calls and visits from constituents, asking help to find medications in short supply. I worked with manufacturers, stakeholders, and the FDA to try to find an appropriate solution to ensure that patients continue to receive the care they deserve and they need.

I would add, while in several cases the crisis was averted, this took hours and hours of individual pharmacists' time, individual doctors' time. At a time when we are trying to be as efficient as possible in our health care system, the last thing we need is to have a doctor or nurse or pharmacist spend half a day to look for medication because there is a shortage.

In February I introduced the Preserving Access to Life-Saving Medications Act with Senator CASEY. This legislation, which has bipartisan support and a total of 17 cosponsors, would give the Food and Drug Administration the ability to require early notification from pharmaceutical companies when a factor arises that may result in a shortage. Today the President issued an Executive order that adopts this framework for an early notification system. The Executive order will do this: It will push drug companies to notify the FDA of any impending shortage of certain prescription drugs; it will expand the FDA's current efforts to expedite review of new manufacturing sites, drug suppliers, and manufacturing changes; and it will direct the FDA to work with the Department of Justice to examine whether drug companies have responded to potential drug shortages by illegally hoarding medications or raising prices to gouge consumers.

This action will help further reduce and prevent drug shortages, protect consumers, and prevent price gouging. This step enhances actions that have already been taken by the FDA and it puts in place additional tools to address drug shortages.

This is something we probably didn't hear about a few years ago, but this year we have learned that drug shortages are having a direct toll on families across America. A couple of months ago I met a young boy named Axel Zirbes. Axel Zirbes is a cute 4-year-old boy from the Twin Cities, with bright eyes and a big smile. He also happens to have no hair on his head. That is because Axel is being treated for leukemia. When he was scheduled to start chemotherapy earlier this year, Axel's parents learned that an essential drug, cytarabine, was in short supply and might not be available for their son. Understandably they were thrown into a panic and desperately looked into any available alternatives. They even prepared to take Axel to Canada, where cytarabine is still readily available.

Imagine this. You are parents of a 4-year-old, you find out he has life-threatening leukemia, and you cannot get medication which is actually quite commonplace in the treatment of this disease, and you are starting to fly to Canada because our own country somehow has not kept up with the supply of this drug.

Fortunately he never had to go to Canada. At the last minute the hospital was able to secure the medication from a pharmacy that still had a supply. But Axel and his parents, sadly, are not alone. There were 178 drug shortages reported in 2010. Keep in mind, these are not individual stories such as Axel's. These are actually drugs, 178 different drugs across the country, basically affecting millions of patients, that had drug shortages in 2010. That is a dramatic increase from 5 years ago. There were 55 shortages 5 years ago. Think of that increase. For some of these drugs, no substitute drugs are available or, if they are, they are less effective and they may involve greater risks of adverse side effects.

The chance of medical errors also rises as providers are forced to use drugs they are not familiar with. A survey conducted by the American Hospital Association showed that nearly 100 percent of their hospitals experienced a shortage in the past year. Another survey, conducted by Premier Health System, showed that 89 percent of its hospitals and pharmacists experienced shortages that have caused a medication safety issue or an error in patient care.

We want to be doing the opposite. We want to be reducing errors. We want to be giving patients the help they need. It is clear there are a large number of overlapping factors resulting in unprecedented shortages. Experts cite a number of factors that are responsible for the shortages. These include market consolidation, poor business incentives, manufacturing problems, production delays, unexpected increases in demand for a drug, inability to procure raw materials, and even the influence of the gray markets, where people are basically hoarding these drugs when they find out there could be a shortage and then upping the prices, as if things were not bad enough.

Financial decisions in the pharmaceutical industry are also a major factor. Many of these medications are in short supply because companies have

simply stopped production. They decided it was not profitable enough to keep producing them.

Instead of low price, and lower profit, generic drugs, companies are looking at more expensive brandname drugs. Mergers in the drug industry have narrowed the focus of product lines. As a result, some products are discontinued or production is moved to different sites, leading to delays. When drugs are made by only a few companies, a decision by one drug company can have a huge impact on the market.

To help correct a poor market environment or to prevent gray market drugs from contaminating our medication supply chain, we must address the drug shortage problem at its root. The early notification system that would be established under the Preserving Access to Life-Saving Medications Act and the President's Executive order that is advanced today will help the FDA take the lead in working with pharmacy groups, drug manufacturers, and health care providers to better prepare for impending shortages, more effectively manage shortages when they occur, and minimize their impact on patient care.

Just so you know, the FDA already does this with orphan drugs. When there is only one drug and the drug manufacturer thinks they are going to run out of the drug they do tell the FDA so the FDA can step in and maybe look internationally for another drug. You saw that happen with the H1N1 virus. When we had a short supply they went to other countries. They are allowed to do that now, but manufacturers are not required to do it in some of the situations we are encountering now with those 178 drug shortages. That is what our bill does. It basically says if you see a drug shortage coming down the pipe because one or a number of these factors is present, you have to let the FDA now know. You have to work with the FDA because they have successfully averted dozens of drug shortages this year.

We do not pretend this is going to solve everything, but at least it is something we can do right now which will give the FDA the power to go in there and work with the drug manufacturers and try to find other sources so the person who is doing that is not the parent of a 4-year-old kid with leukemia or a pharmacist who is trying to serve customers at his pharmacy, or a doctor trying to treat patients and she has to get on the phone and call a bunch of hospitals to try to find a drug. It simply does not make any sense at all. This is a national problem, not a problem for a 4-year-old boy.

Our legislation would also direct the FDA to provide up-to-date public notification of any actual shortage situation and the actions the agency would take to address them.

Additionally, the bill requires the FDA to develop an evidence-based list of drugs vulnerable to shortages and to work with the manufacturers to come up with a continuity of operations plan to address potential problems that may result in a shortage.

The bill would also direct the FDA to establish an expedited reinspection process for manufacturers of a product in shortage. This would allow them to get inspected sooner so we can get the drugs to market. With manufacturers providing early notification, the FDA's drug-shortage team, which already exists, can then appropriately use their tools to prevent shortages from happening. As I mentioned, in the last 2 years the FDA, with early notification and more information, has successfully prevented 137 drug shortages. So this is something that actually works.

While the President's Executive order takes steps toward advancing these goals, he has made it clear we must pass this bill in order to protect patients and ensure consumers they have access to the lifesaving medications they need and deserve. So the Executive order helps, but we still need to pass this bill.

I understand this may be a short-term solution to a long-term problem. That is why I have also been working with several of my colleagues on a bipartisan basis to come up with a broad, permanent solution, one that includes methods to address the root causes of drug shortages. This includes Senator MCCAIN, Senator CORKER, and Senator BURR. I also see Senator BLUMENTHAL here, who has been working on this issue. We have Senators—including Senator CASEY and others—working with the HELP Committee who have been working to get this done. At the urging of this bipartisan working group, the FDA held a public workshop in September that brought together patient advocates, consumer groups, health care professionals, and researchers to discuss the causes and the impact of drug shortages and possible strategies for preventing or mitigating future shortages.

In addition to the working group, I have been speaking with a broad range of stakeholders to try to discover why we have seen such a large number of drug shortages that we have not seen in the past. The facts don't lie, and the numbers don't lie. There has been an enormous increase in the number of drug shortages. This current explosion of shortages appears to be a consequence of a lack of supply of certain products to keep up with a substantial expansion in the scope and demand for these products.

Due to the complex nature of these drug shortages, there is no single or simple solution that would solve all problems. A solution will require everyone involved to play a role in mitigating future drug shortages. We must ensure we have the manufacturing capabilities to keep up with demand. One solution may be to provide tax incentives to manufacturers to continue to make drugs that are on the shortage list or to provide other market incentives, such as including exclusivity pricing similar to that which we give to manufacturers that make orphan drugs. In addition, I have urged the FDA to improve its communication with patients and providers. This will ensure patients and doctors are not the last to know when there is a shortage. I also favor permanent reimportation of drugs from safe countries, such as Canada. Not everyone involved in this issue thinks that is a good idea, but I can tell you, if we were to allow that, that little 4-year-old boy would not have to look at flights to Canada.

One thing is clear: This is a national public health crisis that must be addressed. The President's actions today will provide additional tools to address drug shortages, but more must be done. I will continue to work with my colleagues in the bipartisan working group for a broad permanent solution. I will also continue to work with Senator CASEY, with the Presiding Officer, and with all of the other Senators involved in this, including Senator SUSAN COLLINS, to get our legislation passed. It is common sense. It is not over the top. It simply takes a tool that is used now to avert drug shortages for orphan drugs and expands it so that other drug manufacturers, when they have drugs that are going to experience a shortage, are required to notify the FDA. It gives the FDA that little extra time, whether it is 1 month, 6 months, or 1 year, to look for the drug in other locations. I think it would give us some insight into what is actually going on here so we can fix this.

I yield the floor.

The PRESIDING OFFICER (Mr. BLUMENTHAL). The Senator from Nebraska.

HONORING OUR ARMED FORCES

PETTY OFFICER FIRST CLASS CALEB NELSON

Mr. JOHANNS. Mr. President, I rise today to honor a fallen hero, Petty Officer First Class Caleb Nelson of Omaha, Nebraska. Petty Officer Nelson died on October 1, 2011, when his vehicle was struck by an explosive device in Afghanistan. He was on combat patrol with fellow SEAL team members when the attack occurred. His desire to succeed and help others led him to military service.

For Caleb, it had to be the best. For him, that was the Navy SEALs. Military commanders trusted Petty Officer Nelson's judgment and his commitment. He was typically assigned a leading role on search missions, placing the lives of many SEALs in his capable hands. Caleb was in the lead position when he was killed.

The decorations and badges earned during his distinguished service speak to his dedication and to his skill—The Bronze Star with Valor, the Purple Heart, the Navy and Marine Corps Achievement Medal, the Combat Action Ribbon, the Good Conduct Ribbon, the National Defense Medal, the Iraq Campaign Medal, the Afghanistan Campaign Medal, the Global War on

Terrorism Medal, the Sea Service Ribbon (2 awards), the NATO Service Medal, the Expert Rifle Ribbon, and the Expert Pistol Ribbon.

Although Caleb's life was cut short, he had a wide circle of friends and touched the lives and hearts of many. His dynamic and energetic personality caused people to look to him as a motivator and as a mentor. Those who knew him recall his deep faith in Christ, his strong interest in physical fitness, and a focus on getting things done. Throughout his life, Caleb grew in his Christian faith and quickly became a rock of support for others. No problem was too small to lay before Caleb.

There was also an unrelenting love for family dwelling inside this tough, physically fit SEAL. His wife Anna and his sons, David and Kyle, meant everything to him. When Caleb wasn't training or on assignment, he was with them. Caleb also benefited from a strong relationship with his loving parents, Larry and Barb, his nine siblings, and a faithful community of fellow believers who admired his strength, his compassion, and his leadership.

Today, I ask that God be with the family and friends of Caleb Nelson and bring them comfort during this very difficult time. Their faith is strong, so I know they will join me in seeking God's blessings on those currently serving in uniform, especially those involved in combat operations.

May God bless our servicemembers and their families and bring them home safely.

The PRESIDING OFFICER. The Senator from Illinois.

SWIPE FEE REFORM

Mr. DURBIN. Mr. President, we are at a significant moment in the relationship between the banking industry on Wall Street and businesses and consumers on Main Street all across America. This could be, in the words of Malcolm Gladwell, a ''tipping point,'' and it could lead to a much more balanced relationship in the future.

It is interesting how we reached this point. There was a time not that long ago when Wall Street and Main Street both played by the same rules. Banks and businesses sold goods and services to consumers in a competitive market environment with transparent prices. Banks performed and still perform a valuable function in our economy, providing capital and liquidity. Businesses, of course, in the sale of goods and services are generating the activity that fuels our economy. They were complementary. They worked with one another.

The successful banks and businesses were the ones that were more efficient than their competitors. They offered better products, better prices. This system, characterized by transparency, competition, and choice worked well for everyone: consumers, banks, businesses, all their customers. It was the basis for a free market economy and a great nation.

In recent years, and particularly after the repeal of Glass-Steagall, though, things changed. Banks started moving to a new role beyond capital and liquidity. The level of profitability and the activities of the banks started moving in many different directions. Instead of practicing transparency and competition, many banks started cutting corners, imposing fees, raising interest rates, and basically creating policies that were very difficult for even their most loyal customers to follow. That was a situation which had gotten out of hand.

We saw hidden fees pop up left and right, such as overdraft fees on checking accounts that went completely beyond any reasonable penalty for a person who is guilty of that conduct, and sudden interest rate changes on credit cards. Consumers many times did not even know they were being charged the fees until it was too late, and the banks figured if all the banks did it consumers would have no choice. They had to live with it.

Perhaps no fee better characterized the absence of transparency and competition than the interchange fee, or the swipe fee. This is a fee that banks receive from merchants and retailers each time a person uses a debit card or a credit card. It is a fee unlike any other. With most fees we see one fee rate charged by one bank, such as Bank of America, another rate by another bank, Wells Fargo or Chase or whatever it happens to be. But with interchange fees, all banks receive the same fee rate. There is no competition.

The banks realized that competition holds fee rates down. So they went to Visa and MasterCard—and on debit cards Visa has around 80 percent of the debit card business—and said to them: You can set, you can dictate the interchange fees the banks will collect. And they did.

This duopoly, these two major credit card giants, Visa and MasterCard, set fees for all of the banks issuing their cards across America. This has been a huge moneymaker for the banks. Banks make an estimated $50 billion a year in debit and credit card interchange fees, and because there is no competition and no negotiation with the retailers Visa and MasterCard reward their big bank allies with higher fee rates every single year, even as the cost of processing these transactions continues to go down.

Swipe fees have become a huge and growing burden for Main Street businesses and customers, and American families ultimately pay the price in the form of higher costs for groceries and gasoline.

I think of Potash Supermarket. I have talked about it on the Senate floor many times. Art Potash has become a buddy of mine, second or third generation owning this supermarket near North Chicago. He is not as big as the big boys, Dominicks, Jewel, and the others, but, boy, what a nice store he has.

Art came to me years ago and said: They are killing me. The debit card sweep fees are killing me. It is the second or third most expensive item when I put together the cost of my business, and it is out of control. I have no control over it.

Art was one of the people, he and Rich Neimann down at Quincy, IL, retailers, businessmen who got me started on this. Well, it is interesting. Something is happening out there in America. It could be that the era of some of these banking practices is coming to an end. Maybe we are reaching a tipping point.

In 2009, Congress passed credit card reform that reined in sudden interest rate changes, and regulators placed curbs on abusive overdraft fees. Of course, the credit card companies and the banks screamed bloody murder: Too much government. Too much regulation.

We did not listen to them. We listened to American families and consumers. Last year, Congress passed a Wall Street reform bill, and we created a new Consumer Financial Protection Bureau and placed reasonable limits on Visa and MasterCard swipe fee price fixing. No surprise. The banks cried bloody murder. They do not want to make a penny less than they made in the last quarter, even if their past profits were inflated by hidden fees and anticompetitive practices.

So now big banks are looking for new ways to squeeze their customers in order to maintain their record profits and ten-figure executive bonuses. But in the past week, something interesting has happened in America. After years of raising fees on the customers without much resistance, several of the biggest banks tried to stick it to their customers again with a new monthly debit card fee. The consumers of America noticed, stood up, and said: No way.

After Bank of America, Wells Fargo, and several other big banks announced these new debit fees, their customers began voting with their feet. New account openings at credit unions and community banks surged in many cases by 20 to 50 percent.

I am sure that is good news to my colleague from Iowa to know that there is more business at the community banks and credit unions of Iowa, leaving the Wall Street banks and coming home to Iowa. It is good news in Illinois.

Consumers have been emboldened. They are now saying they will only do business with banks that care about serving them instead of squeezing them. This has been a great development for consumers. It has also been great for those small banks and credit unions which we value so much in the Midwest who have never stopped playing by the rules and have always valued their customers and their communities.

Now, November 5 is coming. It turns out to be a day I was not previously

aware of but I have read about now. They are calling it the National Bank Transfer Day. We are seeing many big banks actually reversing themselves and abandoning their recently announced debit fees in light of the possibility that even more people are going to shift away from the big banks with the monthly debit card fees to community banks and credit unions and other banks that are not imposing the fees.

Big banks are starting to see it just is not good business to nickel and dime their customers and charge them five bucks a month for access to their own checking account. That is what they were doing. At least that is what they were proposing.

Can you imagine the big banks ever changing course like this a few years ago? Not a chance. But through reasonable regulation and consumers standing up and being alert, we are restoring transparency and competition to financial services.

Transparency and competition are part of a good, functioning, free market economy. It is not over by a long shot. The big banks still have enormous power and resources. They are going to continue to try to find ways to make money at the expense of their customers, and that is why we need to do several things.

First, we need to confirm once and for all a Director for the Consumer Financial Protection Bureau. I know Wall Street banks and financial institutions and many on the other side of the aisle hate this new Bureau, as Dale Bumpers used to say, like the Devil hates holy water. But the fact is, this is an agency solely dedicated to ensuring that consumers have good information so they can make good choices. Senate Republicans should lift their hold on Richard Cordray so he can be confirmed to run this important agency. They should stop doing the bidding of the financial institutions who are afraid of oversight and stand on the side of families and small businesses across America.

Second, we need to ensure transparency of all bank fees so consumers cannot be tricked and trapped. This is the role the CFPB will eventually play. But there is no need for banks to wait to provide this transparency. For example, the Pew Charitable Trusts has developed an easy-to-read, one-page model disclosure for banks to list all of the fees they can charge on checking accounts. Banks should immediately adopt this Pew Trust disclosure box so their Web sites are clear to consumers and consumers can actually comparison shop and choose the bank that best serves their needs. This type of standardized fee transparency will help drive consumer business to the good banks, those that play by the rules and offer a good value at a reasonable price.

Third, we have more work to do to bring transparency and competition to the swipe fee system. For example, credit card swipe fees are still entirely unregulated, and they can cost a merchant up to 3 to 4 percent of the transaction amount. Every American should be aware of what it costs a merchant to accept a credit card because ultimately the consumers pay for it.

Consumers should particularly be aware of how much their local small businesses pay in credit card interchange. They should also know how much more rewards cards cost merchants than nonrewards cards. This will help consumers make more informed choices.

If we are for competition and for transparency and for choice, we have to move to a level where consumers have more information. So I call on the Nation's biggest 1 percent of banks, those with over $10 billion in assets, to disclose in their monthly statements of their cardholders the interchange fees the banks received on each credit card transaction.

While it would be ideal for this interchange disclosure to be made known to customers directly at the cash register or on receipts, I recognize that might be difficult. So let's do it on the monthly statement. Big banks can easily modify these monthly statements to show how much the bank received in interchange fees on each transaction. This can happen almost immediately.

This type of transparency is particularly important because we are seeing big banks trying to steer their customers away from paying with debit and toward credit. Have you noticed the ads that are offering rebates on credit cards now; 1 percent, 2 percent, even 3 percent on gasoline? What customers may not realize is that the fee being charged by the credit card company and the bank to the gas station may be far in excess of 3 percent. So they have already taken the money away from consumers as they pay for their gas, and then they toss three pennies back to them.

It is time for a little more disclosure about the actual relationship between those banks, credit card companies, and the consumers and retailers that deal with them.

In closing, I do believe we are at a tipping point when it comes to the balance between Wall Street and Main Street. For too long Main Street businesses and consumers have been playing by the rules, and Wall Street has been rigging the game. Now transparency and competition are being restored to the banking industry.

A member of my staff was down in Georgia over the weekend. He drove by and saw a little bank called Bank of the Ozarks. I do not know what it was doing in Georgia, but it said Bank of the Ozarks. It had a sign outside that said: We agree. Debit cards should be free.

The word is spreading across America. It is an important word to which consumers are paying attention. We are seeing dramatic increases in the Web sites of credit unions and community banks, people transferring their money to where they think they will get better treatment and a better deal. It is called competition. Transparency and competition are coming to the banking industry. Consumers are getting better information, and many of them are making important choices for their families and businesses.

This is going to strengthen small banks and credit unions in Iowa, in Illinois and Connecticut, and many places all around America. It will help small businesses in Iowa, too, as well as Illinois, who are being crushed by hidden swipe fees today. It is going to help the economy move forward in a fair way with real disclosure.

Let's keep this progress moving. I salute those who stood with me on a bipartisan vote on both occasions on the Senate floor to move forward on this important matter. Just a few weeks ago, major publications such as the Wall Street Journal and the Chicago Tribune were jumping all over the ''Durbin fee,'' and they were standing by the big banks that said they were going to put this monthly fee on because of DURBIN.

Guess what. Those banks are backing off now. They realize their customers are leaving if they are not treated properly and fairly. Let's continue that. It is healthy for America and the growth of our economy.

I yield the floor. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF STEPHEN A. HIGGINSON TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

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 the nomination of Stephen A. Higginson, of Louisiana, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour of debate, equally divided and controlled in the usual form.

The Senator from Vermont.

Mr. LEAHY. Mr. President, today the Senate will finally vote on the nomination of Stephen Higginson of Louisiana to fill a vacancy on the Fifth Circuit

which has been a judicial emergency for more than a year. I anticipate his nomination, which was reported unanimously by the Judiciary Committee more than 3½ months ago on July 14, will be confirmed overwhelmingly. It would have been confirmed had it been considered before the August recess, rather than subjected to an extensive and unexplained delay. I hope that the Senate will can build on today's vote by soon having up or down votes on the other 22 superbly qualified judicial nominations pending on the Senate calendar. At a time when judicial vacancies have remained at historically high levels for well over 2½ years, we owe it to the American people to work together to ensure that the Federal courts are functioning.

Stephen Higginson is a well-respected consensus nominee who has served as a Federal prosecutor for 23 years. He served as a law clerk to Justice Byron White of the United States Supreme Court and to Chief Judge Patricia Wald of the DC Circuit. He currently teaches law at the New Orleans College of Law. The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Professor Higginson ''well qualified'' to serve on the Fifth Circuit, its highest possible rating. The two Senators from Louisiana, Democratic Senator MARY LANDRIEU and Republican Senator DAVID VITTER, support his nomination. When Senator VITTER introduced Mr. Higginson to the Judiciary Committee in early June, he joined with Senator LANDRIEU ''in being extremely enthusiastic'' about the nomination and said that he ''wholeheartedly support[s]'' the nomination, saying of the nominee:

He has unbelievable academic and intellectual credentials that are unquestioned . . . He [has] won the respect of everyone in the community based on his work ethic, and his honesty, and his integrity, and his dedication to the job.

In the past, such a nominee would go sailing through and not have to wait week after week, month after month after month. Yet despite the strong endorsement by both his Democratic and Republican home State Senators and the support of every Democrat and every Republican on the Committee, Mr. Higginson's nomination has been stalled for months by Republican leadership. The people of Louisiana and the other States of the Fifth Circuit—Mississippi and Texas—deserve an explanation for these unnecessary delays. So do the 161 million Americans who live in districts or circuits who have judicial vacancies that could be filled today if the Senate Republicans agreed to vote on the other 22 nominations that were reported favorably by the Judiciary Committee and are ready for a Senate vote. We have done our work in the Judiciary Committee. We have held hearings on these nominees. We have vetted them. We have gone through FBI reports and Bar Association reports. We have debated the nominations, and we have voted on them. We have sent the nominations to the Senate floor, and they have been languishing ever since.

The needless delays in our confirmation process are affecting millions of Americans around the country. As shown in this chart I have in the Senate Chamber, more than half of all Americans—161 million—live in districts or circuits with a judicial vacancy that could be filled today if the Senate Republicans agreed to vote on the nominations currently pending on the Executive Calendar. Twenty-four States are served by Federal courts with vacancies that could be filled immediately if Republicans would agree to vote on the judicial nominations already reported by the Judiciary Committee. Judicial vacancies in the Second Circuit, which includes Vermont, New York, and Connecticut, the Fifth Circuit, which includes Louisiana, Texas, and Mississippi, the Ninth Circuit, which includes California, Alaska, Nevada, Arizona, Oregon, Idaho, Montana, Washington, and Hawaii, and the Eleventh Circuit, which includes Florida, Georgia, and Alabama, have been designated ''judicial emergencies'' by the Administrative Office of the United States Courts. So have vacancies on district courts in New York, Texas, and Utah.

I would hope my friends on the other side of the aisle would explain to the millions of Americans in these States why the Senate is not being allowed to vote on these vacancies, especially for the consensus nominees who have been vetted and approved by a bipartisan majority—usually unanimously—in the Judiciary Committee.

The American people need functioning Federal courts with judges, not vacancies. Despite the damaging number of vacancies that have persisted throughout President Obama's term, some Republican Senators have tried to excuse their delay in taking up nominations by suggesting that the Senate is doing better than we did during the first 3 years of President Bush's administration. It is true that President Obama is doing better in that he has worked more closely with home State Senators of both parties. As I have noted, all of the judicial nominees pending and being stalled on the Senate Executive Calendar have the support of both home State Senators. That was not true of President Bush's nominees and led to many problems.

There is no good reason or explanation for the Republican leadership's continued refusal to vote on these stalled nominations. Senator GRASSLEY and I have worked together to ensure that each of the 23 nominations now on the Senate calendar was fully considered by the Judiciary Committee after a thorough and fair process, including completing our extensive questionnaire and questioning at a hearing. Like Mr. Higginson, the other 22 nominees who are awaiting final Senate action are qualified nominees, and 19 were reported unanimously by the committee. Yet despite their qualifications and broad bipartisan support, many have languished needlessly on the Executive Calendar for weeks.

These delays are not only unnecessary, they are damaging. The number of judicial vacancies remains at historic levels, having risen above 90 in August 2009, and staying near or above that level ever since. The number of vacancies is twice as high as it was at this point in President Bush's first term, when the Senate was expeditiously voting on consensus judicial nominations. With 1 in 10 Federal judgeships currently vacant, the Senate must come together to address the serious judicial vacancies crisis on Federal courts throughout the country. Bill Robinson, the president of the American Bar Association, recently highlighted the serious problems for businesses and individuals affected by these excessive vacancies in a letter to the Senate leaders, joining Justice Scalia, Justice Kennedy, and Chief Justice Roberts in warning of the serious problems created by persistent judicial vacancies.

The only way to make progress is to fulfill our constitutional duty and confirm qualified judicial nominations to the Federal bench. We remain well behind the pace we set in dramatically reducing vacancies by regularly scheduling votes during President George W. Bush's first term. At this point in President Bush's first term, the Senate had confirmed 166 of his nominees for the Federal circuit and district courts, including 100 during the 17 months that I was chairman of the Judiciary Committee. In contrast, after today's vote, we will have confirmed only 113 of President Obama's nominees to Federal circuit and district courts. Three years into President Bush's first term, the Senate had confirmed 29 circuit judges. After today's vote, we will have confirmed only 22 of President Obama's circuit court nominees. We could make significant progress toward matching that pace if we voted on consensus nominees. Yet President Obama's judicial nominees unanimously reported by the Judiciary Committee—by any measure consensus nominees—have waited an average of 80 days—nearly 3 months—on the Executive Calendar before coming to a vote. President Bush's nominees waited an average of just 28 days. We must bring an end to the needless delays that have obstructed President Obama's nominations to the Federal bench.

During the last work period, the Senate started to make some progress in voting on some of President Obama's longest pending judicial nominees. I thank Majority Leader REID for working hard to schedule these votes. I hope we can build on this progress by continuing to have votes during this work period on consensus nominations. There is no reason we could not vote today on the nominations of Chris Droney of Connecticut to fill a judicial emergency vacancy on the Second Circuit, Morgan Christen of Alaska to fill

a judicial emergency vacancy on the Ninth Circuit, and Adalberto Jordan of Florida to fill a judicial emergency vacancy on the Eleventh Circuit. Like Mr. Higginson, these nominations were all reported unanimously. The circuits to which they are nominated desperately need judges: the Ninth Circuit Court of Appeals alone has four vacancies, worsening what the Los Angeles Times has recently called ''an already critical case backlog'' on that court, which is the largest circuit court in the country, covering California and all of the Western States. I ask unanimous consent that the full text of the LA Times article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. LEAHY. I hope the 22 judicial nominations pending after today will get a vote soon. We have a long way to go to match the 205 district and circuit court nominations confirmed during President Bush's first term.

With millions of Americans currently affected by judicial vacancies that the Senate could fill today, now is the time for Republicans and Democrats to work together so that our courts can better serve the American people.

I yield the floor.

EXHIBIT 1

[From the Los Angeles Times, Oct. 15, 2011]

JUDGES' DEATHS ADD TO 9TH CIRCUIT BACKLOG

(By Carol J. Williams)

Five judges from the U.S. 9th Circuit Court of Appeals have died this year, worsening an already critical case backlog and spotlighting President Obama's inability to put his judicial choices and stamp on the powerful court.

The deaths of four semi-retired senior jurists and full-time Circuit Judge Pamela Ann Rymer have intensified concerns on the aging bench and among judicial scholars that the 9th Circuit will fall farther behind in what is already the slowest pace of dispensing justice in the federal courts.

Judges of the 9th Circuit currently sit on twice the number of cases each year as those of the other 12 federal appeals courts, according to the Administrative Office of the U.S. Courts. And it takes an average of 16.3 months for the court's panels to issue opinions after an appeal is filed, compared with 11.7 months on average for all circuits. The 9th Circuit has jurisdiction over California and eight other Western states and is authorized to have 29 full-time jurists.

''While we mourn the loss of our colleagues, whom we will miss as friends, we are alarmed by the loss of judicial manpower,'' said 9th Circuit Chief Judge Alex Kozinski, who was appointed to the court by President Reagan. ''A very difficult situation has been seriously exacerbated, and we fear that the public will suffer unless our vacancies are filled very promptly.''

The 9th Circuit is an especially important court because it helps to define many of the nation's laws on immigration, sentencing, intellectual property and civil rights, experts say.

Obama inherited two 9th Circuit vacancies with his inauguration. Two jurists retired last year. Rymer's Sept. 21 death from cancer created another vacancy. Another vacancy looms at the end of the year, when former Chief Judge Mary M. Schroeder plans to take senior status.

Obama has managed to get only one of his picks for the 9th Circuit confirmed by the Senate. He elevated U.S. District Judge Mary H. Murguia in 2010 from the Arizona federal court, leaving that bench with its own manpower crisis after its chief judge, John M. Roll, was killed in the Jan. 8 shooting rampage in Tucson.

Obama's other appeals court nominations, Alaska Supreme Court Justice Morgan Christen and U.S. District Judge Jacqueline H. Nguyen of Los Angeles, are still making their way through the contentious confirmation process. Christen was nominated in May and Nguyen was nominated last month. Obama has yet to name anyone for the other three 9th Circuit vacancies, including one that has been open for seven years because of a dispute between California and Idaho senators over which state gets to propose candidates to the White House. Nationally, Obama nominations are pending in 51 of 92 vacancies.

Some judicial scholars speculate that Obama may be having trouble convincing those he would like to appoint to accept nominations for fear of derailing their legal careers only to be rejected by partisan fights in the Senate. Goodwin Liu, a UC Berkeley law professor twice nominated by Obama, was forced to withdraw earlier this year when Senate Republicans again blocked a confirmation vote.

''What we know is that the nominations haven't been coming through with the speed we would expect. What we don't know is whether that is because the president is not asking people or whether he is being turned down,'' said Arthur Hellman, a University of Pittsburgh law professor and 9th Circuit historian. Citing the relatively low pay compared with what a lawyer can make in private practice and the often withering interrogations in the confirmation process, he said, ''some may be saying it's just not worth it.''

Hellman worries that the overwhelmed 9th Circuit judges will have to cut corners to prevent their case backlog from further increasing. That could mean less time spent reviewing each case, holding fewer oral arguments before issuing decisions or bringing in judges from other circuits who might be unfamiliar with 9th Circuit law.

A call to the White House press office asking why Obama has not nominated more judges wasn't answered Thursday. Earlier in the day, at a session of the Senate Judiciary Committee, its Democratic chairman blamed Republicans for stalling judicial appointments by refusing to give consent for confirmation votes even on candidates voted out of committee with unanimous support.

''Millions of Americans across the country are harmed by delays in overburdened courts,'' said Sen. Patrick J. Leahy (D–Vt.). ''The Republican leadership should explain to the American people why they will not consent to vote on the qualified, consensus candidates nominated to fill these extended judicial vacancies.''

The committee's ranking member, Sen. Charles E. Grassley (R–Iowa), countered with a claim that the Senate is ''ahead of the pace'' compared with the confirmation rate of the Democratic-controlled Congress during the Bush administration. His comment followed Thursday's confirmation vote on three of 30 Obama judicial nominations that Republicans agreed to bring to a vote.

Even if Obama acts quickly to nominate three more 9th Circuit judges, the impending 2012 campaign could thwart Senate approval of those choices, said Michael McConnell, a Stanford law professor and former judge on the 10th Circuit.

Russell Wheeler, a Brookings Institution fellow and veteran analyst of the federal courts, said Obama is entering ''uncharted territory'' with the 9th Circuit vacancies occurring so late in his term.

Noting that Bush got Senate confirmation of 35 federal judges in the last 15 months before his 2004 reelection bid, Wheeler said, ''I doubt Obama will do as well, but confirmations are not going to stop altogether.''

Some judicial analysts also lament that the administration hasn't pushed Congress to expand the federal judiciary, as recommended for more than a decade by the Judicial Conference of the United States. That policymaking body of the federal courts has said the 9th Circuit needs at least five more judges added to its authorized 29 to alleviate its annual caseload of 12,000-plus filings.

The announcement Tuesday that senior Circuit Judge Robert Boochever died at his Pasadena home on Sunday was a sharp reminder of the advancing age of the 9th Circuit bench that relies on its purportedly retired seniors to shoulder much of the case overload. Fifteen of the court's judges are over 80, including two of the 25 active judges and 13 of its 18 seniors. Last year, a third of the court's caseload was carried by senior judges.

Since criminal appeals can't be delayed because of federal laws protecting defendants' rights, the burden of delays will fall on civil cases, said Kozinski.

''We can ameliorate some of that by relying more heavily on visiting judges, but we're already doing that quite a bit,'' he said, adding that the help available from outside is finite. ''Essentially, it's a zero-sum game, so that when you decrease the number of judges available in the federal system, you necessarily add more delay somewhere. Shifting judges around can help even out the burden, but it can't make up for judges that just aren't there.''

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, today the Senate will vote on the nomination of Stephen A. Higginson to serve as U.S. circuit judge for the Fifth Circuit. This is a seat that has been deemed by our statistics as a ''judicial emergency.'' This is the 15th judicial nomination we will confirm this month. With this vote today we have confirmed 51 article III judicial nominees during this Congress, and 30 of those confirmations have been for judicial emergencies.

Despite this brisk level of activity, we continue to hear complaints—too many complaints, unjustified complaints—about the lack of real progress by the Senate.

Let me set the record straight regarding the real progress the Senate has made, and this is in regard to President Obama's judicial nominees. We have taken positive action on 87 percent of the judicial nominations submitted before this Congress. The Senate has confirmed 71 percent of President Obama's nominees since the beginning of his Presidency, including two of the most important—Supreme Court Justices.

We continue to remain ahead of the pace set forth in the 108th Congress under President Bush. So far, we have held hearings on 85 percent of President Obama's judicial nominees. That is compared to only 79 percent at this point in President Bush's Presidency. I

note that we have another nomination hearing scheduled in the Judiciary Committee on Wednesday of this week. We have also reported 76 percent of the judicial nominees received so far this Congress, with five more scheduled for consideration on Thursday of this week. A comparable 75 percent were reported at this time in the 108th Congress.

Critics may dismiss the activity we have accomplished in committee as not making real progress. But everyone knows that no votes can take place on the Senate floor until committee action is complete, and that completion must include hearings as well as markups.

Furthermore, when it comes to floor action, we are making real progress as well. We are well ahead in this session of the confirmation pace of previous sessions of Congress. As I mentioned, after this vote, we will have confirmed 51 judicial nominees during this session of Congress. I point out that this exceeds the average number of judicial confirmations going back to the 1st session of the 97th Congress. That session was the beginning of President Reagan's first term in 1981. The average since then is 44 judicial confirmations per session. This puts the current session of Congress in the top 10 over the past 30 years. This means that during this session, President Obama has had better results with his judicial nominees than President Reagan had in seven sessions of Congress. It is more confirmed in five of the eight sessions of Congress during President Clinton's administration. President George W. Bush had six sessions of Congress with fewer nominees confirmed.

So I hope these statistics—as boring as they are—will put to rest insinuations that there is something that is somehow different about this President or that he is being treated unfairly because those sorts of comments do not hold up to analysis.

To support the ''lack of real progress''—those are the words we keep hearing—some would argue that the only valid measure of progress is how quickly a nominee is confirmed after being reported out of committee. That is only one piece of the confirmation process. Hearings and markups in committee are also necessary components. To ignore those elements distorts the picture.

I want to give you an example involving today's nominee, the one we will be voting on in less than half an hour. Mr. Higginson was nominated May 9 of this year. He had his hearing 30 days later. The total time from nomination to confirmation was 175 days. Compare this to the record of the nomination of Edith Brown Clement. She was the nominee of President Bush to be U.S. circuit judge for the Fifth Circuit. Like Mr. Higginson, she, too, was from Louisiana. May 9, 2001, was the first day of her nomination, and because it wasn't handled right away, it had to be returned to the President during the August recess of that year. And, of course, a month later, on September 4, 2001, she was renominated. Compare this length of time involving Judge Clement with the nominee today. As I said, she was renominated on September 4. She had to wait 148 days for her hearing. The total time from initial nomination to confirmation was 188 days. That is nearly 2 weeks longer than Mr. Higginson's confirmation wait.

This is just one example of how cherry-picking one piece of the confirmation process over another can lead to unfounded conclusions. If one argues that Mr. Higginson has been treated unfairly because of how long he waited for confirmation, then certainly Judge Clement was treated even worse. I note that Judge Clement was approved by the committee on a unanimous vote and confirmed on the floor of the Senate on a 99-to-0 vote.

Let's get to the present nominee. I support the nomination of Mr. Higginson. He received his bachelor of arts degree from Harvard College, summa cum laude, in 1983 and juris doctorate from Yale Law School in 1987. Upon graduating from law school, he served as a law clerk for Chief Judge Patricia Wald, U.S. Court of Appeals, DC Circuit. He then clerked at the Supreme Court for Associate Justice Byron White.

Since these clerkships, Mr. Higginson has served as an assistant U.S. attorney. From 1989 to 1993, he served in the U.S. Attorney's Office in the District of Massachusetts. In 1993, he transferred to the Eastern District of Louisiana, continuing with criminal trial work, and became chief of appeals in 1995. From 1997 through 1998, he was detailed by the Department of Justice to work for the U.S. Department of State as Deputy Director of the Presidential Rule of Law Initiative. In 2004, he became a part-time assistant attorney general while serving as a full-time associate professor of law at Loyola University New Orleans College of Law.

The American Bar Association Standing Committee on the Federal Judiciary has rated Mr. Higginson with a unanimous ''well qualified.''

I intend to vote for his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, I understand we have about 4 minutes on our side. I thank my colleague, Senator GRASSLEY, for his kind words of support.

I have strong words of support for the nomination before the Senate today. I rise to support the confirmation of Stephen Higginson to the U.S. Court of Appeals for the Fifth Circuit. I was pleased to recommend Mr. Higginson to President Obama to be considered for this nomination to this important post. I am pleased to be joined by my colleague from Louisiana, who also supports this nomination and supports this confirmation.

I want to take just a moment to share with my colleagues a few highlights of Mr. Higginson's background and resume.

He has been well prepared for this position. He has resided in New Orleans with his wife Colette and their three children, Christopher, Katy, and Noelle. Prior to that, he began with a degree from Harvard, graduating summa cum laude. After graduating there, he earned a master's in philosophy—which is unusual but very welcomed in this field—from Cambridge University. He went as a Harvard Scholar. With degrees from two very prestigious institutions, he decided to pursue his J.D. from Yale Law School, where he graduated 3 years later. He earned the extraordinary distinction of being both editor-in-chief of the Yale Law Review and the winner of the Israel H. Perez prize for the best written contribution to the Law Review. After graduating from another prestigious school—Yale—he served as law clerk to the Honorable Patricia M. Wald of the U.S. Court of Appeals in the District of Columbia. He also served as law clerk to the Honorable Byron White of the U.S. Supreme Court.

Clearly, his academic and professional accomplishments have prepared him to handle the legal complexities of Federal appellate cases.

All of these things have been put into context beautifully by comments from the judges with whom he will serve should he be confirmed today by the Senate. Other justices on the court, including Judge James Dennis of the Fifth Circuit, described him this way:

> Stephen has all the qualities one needs to become a great judge and great colleague. He will be a great addition to our court, and I look forward to serving with him.

Another Fifth Circuit judge, Judge Edith Clement Brown, called Mr. Higginson ''the best criminal lawyer that has ever practiced before me in all of my 20 years serving on the Federal bench.''

Finally, from the man he will succeed should he be confirmed, Judge Jack Weiner, who took senior status last year, said this:

> I have long admired Stephen Higginson's advocacy here in the Eastern District, his scholarship as a law professor, his outstanding academic record at Harvard and Yale Law School, and as an exemplary citizen here in New Orleans. I am distinctly honored to have him succeed to my seat on this court, and I'm confident that he will discharge the duties of the U.S. Circuit Court Judge fairly, conscientiously, and honorably.

With my strongest recommendation, I ask my colleagues in the Senate to vote with me in approving this nominee today.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I rise and am honored to join my colleague from Louisiana, Senator LANDRIEU, as well as others, including Senators LEAHY and GRASSLEY, in strongly supporting this nomination. It is a very strong nomination.

First of all, let me say that I am very happy to work in a very close fashion with Senator LANDRIEU on all of the judicial nominations in Louisiana under President Obama. I have to say that work and that cooperation has gone more smoothly, with better results, than I could ever have imagined. So I am very pleased with that entire process.

This nomination of Stephen Higginson is perhaps the strongest, most shining example of that. Senator LANDRIEU and I worked very closely together. We were very focused on this important Fifth Circuit nomination. Quite frankly, we were both concerned about someone whom the White House was looking closely at for the nomination. We both, together, expressed that concern. And then we both very much supported this nomination of Stephen Higginson.

Senator LANDRIEU, through a process she set up independently, suggested Steve Higginson as a nominee, and I very immediately and passionately and strongly chimed in. We did this because this is a highly qualified individual who will make nothing less than a great judge.

As has been mentioned, Steve has a sterling record in many different facets. He is an associate law professor at Loyola Law School, where he has received great admiration from both his fellow professors, colleagues, and his students. He has served for about two decades as a Federal prosecutor in various offices of the U.S. Attorney, mostly the U.S. Attorney for the Eastern District of Louisiana, since 1993.

During this time in Louisiana, Steve has handled multiple investigations and criminal trials—first at the trial level, then at the appellate level—and he has supervised both criminal and civil appeals. In this role, he has authored over 100 Federal appellate briefs and he has reviewed more than 300 appellate briefs authored by others. Of course, that is very directly relevant to this job on the U.S. Fifth Circuit.

This work, and the entire work of this U.S. Attorney's Office, has been extremely important for the citizens of Louisiana in at least two respects. First of all, this U.S. Attorney's Office—led by current U.S. Attorney Jim Letten, a career prosecutor, initially appointed by President Bush and kept on by President Obama—has made enormously important strides in cleaning up political corruption in Louisiana with several landmark prosecutions, and Steve Higginson has been an important part of many of those landmark prosecutions.

Second, in the immediate aftermath of Hurricane Katrina, this U.S. Attorney's Office, headed by Jim Letten and aided very much by Steve Higginson, was extremely instrumental in helping local prosecutors and local law enforcement recover from the blows of Hurricane Katrina, get back on their feet and move forward with important criminal prosecutions.

A U.S. attorney's office is always important to a community, but I point out these two ways in which Steve Higginson's work under U.S. Attorney Jim Letten has been particularly significant for the citizens of the Greater New Orleans area.

Steve came very well prepared for all of this work. As was mentioned, he has an exemplary academic career, including editor-in-chief of the Yale Law Journal, which is no small feat. He also served as law clerk to Supreme Court Justice Byron White. His work in the U.S. Attorney's Office has also been recognized in a myriad of ways.

He has gotten many awards, so I will just mention one or two—for instance, the Excellence in Law Enforcement Award from the New Orleans Metropolitan Crime Commission, again focusing on that very important anticorruption work and post-Katrina work. At Loyola Law School, as I mentioned before, Steve has been recognized and lauded by his colleagues on the faculty, his peers, and by his students. In fact, from his students he has won Loyola's Professor of the Year Award three times in just a few years.

Steve will bring a wealth of public experience to the Federal bench and is exceptionally qualified to serve there.

I believe the Constitution is very clear that judges must interpret the law and not legislate from the bench, and I think our most solemn responsibility in terms of confirming Federal judges is to make sure we confirm judges who respect that rule of law and who live by that rule of judicial restraint. I am confident Steve Higginson will be such a judge. So, again, I am very pleased to join my colleague from Louisiana, Senator LANDRIEU, and to join many others in a very bipartisan way, including the chair of the committee, Senator LEAHY, and the ranking member, Senator GRASSLEY, in strongly endorsing and supporting the nomination of Steve Higginson to join the Fifth Circuit Court of Appeals.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. 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. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business.

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

THE CLASS ACT

Mr. GRASSLEY. Mr. President, on Friday a week ago, the Secretary of HHS made a very important announcement regarding one specific provision of the Patient Protection and Affordable Care Act. Secretary Sebelius announced the administration would no longer be implementing the Community Living Assistance Services and Support Act. The acronym CLASS applies to that part of the health care bill. She said:

> When it became clear that the most basic benefit plans wouldn't work, we looked at other possibilities. Recognizing the enormous need in this country for better long-term care insurance options, we cast as wide a net as possible in searching for a model that could succeed. But as a report our department is releasing today shows, we have not identified a way to make CLASS work at this time.

This is not an ''I told you so'' speech, although it certainly could be. It isn't as though folks weren't raising significant concerns about the CLASS Act a long time before it ever passed. Two years ago, during the debate, Member after Member of the Senate came to the floor to argue the CLASS Act was destined to fail. Senator THUNE led the fight to raise awareness about the fiscal disaster the CLASS Act has now turned out to be. The Democratic chairman of the Budget Committee called it a ''Ponzi scheme.'' The Democratic chairman of the Finance Committee stated on the floor that he was ''no friend of the CLASS Act.''

When the Senate took a vote on the CLASS Act, 51 Senators, including 12 Democrats, voted to strip it from the legislation. The majority didn't rule that day because an agreement required 60 votes to strip it out.

I think special recognition should go to former Senator Judd Gregg of New Hampshire. As ranking member of the Budget Committee while in the Senate, and a senior member of the HELP Committee, he was deeply concerned about the ultimate cost of the CLASS Act on future generations. He led an amendment to require the CLASS Act be actuarially sound. He did so not because he wanted to improve the CLASS Act but because he wanted to make clear the CLASS Act could not work from a fiscal standpoint.

His amendment showed that, once implemented, the CLASS Act would take in revenues in early years and then begin to lose revenues in the outyears, ultimately either failing or requiring a massive bailout with taxpayer money to salvage the program. In a strange twist of budget scoring rules, his amendment, once accepted, led the Congressional Budget Office to score the CLASS Act as producing savings on paper in the short term.

The score made clear the CLASS Act was doomed to failure, but as only happens here in Washington, a score showing the obvious failure of the CLASS Act then became an asset, particularly an asset because the Democratic leadership wanted to show this bill was revenue neutral or even revenue positive. It was used by the Democratic leadership not for what it provided beneficiaries but what it did for the overall health care reform bill.

With the CLASS Act and some imaginary savings in the bill, it made the overall bill look as if it actually saved money. Those savings, of course, were a gimmick. Everyone in Congress knew

it, but some chose to ignore it or, worse still, to celebrate it.

The very first action on the floor for the Affordable Care Act was for the majority leader to ask unanimous consent to prevent amendments from spending the imaginary savings—and I emphasize imaginary savings—generated by the CLASS Act. It wasn't a motion to protect the CLASS Act itself but a cynical motion to protect its precious ''savings'' and the political value it had. Only in Washington, with overwhelming evidence on the table making clear a program would fail, would defense of the doomed CLASS Act become a virtue.

The Chief Actuary at CMS stated:

There is a very serious risk that the problem of adverse selection would make the CLASS program unsustainable.

The risks were known then, yet Democrats in Congress plowed ahead anyway. Why, you may ask. Well, Megan McArdle noted in the Atlantic on Monday:

The problems with CLASS were known from day one, but no one listened, because it gave them good numbers to sell their program politically.

And it wasn't just political cover. The imaginary savings gave them protection against potential budget points of order. Would the Senate-passed bill have been subject to a budget point of order without the imaginary CLASS Act savings in the bill? That is a very legitimate question.

The announcement by the Secretary of HHS provides an overdue vindication for Senator Gregg. His amendment made the announcement inevitable. Health and Human Services could not make a viable case for implementing the CLASS Act because of Senator Gregg's amendment requiring the CLASS Act to be actuarially sustainable.

Our next action is clear. Congress should repeal the CLASS Act. It was not in the House health care reform bill. A majority of the Senate voted to strip the CLASS Act from the Senate bill. It was passed under laughably false pretenses. The responsible action for Congress is to repeal it in the first relevant piece of legislation.

I take a back seat to no one on issues associated with improving the lives of seniors and the disabled. As ranking member of the Aging Committee, I oversaw critical hearings into deep and persistent problems in our Nation's nursing homes. I was the principal author of the Medicare Part D prescription drug bill, which is currently providing our seniors and people with disabilities with affordable prescription medications.

On the disability front, one of my proudest achievements is the enactment of legislation I sponsored, along with the late Senator Ted Kennedy—the Family Opportunity Act—which extends Medicaid coverage to disabled children. In large part through my efforts, the Money Follows the Person Rebalancing Act and the option for States to implement a home- and community-based services program were included in the Deficit Reduction Act of 2005.

Along with Senator KERRY, I introduced the Empowered at Home Act which, among other things, revised the income eligibility level for home- and community-based services for elderly and disabled individuals.

This is what I said about the CLASS Act on December 4, 2009:

If I thought that the CLASS Act would add to this list of improvements to the lives of seniors or the disabled, I would be first in line as a proud cosponsor of the CLASS Act. But the CLASS Act does not strengthen the safety net for seniors and the disabled. The CLASS Act compounds the long-term entitlement spending problems we already have by creating yet another new unsustainable entitlement program. The CLASS Act is just simply not viable in its current form.

That is the end of the quote I made on December 4, 2009, when that provision of the health care reform bill was up.

But this is not an ''I told you so'' speech. No, Mr. President, I am here because I am offended by the way this administration and proponents of health care reform have used the disability community throughout the debate over the CLASS Act.

Congress and the administration knew the CLASS Act would fail when it was being considered. The administration now somehow manages to treat this as a shocking discovery, and the fact that they are doing that is beyond me. But the way the administration has tried to soften the blow for the disability community rubs me the wrong way, because in the Secretary's statement on the CLASS Act I referred to, the Secretary said this:

In fact, one of the main reasons we decided not to go ahead with CLASS at this point is that we know no one would be hurt more if CLASS started and failed than the people who had paid into it and were counting on it the most. We can't let that happen.

Of course, they could have opposed the inclusion of the legislation and told the disability community the exact same thing back in 2009. Apparently, the administration is trying to tell the disability community that even though HHS can't implement the statute, they don't want to repeal it. Nicholas Pappas, a White House spokesman, said:

We do not support repeal. Repealing the CLASS Act isn't necessary or productive. What we should be doing is working together to address the long-term care challenges we face in this country.

After putting the political value of the savings ahead of the doomed policy, the administration finally admitted the CLASS Act was a failure. They apologized to the disability community. They said they don't support repeal of the CLASS Act.

After years of dodging reality, it is time for the President and the majority party to treat the disability community respectfully and honestly. If the President believes the CLASS Act can and should be saved, he should put revisions on the table much as he threatened to in early 2010 but never managed to.

Congress should weigh repeal of the CLASS Act against revisions that could be proposed to make it a legitimate program. We should do so with a full score—meaning from CBO—and in the context of our current fiscal climate with all our cards on the table, not the stealthy way it was handled in 2009. We should have a healthy and open debate.

The insipid strategy of passing something into law with a wink and a nod toward making it all better in the future is unacceptable and disrespectful to the disability community purported to be served by the legislation.

Our course is clear. For those of us who care about the disability policies, the days of ignoring reality must come to an end. We should repeal the CLASS Act and move on to other legislation that gets the job done in a fiscally responsible way.

I yield the remainder of the time.

The PRESIDING OFFICER. All time has expired.

The question is, Shall the Senate advise and consent to the nomination of Stephen A. Higginson, of Louisiana, to be United States Circuit Judge for the Fifth District of Louisiana?

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. MANCHIN). Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Missouri (Mrs. MCCASKILL) and the Senator from Virginia (Mr. WARNER) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from New Hampshire (Ms. AYOTTE), the Senator from Missouri (Mr. BLUNT), the Senator from North Carolina (Mr. BURR), the Senator from Indiana (Mr. COATS), the Senator from South Carolina (Mr. DEMINT), the Senator from Texas (Mrs. HUTCHISON), the Senator from Arizona (Mr. MCCAIN), the Senator from Idaho (Mr. RISCH), the Senator from Kansas (Mr. ROBERTS), and the Senator from Florida (Mr. RUBIO).

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

The result was announced—yeas 88, nays 0, as follows:

[Rollcall Vote No. 188 Ex.]

YEAS—88

Akaka	Carper	Franken
Alexander	Casey	Gillibrand
Barrasso	Chambliss	Graham
Baucus	Coburn	Grassley
Begich	Cochran	Hagan
Bennet	Collins	Harkin
Bingaman	Conrad	Hatch
Blumenthal	Coons	Heller
Boozman	Corker	Hoeven
Boxer	Cornyn	Inhofe
Brown (MA)	Crapo	Inouye
Brown (OH)	Durbin	Isakson
Cantwell	Enzi	Johanns
Cardin	Feinstein	Johnson (SD)

Johnson (WI)	Merkley	Shaheen
Kerry	Mikulski	Shelby
Kirk	Moran	Snowe
Klobuchar	Murkowski	Stabenow
Kohl	Murray	Tester
Kyl	Nelson (NE)	Thune
Landrieu	Nelson (FL)	Toomey
Lautenberg	Paul	Udall (CO)
Leahy	Portman	Udall (NM)
Lee	Pryor	Vitter
Levin	Reed	Webb
Lieberman	Reid	Whitehouse
Lugar	Rockefeller	Wicker
Manchin	Sanders	Wyden
McConnell	Schumer	
Menendez	Sessions	

NOT VOTING—12

Ayotte	DeMint	Risch
Blunt	Hutchison	Roberts
Burr	McCain	Rubio
Coats	McCaskill	Warner

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.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

MORNING BUSINESS

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

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

NATIONAL SCHOOL LUNCH AND BREAKFAST PROGRAM

Mr. MORAN. Mr. President, 2 weeks ago, I spoke on the Senate floor about some of my concerns with the pending legislation that we have been talking about now—a number of appropriations bills—including the committee report on agriculture. The last time we visited about this, I talked about the GIPSA rules. I wish to focus on one more area of concern in this appropriations bill; that is, that the Department of Agriculture has proposed a rule to revise the nutrition requirements for the National School Lunch and Breakfast Program.

In its current form, the rule contains some impractical nutrition standards and goals. I don't think there is any question that all of us in the Senate, and certainly every parent I know, would want—we all want our children to have nutritious food and we want them to have nutritious food at home and at school. That is not the point. It is not the question. What I question is whether the Department of Agriculture's rule is realistic for schools, and for those who provide food to the schools, whether they are able to comply with this new rule.

For example, as written, the rule would exclude many nutritious vegetables in school meal programs. Appropriately, the Senate adopted an amendment offered by Senator COLLINS of Maine, which I supported, that allows school nutritionists to continue to make their own recommendations based upon the most recent dietary guidelines for Americans, rather than having to follow the mandates issued in this latest USDA rule. In my view, that is exactly where these decisions should be made: in schools around our country by nutritionists—not mandated by our government in Washington, DC.

Furthermore, we must keep in mind the impact this rule will have on school budgets and food suppliers. Unfunded mandates such as this one will make it even harder for schools to provide healthy lunches for students.

The Department of Agriculture estimates that the cost of compliance over a 5-year period will reach $6.8 billion. The Federal reimbursement already does not cover the full cost of preparing a meal in many schools across our country. This new USDA rule will further drive up the costs of providing lunches and school districts will have to make up the difference. This doesn't seem like a reasonable approach when many school districts are already struggling to make ends meet.

Let me give an example of what is in this rule. Once finalized, schools would be required to reduce sodium content in breakfasts by up to 27 percent and school lunches by up to 54 percent. There are a couple problems with this requirement. There is no suitable replacement for sodium that can maintain the same functions of flavor and texture. Also, reducing sodium is not just a function of limiting raw salt content. Many ingredients have sodium in them that occurs naturally.

School food suppliers have been working for years to reduce the amount of sodium in their food products. However, they need additional time to come up with a solution that balances nutritional value with taste so kids will eat the school lunch.

This rule would also change how nutritional content is measured—rather than measure nutrition based on density, the Department of Agriculture rule proposes to measure nutritional content based on volume. For example, tomato paste is nutritionally dense, but the Department of Agriculture says it must meet the same volume as a fresh tomato. That doesn't make much sense. Why would we take a metric to be the arbitrary volume requirement instead of just measuring the nutritional value?

The bottom line is, kids can still get the right nutrients from food products if they are measured by nutritional content.

A more sensible approach to making sure children have healthy options for breakfast and lunch would be to work together with scientists, nutritionists, and industry representatives toward a set of intermediate goals. Food costs, service operations, and student participation rates could then be more closely evaluated before moving on to the next goal. This would give school districts and food suppliers the chance to make changes in a more reasonable timeframe.

Our colleagues in the House included a provision in their version of this legislation that directed the Department of Agriculture to issue a new proposed rule that would not add unnecessary and costly regulations to the school lunch and breakfast programs. Unfortunately, this language was not included in the Senate version of the bill. In conference, I will continue to work with my colleagues to make sure the Department of Agriculture is not making it harder for schools to provide healthy lunches but instead is working alongside local schools and their officials to develop better nutritional goals.

TRIBUTE TO MR. EMMETTE THOMPSON AND MISSION OF HOPE

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to one of the finest charitable organizations serving the people of Kentucky, Mission of Hope, and its executive director, Mr. Emmette Thompson. Mission of Hope, located in Knoxville, TN, has been providing the impoverished children and families in the rural Appalachian communities of southeastern Kentucky and elsewhere with food, clothing, and other necessities for over 15 years.

Mission of Hope was founded in 1966 in response to a television broadcast entitled ''Hunger for Hope,'' in which anchor Bill Williams informed viewers of the destitution and poverty that affected families in the mountains and hills of southeastern Kentucky. The ''Hunger for Hope'' broadcast inspired founder Julie Holland to enlist the help of her church, Central Baptist of Bearden, to aid in handing out children's coats that had been donated by a local department store.

Since that first donation, Mission of Hope has grown to serve more than 17,000 people throughout more than 80 schools and organizations in Kentucky, Tennessee, Virginia and West Virginia. Over 85 percent of the population in this region suffers from hunger and joblessness due to a depleted coal mining economy.

Mission of Hope's objective is to provide, every year, the hunger-stricken families of Appalachia with hope and the chance at a better life through evangelical Christian charitable ministries. By partnering with school family-resource centers and small community ministries, Mission of Hope is able to provide assistance to those children and families most severely impoverished, and donates new clothes, food, toys, and school supplies through organized programs and events.

In addition, Mission of Hope assists in the repairing of homes, and provides a $2,500 scholarship to 11 qualified students from schools in the region. They

operate basic health-care clinics thanks to the volunteer efforts of local medical professionals, and assist in the development of literacy and other skills in order to create new jobs.

Most importantly, however, the countless volunteers who work tirelessly to provide Mission of Hope's services receive the greatest possible reward for their efforts. The sense of gratitude that is visible in thankful children's eyes is what motivates the volunteers each and every day, and it is the satisfaction from this ''personal touch'' that drives the people of Mission of Hope and their cause.

''What we do wouldn't work in today's business world,'' says Mr. Emmette Thompson, who is fundamental to the organization's success. ''Our business model and the way we distribute our harvest wouldn't work in corporate America because it defies logic . . . I'd love to tell people that I speak to that we're working ourselves out of a job, but that would be a bold-faced lie.''

Mr. President, the charitable work that Mr. Emmette Thompson and Mission of Hope provide to the impoverished families of Kentucky and the Appalachia region is extremely honorable. I commend Emmette and the organization for their selfless devotion to this important cause. Organizations and people such as these embrace the spirit of Kentucky and continue to provide hope to the people of our great Commonwealth.

BUDGETARY ADJUSTMENTS

Mr. CONRAD. Mr. President, on October 20, 2011, I filed a statement regarding a revision to committee allocations and budgetary aggregates pursuant to section 106 of the Budget Control Act of 2011. Specifically, I adjusted the allocation to the Committee on Appropriations for fiscal year 2012 and the budgetary aggregates for fiscal year 2012.

Two of the tables detailing the changes to the allocation to the Committee on Appropriations and the budgetary aggregates that are customarily provided for such an adjustment were inadvertently omitted and are provided here.

I ask unanimous consent that the following tables be printed in the RECORD.

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

BUDGETARY AGGREGATES—PURSUANT TO SECTION 106(b)(1)(C) OF THE BUDGET CONTROL ACT OF 2011 AND SECTION 311 OF THE CONGRESSIONAL BUDGET ACT OF 1974

[$s in millions]

	2011	2012
Current Spending Aggregates:		
Budget Authority	3,070,885	2,983,770
Outlays	3,161,974	3,047,206
Adjustments:		
Budget Authority	0	475
Outlays	0	62
Revised Spending Aggregates:		
Budget Authority	3,070,885	2,984,245

BUDGETARY AGGREGATES—PURSUANT TO SECTION 106(b)(1)(C) OF THE BUDGET CONTROL ACT OF 2011 AND SECTION 311 OF THE CONGRESSIONAL BUDGET ACT OF 1974—Continued

[$s in millions]

	2011	2012
Outlays	3,161,974	3,047,268

FURTHER REVISIONS TO THE BUDGET AUTHORITY AND OUTLAY ALLOCATIONS TO THE COMMITTEE ON APPROPRIATIONS PURSUANT TO SECTION 106 OF THE BUDGET CONTROL ACT OF 2011 AND SECTION 302 OF THE CONGRESSIONAL BUDGET ACT OF 1974

[$s in millions]

	Current Allocation/ Limit	Adjustment	Revised Allocation/ Limit
Fiscal Year 2011:			
General Purpose Discretionary Budget Authority	1,211,141	0	1,211,141
General Purpose Discretionary Outlays	1,391,055	0	1,391,055
Fiscal Year 2012:			
Security Discretionary Budget Authority	814,744	0	814,744
Nonsecurity Discretionary Budget Authority–	363,806	475	364,281
General Purpose Discretionary Outlays	1,327,942	62	1,328,004

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT

Ms. KLOBUCHAR. Mr. President, I rise today to speak about the proposed rules issued by the U.S. Department of Agriculture, USDA, regarding tomato product crediting. I believe we must provide our children with healthy meals and ensure they have access to nutritious foods not only for their own well-being, but for the well-being of our Nation.

Given that a significant number of children rely on school lunch programs for meals every day, I am concerned that provisions in the rule regarding tomato paste crediting could have unintended consequences.

Tomato paste contributes dietary fiber, potassium—a nutrient of concern for children—as well as Vitamins A and C. It is delivered to kids in popular school menu items they enjoy eating and drives National School Lunch Program and School Breakfast Program participation. The proposed rule changes a technical crediting issue, effectively mandating the use of three times as much tomato paste or other tomato product. For example, under the proposed rules, the crediting of tomato paste would be based on the volume served as opposed to ''single-strength reconstituted basis'' as outlined in the Food Buying Guide for Child Nutrition Programs. To achieve one vegetable serving, an estimated three times the current quarter cup volume of tomato product—like tomato paste, tomato sauce, or salsa—would be required. This increased amount is unrealistic for many single foods and combination foods and would make the weekly vegetable serving requirement more difficult for schools to achieve.

Under this rule, a plate of spaghetti with three times the normal amount of sauce becomes more of a soup than a pasta dish, and a slice of whole grain pizza with three times the amount of sauce could be equally excessive. This becomes a problem for schools hoping to feed their students healthy meals that kids like.

The Institute of School Meals report does not recommend a change in the way tomato products are calculated. This change does not bring a nutritional benefit, and it was not called for by schools, nutritionists, or the Institute of Medicine. Constituents in Minnesota have said that this would result in increased volumes of foods consumed, increased costs to schools, and the virtual elimination of many foods served in school lunch, because of altered formulas and proper ratios that no longer allows for proper preparation or consumption.

I am not suggesting that USDA stop action on the rule—but, I believe we must focus on increasing fruits and vegetables rather than decreasing specific foods that provide an important source of essential nutrients. And because of that, I suggest that USDA refrain from changing the current tomato paste crediting levels. We need to make sure that we promote nutritious meals and recognize that the quality of the meals our kids eat in school plays a major role in their health and well-being.

AMENDMENT NO. 810

Mr. President, I also wish to speak on Senator SESSIONS' amendment No. 810. While I support Senator SESSIONS' efforts to eliminate waste, fraud, and abuse in the government, I have concerns that this amendment will take food away from children and families with the greatest needs. This amendment prohibits the use of any funds from being used to support categorical eligibility in the Supplemental Nutrition Assistance Program, SNAP. Categorical eligibility reduces administrative costs, simplifies enrollment, and helps eligible low-income households receive food assistance. I have heard from a number of groups in my State who stressed the importance of categorical eligibility in giving states the option to enroll beneficiaries in SNAP, and I know how important it is to reach out to citizens that are eligible for benefits.

While I opposed this amendment, I will work in the farm bill to strengthen and improve the program to ensure that taxpayer resources are spent wisely.

AMENDMENT NO. 739

Mr. President, I also wish to discuss amendment No. 739 offered by Senator MCCAIN to the Transportation, Housing and Urban Development appropriations bill. I share Senator MCCAIN's concern that transportation funds need to be spent carefully to address our most critical infrastructure priorities. However, I voted to table the McCain amendment because I believe it needed

to be changed to allow States to continue to maintain existing infrastructure projects. The Minnesota Department of Transportation noted that the McCain amendment could have negatively impacted proposed projects to rehabilitate historic bridges that remain in use today as a critical part of Minnesota's road network. Specifically, bridges in Winona and Oslo, Minnesota may have been impacted and possibly Baudette, Minnesota's project as well. The chairman of the Environment and Public Works Committee which has jurisdiction over transportation policy also assured me that no funding in this bill would be used to fund transportation museums.

AMENDMENT NO. 792

Mr. President, I also wish to discuss amendment No. 792 offered by Senator COBURN to the Transportation, Housing and Urban Development appropriations bill. While I agree with Senator COBURN that Federal dollars should not end up in the hands of property owners that put their tenants at risk, I ultimately could not support this amendment because it could have harmed the very families it sought to help.

Before the vote, I was contacted by several affordable housing groups from my home State of Minnesota asking that I oppose this amendment. They were concerned that because of the way this amendment was drafted it could end up forcing the tenants it sought to protect into worse housing conditions, or even onto the street. By suspending payments to properties identified as deficient, it could also have prevented new owners from taking over deficient properties in order to rehabilitate them as they wouldn't have any way of financing the rehabilitation.

The Department of Housing and Urban Development already has the ability to enforce physical standards by suspending payments, seeking appointment of a receiver, and pursuing civil money penalties. I will continue to insist that they use these tools to develop responsive strategies for every troubled property while putting the safety of the tenants first.

WITHHOLDING TAX RELIEF ACT OF 2011

Ms. SNOWE. Mr. President, I rise to express support for the Republican leader's legislation on a critical issue that addresses the burdensome cost of compliance with the Tax Code. Senator MCCONNELL's bill is modeled after bipartisan legislation Senator BROWN and I introduced earlier this year which would repeal the 3 percent withholding on government contractors that was enacted in 2005 and which mandates that Federal, State, and local governments withhold 3 percent of their payments to private contractors, including Medicare provider payments, farm payments, defense contracts and certain grants.

I am deeply disappointed by the fact that the bill received 57 votes on the floor on October 20 but failed to pass the 60-vote threshold. The onerous withholding mandate on government contracts therefore remains before us and must be repealed. The House of Representatives has spoken quite clearly by passing repeal legislation last week by a vote of 405–16 and it is time for the Senate to do the same!

This issue originated as a result of very legitimate efforts to address the tax gap—the difference between what is owed in taxes and the amount that the IRS is able to collect. I believe everyone agrees that Americans should pay their taxes in full and none of us supports tax cheats, yet the issue that Senator MCCONNELL's legislation addresses arises from the means of mandating compliance with the Tax Code, the cost of that compliance compared to the revenue collected, and impact on hiring. The unfortunate fact is that the 3 percent withholding provision will cost far more to implement than will be collected in tax revenue. More importantly, our economy will suffer as this provision would take a significant toll on jobs and growth.

According to the Bureau of Labor Statistics, the average annual unemployment rate for 2010 was 9.6 percent. For 27 out of the past 32 months the unemployment rate has been at 9 percent or above. About 45 percent of the unemployed have been out of work for at least 6 months—a level previously unseen in the six decades since World War II. At a time when 14 million Americans are still unemployed, and have been so for the longest period since record keeping begun in 1948, our government should be taking every possible step to ease the burden on job creators. We need to offer the American people solutions that help to grow jobs, not provisions that prevent it!

Compliance with this law will impose billions of dollars of cost on both the public and private sectors, with a disproportionate impact on small businesses. These compliance costs will far exceed projected tax collections. For instance, just one Federal agency, the Department of Defense, estimated that it would cost over $17 billion in the first 5 years to comply, and the revenue estimate in 2005 projected that only $6.977 billion would be collected over a 10-year window. Even if that DOD estimate is inflated, as some charge, the Congressional Budget Office projects costs of $12 billion just to implement this provision at the Federal level. There are similar costs imposed across all of the Nation's State and local governments, making this provision simply an unfunded mandate on State and local governments. This is a case of spending a dollar to collect a dime, which is counterproductive for addressing the Nation's deficits.

What is worse is that this provision is not going to impact only those who have skirted tax laws—this provision will fall most heavily on innocent parties who have done nothing wrong at all, jeopardizing their cash flow and ability to grow. As ranking member of the Senate Committee on Small Business, I have heard from many businesses across the country that the 3 percent withholding amount will exceed their profit on a given contract and will prevent them from being able to make payroll, forcing them to borrow from banks just to pay their employees. This is not the way to encourage jobs and business growth but rather way to stifle it.

This 3 percent withholding provision would increase the tax and regulatory burdens on our businesses, precisely the wrong policy potion for these troubled times. We have the opportunity now to repeal this provision and we need to take that step to help the jobs picture. It is vital to note that it is not just workers who would suffer under this provision but Medicare recipients as well. Maine has the oldest population in the Nation and I know all too well how fragile are the finances of our seniors who depend on this vital program. This provision would deduct 3 percent from payments to Medicare providers and instead send the cash to the IRS. Why would we want to give these precious dollars to the tax man rather than doctors? This new problem would give doctors one more reason to turn away Medicare patients. And that is to say nothing of the cost to CMS of setting up the accounting systems that would implement this withholding scheme.

In the American Recovery and Reinvestment Act, ARRA, Congress delayed for 1 year the implementation of this mandate in recognition of the exorbitant expenditures that will be necessary to implement accounting systems and hire new compliance employees at a time when the those resources were desperately needed for productive uses. The IRS itself recently recognized the enormous burdens that this provision will put on government agencies and as a result issued an administrative delay, meaning the 3 percent withholding provision now becomes effective after 2012. And even the President, in his recent Jobs Act proposal, called for further delay of any implementation of this provision. If the Congress, the IRS, and this administration all recognize that the costs of this provision outweigh the benefits, then it is time to act to repeal it.

As a result of the IRS regulatory delay, this provision goes into effect at the end of 2012, but people and businesses already are expending valuable resources in anticipation of having to comply with this pernicious provision. At a time when the American people are extremely frustrated with the partisan gridlock and Congress inability to pass meaningful legislation, we had an opportunity to pass a bipartisan bill that would provide small businesses with much needed certainty and relief. The Senate failed to grasp that opportunity on October 20 but we cannot stop fighting to defend small businesses from its implementation. We

must act soon, and we must act completely, to end the three percent withholding provision entirely. I urge my colleagues to support this legislation.

NATIONAL BREAST CANCER AWARENESS MONTH

Mr. BLUMENTHAL. Mr. President, I rise today to recognize October as National Breast Cancer Awareness Month. This disease affects people everywhere of all walks of life, taking the lives of approximately 40,000 women in our country each year. In Connecticut, over 3,000 new cases of breast cancer will be diagnosed this year.

The epidemic incidence of breast cancer reminds us of the need for vigilance and vigor in fighting it. I applaud the various advocacy and fundraising organizations that have fought on behalf of the millions of individuals affected by breast cancer. These organizations have been instrumental in raising awareness of breast cancer throughout the health community, public, and Congress. Their work in promoting vital prevention activities and critical funding within government agencies for breast cancer has saved millions of lives, and I thank them for all they have done in the fight against breast cancer.

It is important to remember this month, and always, how critical preventive care is in the fight against breast cancer. I strongly encourage individuals to speak with their doctors about breast cancer to determine what steps they should take to protect themselves. Early detection can significantly lower the risk of death from breast cancer, and I hope women will be reminded this month to seek the preventive care they may need.

While progress has been made on this issue, we must continue to fight against breast cancer. I know my colleagues and I can agree that this this fight is a national priority, and I look forward to working with them on this issue in the coming years.

20TH ANNIVERSARY OF THE APPOINTMENT OF JUSTICE CLARENCE THOMAS

Mr. HATCH. Mr. President, on October 20, I paid tribute to the 20th anniversary of Justice Clarence Thomas' appointment to the Supreme Court. I entered into the RECORD following my remarks letters from several of his former clerks giving their own reflections. I ask unanimous consent to have printed in the RECORD today letters from three other clerks: John Eastman, Jeffrey Wall, and Chris Landau.

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

CHAPMAN UNIVERSITY,
Orange, CA, October 12, 2011.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: I was honored to serve as a law clerk with Justice Clarence Thomas during the Supreme Court's October 1996 Term. The Justice's mentorship, foresight, and depth of understanding of the principles of the American Founding ensured that my service with him would be one of the highlights of my professional career, no matter where that career would lead in the fullness of time. So I am particularly grateful for the opportunity to provide a letter for the Congressional Record commemorating the twentieth anniversary of his confirmation and appointment as Associate Justice of the Supreme Court of the United States.

I also want to express my sincere thanks to you, for your extraordinary efforts in advancing Justice Thomas's confirmation in the U.S. Senate twenty years ago. What a difference twenty years makes! Back then, even after the scurrilous efforts to derail the confirmation failed, there was a sustained effort to belittle the unbelievable accomplishments of this truly great man. Instead of taking American pride in the Justice's phenomenal rise from the depths of poverty to one of the highest offices in the land, a true Horatio Alger story if ever there was one, some of our fellow citizens continued their efforts to discredit. Justice Thomas was merely the ''puppet'' of Justice Antonin Scalia, we were told, because the two voted together roughly ninety percent of the time. (I never saw a similar claim that Justice Ginsburg was merely the ''puppet'' of Justice Stevens because of similarly high vote agreement, and I'm still waiting for the ''puppet'' charge to be applied to Justice Kagan, who this past year agreed with Justices Sotomayor and Ginsburg 94% and 90% of the time, respectively). The New York Times called him the ''cruelest'' Justice early in his tenure on the bench because of an opinion he authored faithfully adhering to the Constitution's text in a case involving an assault on a prisoner. One federal appellate judge even went so far as to claim that no Supreme Court decision decided by a 5–4 vote with Justice Thomas in the majority should be deemed binding precedent!

And yet, despite all this, the Justice persevered, building over the years such a coherent and profound body of law that even some of his most vocal critics from the early years have had to concede that they were wrong. This past summer, the New Yorker Magazine acknowledged that in ''several of the most important areas of constitutional law, Thomas has emerged as an intellectual leader of the Supreme Court.'' His concurring opinion in the 1997 decision of Printz v. United States invited a long-overdue consideration of whether the Second Amendment conferred ''a personal right to 'keep and bear arms,''' an invitation that the Court accepted and vindicated a decade later in the landmark case of Heller v. District of Columbia. His concurring opinion in Simmons v. Zelman-Harris, the 2002 Ohio school vouchers case, has created a virtual cottage industry in legal scholarship assessing his contention that the Establishment Clause was primarily a federalism provision, and thereby not as susceptible to being incorporated and made applicable to the States via the Fourteenth Amendment as the other clauses of the First Amendment, certainly without a more thorough analysis than had previously been provided by the Court.

But the Justice's most profound intellectual leadership on the Court has involved his commitment to our nation's founding principles. He has been at the forefront of the effort to revive the idea that the federal government is one of only limited, enumerated powers, and that it is the solemn duty of the Court to serve as a check against a Congress bent on ignoring the limits on its own power, in order to protect the cause of liberty. Even more important than his dedication to limited government, though, has been his devotion to the natural rights political theory of the Founders on which the idea of limited government is grounded, particularly as espoused in the Declaration of Independence. The Justice has famously disagreed with Justice Scalia about the role of the Declaration in constitutional interpretation, finding that the principles espoused there are not only relevant but binding. In the 1995 case of Adarand Constructors, Inc. v. Pena, for example, Justice Thomas objected to the federal government's use of racial preferences in government contracting, stating that there ''can be no doubt that the paternalism that appears to lie at the heart of this program is at war with the principle of inherent equality that underlies and infuses our Constitution.'' The citation he provided for that simple but important proposition—paragraph two of the Declaration of Independence (''We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness'').

When he nominated Justice Thomas to the Supreme Court, President Bush asserted that he was the most qualified person in the country for the job. Many disparaged the President's statement at the time, as so patently false that even the President himself could not possibly have believed it. Instead, it was said, the President was merely claiming that Thomas was the most qualified conservative African-American with judicial experience who could be nominated to fill the seat from which the first African-American to serve on the high Court, Thurgood Marshall, had just retired. And in that category of one, Thomas was the most qualified. Quite apart from the fact that the very idea of race-based allotments of seats on the Supreme Court runs counter to Justice Thomas's deep devotion to a color-blind constitution, the derogatory interpretation of the President's claim has, happily, been thoroughly debunked by the Justice's own jurisprudence. At a time when our understanding of the Law has been infected with a morally relativistic legal positivism, Justice Thomas's revival of the Declaration's recognition that there is a higher law that governs the affairs of man, that our inalienable rights to life, liberty, and the pursuit of happiness come not from any government but by our Creator, and that the sole legitimate purpose of government is to secure those rights, has proved beyond measure that the President was correct.

And increasingly, the Court is following his lead. As the New Yorker magazine recognized, ''the majority has followed where Thomas has been leading for a decade or more. Rarely has a Supreme Court Justice enjoyed such broad or significant vindication.''

The American founding was one of the great episodes in all of human history. The United States of America became a beacon of hope to the world, a shining city on a hill lighting the path of freedom for all. We had lost that wonderful legacy for a time, but we have begun to reclaim it, in no small part because of the efforts of Justice Clarence Thomas, of those who taught him, and of those who learned and continue to learn from him. Please join me in thanking Justice Thomas for his dedication to our nation's founding principles, congratulating him on this 20–year milestone, and wishing him Godspeed for the next twenty years as he continues his efforts on and off the bench on behalf of the principles of liberty.

With utmost respect and admiration,

JOHN C. EASTMAN,
Henry Salvatori Professor
of Law & Community Service.

OCTOBER 13, 2011.

Hon. ORRIN G. HATCH,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR HATCH: Thank you for honoring Justice Thomas on the twentieth anniversary of his confirmation to the Supreme Court of the United States. Thank you also for inviting me to offer my own thoughts on this important anniversary.

In their letters, many of my fellow law clerks to Justice Thomas describe his contributions to the development of the law. As they observe, he has articulated a clear, consistent approach to judging that focuses on the text and history of the Constitution and federal statutes. It would be a mistake then to pigeonhole the Justice's views as either results-oriented or outdated. On the one hand, it would not explain many of his opinions—for instance, his view that the Eighth Amendment does not place limits on the amount of punitive damages that plaintiffs may recover against defendants, or his view that the Sixth Amendment places limits on the government's ability to introduce evidence from absent witnesses at criminal trials. On the other hand, it would not explain the areas in which Justice Thomas's attention to history has foreshadowed the later direction of the Court—for instance, his discussion of the Second Amendment in Printz v. United States, eleven years before the Court recognized an individual right to bear arms in District of Columbia v. Heller. Justice Thomas's contributions to the law have been principled and important, and their influence over the past two decades merits serious consideration.

I would like to focus, though, on something that receives less public attention: his decency, both as a judge and as a human being. Because Justice Thomas seldom asks questions at oral argument, it would be easy to assume that he is a quiet, reserved individual, detached from the life of the Court and the lives of those around him. Nothing could be further from the truth. Before the Supreme Court hears cases, it is common for the Justices to discuss those cases with their law clerks. I still remember the first of those conferences when I clerked for Justice Thomas: it lasted nearly two days. He discussed our views on the cases for hours—challenging us to clarify our thoughts, defend our positions, and explain our differences. In the end, of course, the Justice reached his own views, but no litigant should ever walk away from the Court thinking that his arguments fell on deaf ears. Indeed, Justice Thomas's reluctance to participate in oral argument is driven in large part by his desire to hear from the advocates. Many of them have worked for years to bring the country's most important cases before its highest Court, and he believes that they should have the opportunity to be heard. Whatever one thinks of that approach, it is'born of a respect for other people and what matters to them.

Our conferences and conversations with the Justice also ranged far beyond the law. He wanted to get to know us as people—to understand where we grew up, what we enjoy, and what we hope for our futures. It is not an exaggeration to say that Justice Thomas treats his clerks, his staff, and his colleagues like a family. And like any family, he takes on our cares and concerns, our highs and lows. Several years ago, a member of my family was having an issue with her health, and I happened to mention it in passing to the Justice as something that had been weighing on my mind. The next day, without any indication to me, the Justice contacted her to see whether there was anything that he could do. Perhaps the most remarkable thing is, that story will not surprise anyone who knows him: all of us can recall a time when he reached out to offer encouragement in an hour of need. He does not provide that support publicly, where he could receive recognition, which reminds me of Matthew's admonition to give alms in private and not for the glory of others. I suspect that if Justice Thomas ever reads this letter, he will be upset with me for bringing his humanity into the spotlight.

Several years ago, Justice Thomas gave a talk to students at the University of Alabama Law School. During the flight, he struck up conversation with a lawyer returning home to Birmingham. They talked about legal practice, their families, and Alabama football—all without the attorney's having any idea that he was conversing with a Supreme Court Justice. At the law school, Justice Thomas spoke before a packed house of hundreds of students, and afterward he stood for hours, meeting and taking pictures with every last student who had waited in line. At a similar visit to the University of Tennessee, he literally closed down the law school, waiting until everyone had left and then thanking the janitorial staff who were cleaning up from the event. From a lawyer in Birmingham, to students in Tuscaloosa, to employees in Knoxville, there are countless people across America who can testify to Justice Thomas's warmth and his deep, booming laugh. Wherever he goes, he connects with strangers from all walks of life, because he is sincerely interested in their backgrounds and genuinely grateful for their contributions. He reminds all of us that we are never too busy or important to be considerate to others, and he deserves the highest of compliments that I can pay to a fellow Georgian: he has never forgotten who he is or where he came from.

Finally, any recognition of Justice Thomas's time on the Court would be incomplete without also recognizing his wife, Mrs. Ginni Thomas. She has been there every step of the way, sharing in the substantial burdens that serving as a Justice can impose. Justice Thomas often says that he could not do his job without her support, and I am sure that he would want any commemoration of his service to extend to her as well. Thank you for recognizing them on the twentieth anniversary of Justice Thomas's confirmation to the Supreme Court.

Sincerely,

JEFFREY B. WALL,
Law Clerk to Justice Thomas, 2004–2005.

WASHINGTON, DC,
October 17, 2011.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH, Thank you so much for inviting me to participate in your tribute to Justice Thomas on his twentieth anniversary on the Supreme Court.

Justice Thomas didn't want to be Justice Thomas. I know this for a fact, because I was with him on June 27, 1991, when he received word that Justice Thurgood Marshall had announced his retirement and that the White House was calling for an interview. Time stood still for a moment as then-Judge Thomas absorbed this information and its obvious implications. It wasn't a moment of excitement or exhilaration; rather, he accepted a stack of pink phone slips as if each one were an iron weight. He had just turned forty-three, and had been a judge on the D.C. Circuit for little over a year.

Ironically, one of the best qualifications for serving on the Supreme Court may be the lack of a craving to do so. For Justice Thomas, service on the Court is a job, not a calling. He gets up in the morning, goes into the office, decides cases, and then goes home again. He isn't impressed by important people, and doesn't try to impress anyone. He enjoys his job, but it doesn't define him.

The job may come easier to him than to others because of his firm views about the limited role of federal judges. He doesn't believe it's his business to make tough policy choices, but to enforce the policy choices made by others. He's often voted for results that I'm quite sure he would oppose as a legislator. His concern is deciding cases correctly, not garnering either votes or accolades.

I vividly recall a case argued during Justice Thomas' very first sitting on the Supreme Court in November 1991. The Justice returned to Chambers after Conference and sheepishly admitted that he'd switched his intended vote because every one of his colleagues had voted the other way. The next morning, however, he summoned his law clerks into his office to tell us that he'd had trouble sleeping because he still couldn't justify that vote, and had just informed the Chief Justice that he would try his hand at a dissent. That dissent ultimately picked up a number of other votes, and the result in the case nearly flipped. When a similar issue reached the Court a few years later, Justice Thomas wrote the majority opinion.

I don't think that Justice Thomas has spent many sleepless nights since then. He knows who he is as a person and a judge, and is comfortable on both scores. His judicial voice is confident, original, and compelling. There can be little doubt that he has brought true diversity to the Supreme Court.

Finally, no tribute to Justice Thomas would be complete without acknowledging his warm personality, perfectly captured by his booming laugh. From a parochial perspective, he takes a real interest in his law clerks, both before and after the clerkship. He enjoys having lunch on a regular basis with those of us who live in the Washington area, not only so that he can keep up with us, but also so that we can keep up with each other. And, through it all, he derives great strength and comfort from his wife Ginni. Without her, he never would have found his beloved Cornhuskers!

I appreciate the opportunity to share these thoughts.

Sincerely yours,

CHRISTOPHER LANDAU,
Law clerk to Judge Thomas, D.C. Circuit, 1990,
Law clerk to Justice Thomas, Supreme Court, 1991–92.

REMEMBERING REVEREND FRED SHUTTLESWORTH

Mr. PORTMAN. Mr. President, I rise today to recognize the late civil rights leader, Reverend Fred Shuttlesworth, who passed away earlier this month. From his humble beginnings in Mount Meigs, AL, he grew to become one of the most influential leaders in the battle for civil rights. Reverend Shuttlesworth was best known as cofounder of the Southern Christian Leadership Conference, which was formed in response to the Montgomery bus boycott, and for the role he played in the sit-ins of lunch counters in 1960 and the Freedom Rides of 1961.

Dr. Martin Luther King, Jr. considered Reverend Shuttlesworth one of the Nation's most courageous freedom fighters. Reverend Shuttlesworth was beaten, assaulted, jailed, and had his

home bombed because of his outspoken views and his fight for racial equality.

In 1953, he became the presiding pastor of Bethel Baptist Church in Birmingham, AL. He continued his call to preach in Cincinnati, OH, from 1961–1966 where he pastored the Revelation Baptist Church. Reverend Shuttlesworth remained in Cincinnati during his latter years and returned to Birmingham after his retirement in 2007. During that time, he continued his fight for racial equality and became a strong advocate for the homeless.

Although Reverend Shuttlesworth is no longer with us, his contributions to our Nation will not be forgotten.

ADDITIONAL STATEMENTS

REMEMBERING SALOMON E. RAMIREZ

● Mr. BINGAMAN. Mr. President, Salomon E. Ramirez, New Mexico State executive director of USDA's Farm Service Agency, died October 22 at his family's ranch in Rociada, NM. He was 56 years old. Salomon came from a ranching family in San Miguel County and devoted his life to serving agriculture in New Mexico and the Nation.

He was born in Las Vegas, NM, attended Robertson High School, and graduated with a degree in agriculture from New Mexico State University. His passion for agriculture and a desire to help farmers and ranchers in New Mexico led him to a career at the U.S. Department of Agriculture, including positions at both the Farm Service Agency and the U.S. Forest Service. Because of his knowledge and experience, he spent time at USDA's headquarters in Washington helping to write a new farm bill and implement national farm policy.

Salomon Ramirez was a model public servant. He worked at USDA for over 30 years and was a tireless advocate for my State's farmers and ranchers. No one knew more about farm programs or understood how they could best be implemented to support the producers in my State. My staff and I frequently sought his counsel and valued his always astute advice. I was honored to recommend him to be the State executive director of the New Mexico Farm Service Agency and was pleased when President Obama appointed him to the position in 2009.

No State had a more capable or caring manager for its farm programs than New Mexico. He was a true friend of agriculture and everyone who depends on agriculture from producers to consumers—in fact, all of us. He will be greatly missed.●

ZERO LANDFILL WASTE CELEBRATION

● Mr. PRYOR. Mr. President, it is with the greatest pleasure that today I recognize the achievements of the McKee Foods Corporation plant in Gentry, AR. This plant reached the milestone of having zero landfill waste, a first for a McKee Foods production facility.

In 1934, under the shadow of the Great Depression, the late O.D. and Ruth McKee converted a cookie shop into a 5-cent bakery in Chattanooga, TN. With O.D.'s aptitude for sales and Ruth's management abilities, the duo took their small mom-and-pop bakery and expanded into what is now known as McKee Foods Corporation. The expansion into Gentry came in 1982 when the company needed a larger facility to serve the western United States and Mexico. Among other things, the Gentry plant produces a variety of ''Little Debbie'' snack cakes, a favorite treat among my family and staff.

It was 2 years ago that the Gentry plant management team challenged themselves and the more than 1,500 Gentry employees to reach a goal of zero landfill waste. Although seen as challenging, the entire plant knew this was achievable. Many recycling efforts were already under way, and the plant partnered with several local recycling companies to put processes in place to bring their landfill waste down to zero. For the Gentry plant, there will be no going back to the landfill.

With responsibility as a guiding value, McKee Foods has been and will continue to be a strong advocate for environmentally conscious business practices. On average, McKee Foods recycles 3,750 tons of cardboard, 10,000 gallons of used petroleum oil, over 100,000 wooden pallets, and 200 tons of scrap steel and other metals. While the Gentry plant is setting the bar high for other McKee facilities, the entire McKee Foods Corporation is to be commended for its environmental stewardship.

I ask my colleagues to join me today in congratulating the McKee Foods Corporation's Gentry plant on attaining zero landfill waste. As the company motto adopted by O.D. McKee makes clear, McKee Foods is committed to ''finding a better way'' of doing business, and the Gentry plant is leading the way. I am proud of all they have accomplished and look forward to their future successes.●

TRIBUTE TO NEIL BOWES

● Mr. THUNE. Mr. President, today I recognize Neil Bowes for 50 outstanding years at WNAX Radio. When Mr. Bowes first arrived at WNAX Radio, he was a new graduate of the University of South Dakota. He began his career on the business side of WNAX operations in 1961 and remained there for seven years before he decided to venture into sales in 1968. Ever since this transition, businesses that advertise on WNAX have had the privilege of dealing with Neil. For many of those clients, besides being a trusted businessman, he is also a friend.

Neil's duties have allowed him to broadcast live from numerous State fairs, Dakota Fests, parades, grand openings, and other events over the years. Through his work, he has been able to see many parts of our great State in an effort to, as he puts it, ''give businesses the opportunity to share their good news with listeners of WNAX.'' Neil also enjoys exploring the never-ending, ''out-of-the-way spots'' in South Dakota when he takes the long way home.

Mr. Bowes lives with his wife Mary Ellen near the Missouri River just west of Yankton. They have raised four kids who have in turn blessed them with seven grandchildren. His family, at home and at WNAX, is grateful for his long commitment to radio and dedication to his work.●

TRIBUTE TO BRIGADIER GENERAL CHARLES YRIARTE

● Mr. WYDEN. Mr. President, on November 4, one of the Oregon National Guard's most remarkable military leaders will retire: BG Charles Yriarte.

General Yriarte has served the citizens of Oregon, and the United States, in the Oregon National Guard for over 40 years. He joined as a private and has held numerous positions, including troop commander, battalion commander, brigade commander, and is ending his service as an assistant adjutant general.

Oregonians hold the men and women of our National Guard in high regard, and General Yriarte is one example of why. While serving as a model citizen soldier, he has raised his children, maintained a civilian career as a U.S. Forest Service civil servant and also assisted his family with their cattle ranch in Burns, OR. His dedication to his family runs deep. When General Yriarte was promoted to the rank of Brigadier General, the ceremony was held at St. Charles Hospital in Bend, Oregon, so his father, who was undergoing treatment, could be present. But, when duty has called, General Yriarte has always answered, many times at great sacrifice to himself. Joining the Forest Service in 1974 was his dream job, but after the attacks of September 11, 2001, he took on a number of critical full-time assignments in the Oregon National Guard.

General Yriarte deployed to Iraq shortly after the war commenced and was placed in charge of Joint Base Ballad, in an extremely hazardous environment, with the duty of making the base functional for U.S. and allied soldiers. General Yriarte worked to improve relations with local leaders to lessen the daily mortar attacks and reduce the threat to his soldiers and the base in the early stages of the war. This outreach was a tremendous success and led to a strong relationship and enduring friendship with many of the local community leaders. His tireless effort to secure the base ensured the safety of several thousand servicemembers on base and reduced the attacks and violence outside the perimeter. General Yriarte accomplished this

mission in spectacular fashion and he successfully returned his unit to Oregon with no casualties.

In each command, the units under him excelled in every way. His mentorship of young officers and noncommissioned officers has been truly exceptional. The soldiers that he has taught are now serving in the most important positions in the Oregon National Guard. These soldiers will have positive impacts on the institution for decades to come. General Yriarte's legacy will be lasting and profound within the Oregon National Guard.

To understand General Yriarte's ability to inspire, here is what he said during his unit's homecoming event:

Every person in this room has sacrificed. I wouldn't be here today without your sacrifices. You did this country great, and I applaud you. This room is filled with heroes both past and present. I went to Iraq because I love my country. I found out that the Iraqis are good people and like everyone are looking for safety for themselves and their families. I already knew, but it was proven that American soldiers never quit. They do their job. You are this nation's greatest generation, and you became leaders when you came home. Our soldiers are doing that now. Our nation is great, we remain great. . . .

These words also say an enormous amount about him.

So, if I can use the general's own words, let me say that general, you have sacrificed. Your country is better because of your many sacrifices. You have done your State and Nation proud. You are a giant to all you have touched and your love of home and country are an inspiration. You have protected everyone in your charge. You have always given your best. Our Nation will remain great because we have men and women like you in every generation. Like the great military leaders before you, your words and action will positively influence our Nation far into the future.

Therefore, it is my honor and great privilege to commend BG Charles Yriarte, assistant adjutant general, Oregon National Guard, for his more than 40 years of service to our country. Mr. President, today, I join my fellow Oregonians in recognition and celebration of the great achievements of Brigadier General Yriarte, as he begins this new chapter in his life with his beloved wife Christine.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON THE CONTINUATION OF THE NATIONAL EMERGENCY DECLARED IN EXECUTIVE ORDER 13413 WITH RESPECT TO BLOCKING THE PROPERTY OF PERSONS CONTRIBUTING TO THE CONFLICT TAKING PLACE IN THE DEMOCRATIC REPUBLIC OF THE CONGO, RECEIVED DURING ADJOURNMENT OF THE SENATE ON OCTOBER 25, 2011—PM 30

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice stating that the national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo and the related measures blocking the property of certain persons contributing to the conflict in that country are to continue in effect beyond October 27, 2011.

The situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities that continue to threaten regional stability, continues to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, I have determined that it is necessary to continue the national emergency to deal with that threat and the related measures blocking the property of certain persons contributing to the conflict in that country.

BARACK OBAMA.

THE WHITE HOUSE, *October 25, 2011*.

MESSAGE FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 5, 2011, the Secretary of the Senate, on October 25, 2011, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker had signed the following enrolled bills:

H.R. 489. An act to clarify the jurisdiction of the Secretary of the Interior with respect to the C.C. Cragin Dam and Reservoir, and for other purposes.

H.R. 765. An act to amend the National Forest Ski Area Permit Act of 1986 to clarify the authority of the Secretary of Agriculture regarding additional recreational uses of National Forest System land that is subject to ski area permits, and for other purposes.

H.R. 1843. An act to designate the facility of the United States Postal Service located at 489 Army Drive in Barrigada, Guam, as the ''John Pangelinan Gerber Post Office Building''.

H.R. 1975. An act to designate the facility of the United States Postal Service located at 281 East Colorado Boulevard in Pasadena, California, as the ''First Lieutenant Oliver Goodall Post Office Building''.

H.R. 2062. An act to designate the facility of the United States Postal Service located at 45 Meetinghouse Lane in Sagamore Beach, Massachusetts, as the ''Matthew A. Pucino Post Office''.

H.R. 2149. An act to designate the facility of the United States Postal Service located at 4354 Pahoa Avenue in Honolulu, Hawaii, as the ''Cecil L. Heftel Post Office Building''.

The enrolled bills were subsequently signed during the session of the Senate by the President pro tempore (Mr. INOUYE).

MESSAGE FROM THE HOUSE

At 3:03 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 295. An act to amend the Hydrographic Services Improvement Act of 1998 to authorize funds to acquire hydrographic data and provide hydrographic services specific to the Arctic for safe navigation, delineating the United States extended continental shelf, and the monitoring and description of coastal changes.

H.R. 320. An act to designate a Distinguished Flying Cross National Memorial at the March Field Air Museum in Riverside, California.

H.R. 441. An act to authorize the Secretary of the Interior to issue permits for microhydro projects in nonwilderness areas within the boundaries of Denali National Park and Preserve, to acquire land for Denali National Park and Preserve from Doyon Tourism, Inc., and for other purposes.

H.R. 461. An act to direct the Secretary of the Interior to convey certain Federal features of the electric distribution system to the South Utah Valley Electric Service District, and for other purposes.

H.R. 674. An act to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs, and for other purposes.

H.R. 818. An act to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Uintah Water Conservancy District.

H.R. 1160. An act to require the Secretary of the Interior to convey the McKinney Lake National Fish Hatchery to the State of North Carolina, and for other purposes.

H.R. 1904. An act to facilitate the efficient extraction of mineral resources in southeast Arizona by authorizing and directing an exchange of Federal and non-Federal land, and for other purposes.

H.R. 2042. An act to require the Secretary of Homeland Security, in consultation with the Secretary of State, to establish a program to issue Asia-Pacific Economic Cooperation Business Travel Cards, and for other purposes.

H.R. 2447. An act to grant the congressional gold medal to the Montford Point Marines.

H.R. 2527. An act to require the Secretary of the Treasury to mint coins in recognition and celebration of the National Baseball Hall of Fame.

H.R. 2594. An act to prohibit operators of civil aircraft of the United States from participating in the European Union's emissions trading scheme, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 295. An act to amend the Hydrographic Services Improvement Act of 1998 to authorize funds to acquire hydrographic data and provide hydrographic services specific to the Arctic for safe navigation, delineating the United States extended continental shelf, and the monitoring and description of coastal changes; to the Committee on Commerce, Science, and Transportation.

H.R. 320. An act to designate a Distinguished Flying Cross National Memorial at the March Field Air Museum in Riverside, California; to the Committee on Energy and Natural Resources.

H.R. 441. An act to authorize the Secretary of the Interior to issue permits for microhydro projects in nonwilderness areas within the boundaries of Denali National Park and Preserve, to acquire land for Denali National Park and Preserve from Doyon Tourism, Inc., and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 461. An act to direct the Secretary of the Interior to convey certain Federal features of the electric distribution system to the South Utah Valley Electric Service District, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1160. An act to require the Secretary of the Interior to convey the McKinney Lake National Fish Hatchery to the State of North Carolina, and for other purposes; to the Committee on Environment and Public Works.

H.R. 1904. An act to facilitate the efficient extraction of mineral resources in southeast Arizona by authorizing and directing an exchange of Federal and non-Federal land, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2447. An act to grant the congressional gold medal to the Montford Point Marines; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 2527. An act to require the Secretary of the Treasury to mint coins in recognition and celebration of the National Baseball Hall of Fame; to the Committee on Banking, Housing, and Urban Affairs.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 818. An act to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Uintah Water Conservancy District.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 674. An act to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare—related programs, and for other purposes.

S. 1769. A bill to put workers back on the job while rebuilding and modernizing America.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BROWN of Massachusetts (for himself and Ms. SNOWE):

S. 1762. A bill to repeal the imposition of withholding on certain payments made to vendors by government entities and to amend the Internal Revenue Code of 1986 to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs; to the Committee on Finance.

By Mr. AKAKA (for himself, Mr. FRANKEN, Mr. UDALL of New Mexico, Mr. INOUYE, Mr. BEGICH, Mrs. MURRAY, Mr. JOHNSON of South Dakota, Mr. BINGAMAN, Mr. TESTER, and Mr. BAUCUS):

S. 1763. A bill to decrease the incidence of violent crimes against Indian women, to strengthen the capacity of Indian tribes to exercise the sovereign authority of Indian tribes to respond to violent crimes committed against Indian women, and to ensure that perpetrators of violent crimes committed against Indian women are held accountable for that criminal behavior, and for other purposes; to the Committee on Indian Affairs.

By Ms. STABENOW:

S. 1764. A bill to amend the Internal Revenue Code of 1986 to extend the qualifying advanced energy project credit; to the Committee on Finance.

By Mrs. HAGAN:

S. 1765. A bill to amend the Public Health Service Act to provide grants to strengthen the healthcare system's response to domestic violence, dating violence, sexual assault, and stalking; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWN of Ohio:

S. 1766. A bill to establish the Honorable Stephanie Tubbs Jones Fire Suppression Demonstration Incentive Program within the Department of Education to promote installation of fire sprinkler systems, or other fire suppression or prevention technologies, in qualified student housing and dormitories, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MERKLEY (for himself and Mr. BROWN of Ohio):

S. 1767. A bill to amend the Truth in Lending Act to prohibit the distribution of any check or other negotiable instrument as part of a solicitation by a creditor for an extension of credit, to limit the liability of consumers in conjunction with such solicitations, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BEGICH (for himself, Mr. CASEY, Mr. GRAHAM, Mr. GRASSLEY, Ms. KLOBUCHAR, Mr. LEAHY, Ms. MURKOWSKI, Mr. PRYOR, Ms. SNOWE, and Mr. TESTER):

S. 1768. A bill to amend title 10, United States Code, to authorize space-available travel on military aircraft for members of the reserve components, a member or former member of a reserve component who is eligible for retired pay but for age, widows and widowers of retired members, and dependents; to the Committee on Armed Services.

By Ms. KLOBUCHAR (for herself, Mr. MANCHIN, Mr. WHITEHOUSE, Mr. REID, Mr. KERRY, Mrs. BOXER, Mr. COONS, Mr. BEGICH, Mr. LAUTENBERG, Mr. FRANKEN, Mr. SCHUMER, Mr. NELSON of Florida, Mr. BLUMENTHAL, Mrs. FEINSTEIN, Mr. LEVIN, Mr. MENENDEZ, Mr. BROWN of Ohio, and Ms. STABENOW):

S. 1769. A bill to put workers back on the job while rebuilding and modernizing America; read the first time.

ADDITIONAL COSPONSORS

S. 50

At the request of Mr. INOUYE, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 50, a bill to strengthen Federal consumer product safety programs and activities with respect to commercially-marketed seafood by directing the Secretary of Commerce to coordinate with the Federal Trade Commission and other appropriate Federal agencies to strengthen and coordinate those programs and activities.

S. 52

At the request of Mr. INOUYE, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 52, a bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes.

S. 75

At the request of Mr. KOHL, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 75, a bill to restore the rule that agreements between manufacturers and retailers, distributors, or wholesalers to set the minimum price below which the manufacturer's product or service cannot be sold violates the Sherman Act.

S. 202

At the request of Mr. PAUL, the names of the Senator from Arizona (Mr. MCCAIN) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 202, a bill to require a full audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks by the Comptroller General of the United States before the end of 2012, and for other purposes.

S. 296

At the request of Ms. KLOBUCHAR, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 296, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide the Food and Drug Administration with improved capacity to prevent drug shortages.

S. 384

At the request of Mrs. FEINSTEIN, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of

S. 384, a bill to amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research.

S. 418

At the request of Mr. HARKIN, the names of the Senator from New Hampshire (Ms. AYOTTE) and the Senator from Nevada (Mr. HELLER) were added as cosponsors of S. 418, a bill to award a Congressional Gold Medal to the World War II members of the Civil Air Patrol.

S. 572

At the request of Mr. BROWN of Ohio, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 572, a bill to amend title 38, United States Code, to repeal the prohibition on collective bargaining with respect to matters and questions regarding compensation of employees of the Department of Veterans Affairs other than rates of basic pay, and for other purposes.

S. 652

At the request of Mr. KERRY, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 652, a bill to facilitate efficient investments and financing of infrastructure projects and new job creation through the establishment of an American Infrastructure Financing Authority, to provide for an extension of the exemption from the alternative minimum tax treatment for certain tax-exempt bonds, and for other purposes.

S. 720

At the request of Mr. THUNE, the name of the Senator from South Carolina (Mr. DEMINT) was withdrawn as a cosponsor of S. 720, a bill to repeal the CLASS program.

S. 752

At the request of Mrs. FEINSTEIN, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 752, a bill to establish a comprehensive interagency response to reduce lung cancer mortality in a timely manner.

S. 933

At the request of Mr. SCHUMER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 933, a bill to amend the Internal Revenue Code of 1986 to extend and increase the exclusion for benefits provided to volunteer firefighters and emergency medical responders.

S. 936

At the request of Mr. ROCKEFELLER, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 936, a bill to establish the American Infrastructure Investment Fund and other activities to facilitate investments in infrastructure projects that significantly enhance the economic competitiveness of the United States by improving economic output, productivity, or competitive commercial advantage, and for other purposes.

S. 960

At the request of Mr. ALEXANDER, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 960, a bill to provide for a study on issues relating to access to intravenous immune globulin (IVG) for Medicare beneficiaries in all care settings and a demonstration project to examine the benefits of providing coverage and payment for items and services necessary to administer IVG in the home.

S. 968

At the request of Mr. LEAHY, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 968, a bill to prevent online threats to economic creativity and theft of intellectual property, and for other purposes.

S. 1016

At the request of Mr. BINGAMAN, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 1016, a bill to amend the Internal Revenue Code of 1986 to permanently modify the limitations on the deduction of interest by financial institutions which hold tax-exempt bonds, and for other purposes.

S. 1048

At the request of Mr. MENENDEZ, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1048, a bill to expand sanctions imposed with respect to the Islamic Republic of Iran, North Korea, and Syria, and for other purposes.

S. 1106

At the request of Mr. KOHL, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 1106, a bill to authorize Department of Defense support for programs on pro bono legal assistance for members of the Armed Forces.

S. 1107

At the request of Mr. MENENDEZ, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1107, a bill to authorize and support psoriasis and psoriatic arthritis data collection, to express the sense of the Congress to encourage and leverage public and private investment in psoriasis research with a particular focus on interdisciplinary collaborative research on the relationship between psoriasis and its comorbid conditions, and for other purposes.

S. 1181

At the request of Mr. GRASSLEY, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Montana (Mr. TESTER) were added as cosponsors of S. 1181, a bill to require the Secretary of the Treasury to mint coins in commemoration of the National Future Farmers of America Organization and the 85th anniversary of the founding of the National Future Farmers of America Organization.

S. 1221

At the request of Mrs. SHAHEEN, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 1221, a bill to provide grants to better understand and reduce gestational diabetes, and for other purposes.

S. 1265

At the request of Mr. BINGAMAN, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 1265, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

S. 1301

At the request of Mr. LEAHY, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 1301, a bill to authorize appropriations for fiscal years 2012 to 2015 for the Trafficking Victims Protection Act of 2000, to enhance measures to combat trafficking in person, and for other purposes.

S. 1328

At the request of Mr. REED, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1328, a bill to amend the Elementary and Secondary Education Act of 1965 regarding school libraries, and for other purposes.

S. 1335

At the request of Mr. INHOFE, the names of the Senator from Nebraska (Mr. NELSON) and the Senator from Ohio (Mr. PORTMAN) were added as cosponsors of S. 1335, a bill to amend title 49, United States Code, to provide rights for pilots, and for other purposes.

S. 1358

At the request of Mr. TESTER, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1358, a bill to amend the Family and Medical Leave Act of 1993 to provide leave because of the death of a son or daughter.

S. 1440

At the request of Mr. BENNET, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1440, a bill to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 1444

At the request of Mr. AKAKA, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 1444, a bill to provide for the presentation of a United States flag on behalf of Federal civilian employees who are killed while performing official duties or because of their status as Federal employees.

S. 1467

At the request of Mr. BLUNT, the name of the Senator from Ohio (Mr. PORTMAN) was added as a cosponsor of S. 1467, a bill to amend the Patient Protection and Affordable Care Act to

protect rights of conscience with regard to requirements for coverage of specific items and services.

S. 1591

At the request of Mr. KIRK, the name of the Senator from Kansas (Mr. MORAN) was added as a cosponsor of S. 1591, a bill to award a Congressional Gold Medal to Raoul Wallenberg, in recognition of his achievements and heroic actions during the Holocaust.

S. 1616

At the request of Mr. MENENDEZ, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 1616, a bill to amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investments in United States real property interests, and for other purposes.

S. 1627

At the request of Mr. NELSON of Florida, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1627, a bill to amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes.

S. 1647

At the request of Mr. CRAPO, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. 1647, a bill to repeal the sunset on the reduction of capital gains rates for individuals and on the taxation of dividends of individuals at capital gain rates.

S. 1651

At the request of Mr. SESSIONS, the name of the Senator from Ohio (Mr. PORTMAN) was added as a cosponsor of S. 1651, a bill to provide for greater transparency and honesty in the Federal budget process.

S. 1684

At the request of Mr. BARRASSO, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1684, a bill to amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes.

S. 1707

At the request of Mr. BURR, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 1707, a bill to amend title 38, United States Code, to clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes.

S. 1718

At the request of Mr. WYDEN, the names of the Senator from Idaho (Mr. CRAPO), the Senator from South Carolina (Mr. GRAHAM) and the Senator from Pennsylvania (Mr. CASEY) were added as cosponsors of S. 1718, a bill to amend title XVIII of the Social Security Act with respect to the application of Medicare secondary payer rules for certain claims.

S. 1727

At the request of Mr. HELLER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1727, a bill to direct the Secretary of the Army and the Secretary of the Navy to conduct a review of military service records of Jewish American veterans of World War I, including those previously awarded a military decoration, to determine whether any of the veterans should be posthumously awarded the Medal of Honor, and for other purposes.

S. 1734

At the request of Mr. BLUMENTHAL, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 1734, a bill to provide incentives for the development of qualified infectious disease products.

S. RES. 251

At the request of Mr. CARPER, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. Res. 251, a resolution expressing support for improvement in the collection, processing, and consumption of recyclable materials throughout the United States.

S. RES. 297

At the request of Mr. MENENDEZ, the names of the Senator from Rhode Island (Mr. WHITEHOUSE), the Senator from Michigan (Mr. LEVIN), the Senator from Rhode Island (Mr. REED) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. Res. 297, a resolution congratulating the Corporation for Supportive Housing on the 20th anniversary of its founding.

S. RES. 302

At the request of Ms. LANDRIEU, the names of the Senator from South Dakota (Mr. THUNE), the Senator from Oregon (Mr. MERKLEY) and the Senator from Connecticut (Mr. BLUMENTHAL) were added as cosponsors of S. Res. 302, a resolution expressing support for the goals of National Adoption Day and National Adoption Month by promoting national awareness of adoption and the children awaiting families, celebrating children and families involved in adoption, and encouraging the people of the United States to secure safety, permanency, and well-being for all children.

AMENDMENT NO. 873

At the request of Mr. REED, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of amendment No. 873 intended to be proposed to H.R. 2112, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA (for himself, Mr. FRANKEN, Mr. UDALL of New Mexico, Mr. INOUYE, Mr. BEGICH, Mrs. MURRAY, Mr. JOHNSON of South Dakota, Mr. BINGAMAN, Mr. TESTER, and Mr. BAUCUS.

S. 1763. A bill to decrease the incidence of violent crimes against Indian women, to strengthen the capacity of Indian tribes to exercise the sovereign authority of Indian tribes to respond to violent crimes committed against Indian women, and to ensure that perpetrators of violent crimes committed against Indian women are held accountable for that criminal behavior, and for other purposes; to the Committee on Indian Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce the Stand Against Violence and Empower Native Women—SAVE Native Women—Act. I would like to thank the cosponsors of my bill, my good friends Senators INOUYE, MURRAY, UDALL of New Mexico, BEGICH, FRANKEN, JOHNSON of South Dakota, BAUCUS, TESTER, and BINGAMAN.

Native women across the country suffer from severe threats to their safety. According to a safety study by the Department of Justice, two in five girls and women in Native communities will suffer domestic violence and one in three will be sexually assaulted in their lifetime. Can you imagine looking through the loving eyes of your daughter, sister, or mother and knowing one of them will probably be abused in her lifetime? This is a terrible reality of life for Native women and their families across the country. It is an epidemic, it is unacceptable, and we must stand against it. This is why I am introducing the SAVE Native Women Act.

Most of those who commit these terrible crimes against Native women are not Native themselves. Yet, currently, tribes have no ability to prosecute non-Natives for domestic violence and sexual assault in their own communities. This has resulted in a sense of lawlessness and leaves Native women with few places to turn. My bill strengthens tribal jurisdiction over domestic violence and sexual assault so that all offenders, Native and non-Native, can be brought to justice.

My bill strengthens existing programs that support Native victims of domestic violence and sexual assault. In many communities, these programs offer the only safety and support available for Native women. Yet these programs are greatly strained. This bill provides programs with more flexibility and tools to address their most critical needs.

Finally, my bill addresses the disturbing trend of sex trafficking in many Native communities. I have included provisions that improve data gathering and strengthen programs that better understand and respond to sex trafficking of Native women.

I have worked closely with tribes, tribal organizations, and Federal agencies to develop this bill. We should not let the next generation of young Native

women grow up, as their mothers have, in unbearable situations that threaten their security, stability, and even their lives. I urge you to join me and my cosponsors and stand against violence and support passage of the SAVE Native Women Act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1763

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Stand Against Violence and Empower Native Women Act'' or the ''SAVE Native Women Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—GRANT PROGRAMS

SEC. 101. GRANTS TO INDIAN TRIBAL GOVERNMENTS.

Section 2015(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–10(a)) is amended—

(1) in paragraph (2), by inserting ''sex trafficking,'' after ''sexual assault,'';

(2) in paragraph (4), by inserting ''sex trafficking,'' after ''sexual assault,'';

(3) in paragraph (5), by inserting ''sexual assault, sex trafficking,'' after ''dating violence,'';

(4) in paragraph (7)—

(A) by inserting ''sex trafficking,'' after ''sexual assault,'' each place it appears; and

(B) by striking ''and'' at the end;

(5) in paragraph (8)—

(A) by inserting ''sex trafficking,'' after ''stalking,''; and

(B) by striking the period at the end and inserting a semicolon; and

(6) by adding at the end the following:

''(9) provide services to address the needs of youth who are victims of domestic violence, dating violence, sexual assault, sex trafficking, or stalking and the needs of children exposed to domestic violence, dating violence, sexual assault, sex trafficking, or stalking, including support for the nonabusing parent or the caretaker of the child; and

''(10) develop and promote legislation and policies that enhance best practices for responding to violent crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, sex trafficking, and stalking.''.

SEC. 102. TRIBAL COALITION GRANTS.

Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by striking subsection (d) and inserting the following:

''(d) TRIBAL COALITION GRANTS.—

''(1) PURPOSE.—The Attorney General shall award a grant to each established tribal coalition for purposes of—

''(A) increasing awareness of domestic violence and sexual assault against Indian women;

''(B) enhancing the response to violence against Indian women at the Federal, State, and tribal levels;

''(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence, including sex trafficking; and

''(D) assisting Indian tribes in developing and promoting legislation and policies that enhance best practices for responding to violent crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, sex trafficking, and stalking.

''(2) GRANTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Attorney General shall award grants on annual basis under paragraph (1) to—

''(i) each tribal coalition that—

''(I) meets the criteria of a tribal coalition under section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a));

''(II) is recognized by the Office on Violence Against Women; and

''(III) provides services to Indian tribes; and

''(ii) organizations that propose to incorporate and operate a tribal coalition in areas where Indian tribes are located but no tribal coalition exists.

''(B) RESTRICTION.—An organization described in subparagraph (A)(ii) shall use a grant under this subsection to support the planning and development of a tribal coalition, subject to the condition that any amounts provided to the organization under this subsection that remain unobligated on September 30 of each fiscal year for which amounts are made available under paragraph (3) shall be redistributed in the subsequent fiscal year by the Attorney General to tribal coalitions described in subparagraph (A)(i).

''(3) USE OF AMOUNTS.—For each of fiscal years 2013 through 2017, of the amounts appropriated to carry out this subsection—

''(A) 10 percent shall be made available to organizations described in paragraph (2)(A)(ii); and

''(B) 90 percent shall be made available to tribal coalitions described in paragraph (2)(A)(i), which amounts shall be distributed equally among each eligible tribal coalition for the applicable fiscal year.

''(4) DURATION.—A grant under this subsection shall be awarded for a period of 1 year.

''(5) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by a tribal coalition shall not preclude the tribal coalition from receiving additional grants under this title to carry out the purposes described in paragraph (1).

''(6) MULTIPLE PURPOSE APPLICATIONS.—Nothing in this subsection prohibits any tribal coalition or organization described in paragraph (2)(A) from applying for funding to address sexual assault or domestic violence needs in the same application.''.

SEC. 103. CONSULTATION.

Section 903 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 14045d) is amended—

(1) in subsection (a)—

(A) by striking ''and the Violence Against Women Act of 2000'' and inserting '', the Violence Against Women Act of 2000''; and

(B) by inserting '', and the Stand Against Violence and Empower Native Women Act'' before the period at the end;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''the Secretary of the Department of Health and Human Services and'' and inserting ''the Secretary of Health and Human Services, the Secretary of the Interior, and''; and

(B) in paragraph (2), by inserting ''sex trafficking,'' after ''sexual assault,''; and

(3) by adding at the end the following:

''(c) NOTICE.—Not later than 120 days before the date of a consultation under subsection (a), the Attorney General shall notify tribal leaders of the date, time, and location of the consultation.''.

SEC. 104. ANALYSIS AND RESEARCH ON VIOLENCE AGAINST WOMEN.

Section 904(a) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 3796gg–10 note) is amended—

(1) in paragraph (1)—

(A) by striking ''The National'' and inserting ''Not later than 2 years after the date of enactment of the Stand Against Violence and Empower Native Women Act, the National''; and

(B) by inserting ''and in Native villages'' before the period at the end;

(2) in paragraph (2)(A)—

(A) in clause (iv), by striking ''and'' at the end;

(B) in clause (v), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(vi) sex trafficking.'';

(3) in paragraph (4), by striking ''this Act'' and inserting ''the Stand Against Violence and Empower Native Women Act''; and

(4) in paragraph (5), by striking ''this section $1,000,000 for each of fiscal years 2007 and 2008'' and inserting ''this subsection $1,000,000 for each of fiscal years 2012 and 2013''.

SEC. 105. DEFINITIONS.

Section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)) is amended—

(1) by redesignating paragraphs (18) through (22) and (23) through (37) as paragraphs (19) through (23) and (25) through (39), respectively;

(2) by inserting after paragraph (17) the following:

''(18) NATIVE VILLAGE.—The term 'Native village' has the meaning given that term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).'';

(3) in paragraph (22) (as redesignated by paragraph (1))—

(A) in subparagraph (A), by striking ''or'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(C) an area or community under the jurisdiction of a federally recognized Indian tribe.'';

(4) by inserting after paragraph (23) (as redesignated by paragraph (1)) the following:

''(24) SEX TRAFFICKING.—The term 'sex trafficking' means any conduct proscribed by section 1591 of title 18, United States Code, regardless of whether the conduct occurs in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States.''; and

(5) by striking paragraph (31) (as redesignated by paragraph (1)) and inserting the following:

''(31) TRIBAL COALITION.—The term 'tribal coalition' means an established nonprofit,

nongovernmental Indian organization established to provide services on a statewide, regional, or customary territory basis that—

''(A) provides education, support, and technical assistance to Indian service providers in a manner that enables the providers to establish and maintain culturally appropriate services, including shelter and rape crisis services, designed to assist Indian women and the dependents of those women who are victims of domestic violence, dating violence, sexual assault, and stalking;

''(B) is comprised of board and general members that are representative of—

''(i) the service providers described in subparagraph (A); and

''(ii) the tribal communities in which the services are being provided;

''(C) serves as an information clearinghouse and resource center for Indian programs addressing domestic violence and sexual assault;

''(D) supports the development of legislation, policies, protocols, procedures, and guidance to enhance domestic violence and sexual assault intervention and prevention efforts in Indian tribes and communities to be served; and

''(E) has expertise in the development of Indian community-based, linguistically, and culturally specific outreach and intervention services for the Indian communities to be served.''.

TITLE II—TRIBAL JURISDICTION AND CRIMINAL OFFENSES

SEC. 201. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE.

Title II of Public Law 90–284 (25 U.S.C. 1301 et seq.) (commonly known as the ''Indian Civil Rights Act of 1968'') is amended by adding at the end the following:

''SEC. 204. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE.

''(a) DEFINITIONS.—In this section:

''(1) DATING VIOLENCE.—The term 'dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

''(2) DOMESTIC VIOLENCE.—The term 'domestic violence' means violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, or by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the Indian tribe that has jurisdiction over the Indian country where the violence occurs.

''(3) INDIAN COUNTRY.—The term 'Indian country' has the meaning given the term in section 1151 of title 18, United States Code.

''(4) PARTICIPATING TRIBE.—The term 'participating tribe' means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.

''(5) PROTECTION ORDER.—The term 'protection order' means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, so long as the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

''(6) SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.—The term 'special domestic violence criminal jurisdiction' means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.

''(7) SPOUSE OR INTIMATE PARTNER.—The term 'spouse or intimate partner' has the meaning given the term in section 2266 of title 18, United States Code.

''(b) NATURE OF THE CRIMINAL JURISDICTION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by this Act, the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.

''(2) CONCURRENT JURISDICTION.—A participating tribe shall exercise special domestic violence criminal jurisdiction concurrently, not exclusively.

''(3) APPLICABILITY.—Nothing in this section—

''(A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or

''(B) affects the authority of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute a criminal violation in Indian country.

''(c) CRIMINAL CONDUCT.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into1 or more of the following categories:

''(1) DOMESTIC VIOLENCE AND DATING VIOLENCE.—An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

''(2) VIOLATIONS OF PROTECTION ORDERS.—An act that—

''(A) occurs in the Indian country of the participating tribe; and

''(B) violates the portion of a protection order that—

''(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

''(ii)(I) was issued against the defendant;

''(II) is enforceable by the participating tribe; and

''(III) is consistent with section 2265(b) of title 18, United States Code.

''(d) DISMISSAL OF CERTAIN CASES.—

''(1) DEFINITION OF VICTIM.—In this subsection and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a criminal violation of a protection order, the term 'victim' means a person specifically protected by a protection order that the defendant allegedly violated.

''(2) NON-INDIAN VICTIMS AND DEFENDANTS.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the case shall be dismissed if—

''(A) the defendant files a pretrial motion to dismiss on the grounds that the alleged offense did not involve an Indian; and

''(B) the participating tribe fails to prove that the defendant or an alleged victim is an Indian.

''(3) TIES TO INDIAN TRIBE.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the case shall be dismissed if—

''(A) the defendant files a pretrial motion to dismiss on the grounds that the defendant and the alleged victim lack sufficient ties to the Indian tribe; and

''(B) the prosecuting tribe fails to prove that the defendant or an alleged victim—

''(i) resides in the Indian country of the participating tribe;

''(ii) is employed in the Indian country of the participating tribe; or

''(iii) is a spouse or intimate partner of a member of the participating tribe.

''(4) WAIVER.—A knowing and voluntary failure of a defendant to file a pretrial motion described in paragraph (2) or (3) shall be considered a waiver of the right to seek a dismissal under this subsection.

''(e) RIGHTS OF DEFENDANTS.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

''(1) all applicable rights under this Act;

''(2) if a term of imprisonment of any length is imposed, all rights described in section 202(c); and

''(3) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise criminal jurisdiction over the defendant.

''(f) PETITIONS TO STAY DETENTION.—

''(1) IN GENERAL.—A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 203 may petition that court to stay further detention of that person by the participating tribe.

''(2) GRANT OF STAY.—A court shall grant a stay described in paragraph (1) if the court—

''(A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

''(B) after giving each alleged victim in the matter an opportunity to be heard, finds, by clear and convincing evidence that, under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

''(g) GRANTS TO TRIBAL GOVERNMENTS.—The Attorney General may award grants to the governments of Indian tribes (or to authorized designees of those governments)—

''(1) to strengthen tribal criminal justice systems to assist Indian tribes in exercising special domestic violence criminal jurisdiction, including—

''(A) law enforcement (including the capacity to enter information into and obtain information from national crime information databases);

''(B) prosecution;

''(C) trial and appellate courts;

''(D) probation systems;

''(E) detention and correctional facilities;

''(F) alternative rehabilitation centers;

''(G) culturally appropriate services and assistance for victims and their families; and

''(H) criminal codes and rules of criminal procedure, appellate procedure, and evidence;

''(2) to provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant, in criminal proceedings in which a participating tribe prosecutes a crime of domestic violence or dating violence or a criminal violation of a protection order;

''(3) to ensure that, in criminal proceedings in which a participating tribe exercises special domestic violence criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and

''(4) to accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a) of title 18, United States Code, consistent with tribal law and custom.

''(h) SUPPLEMENT, NOT SUPPLANT.—Amounts made available under this section shall supplement and not supplant any other

Federal, State, tribal, or local government amounts made available to carry out activities described in this section.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsection (g) and to provide training, technical assistance, data collection, and evaluation of the criminal justice systems of participating tribes such sums as are necessary.''.

SEC. 202. TRIBAL PROTECTION ORDERS.

Section 2265 of title 18, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) TRIBAL COURT JURISDICTION.—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, the exclusion of violators from Indian land, and other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.''.

SEC. 203. AMENDMENTS TO THE FEDERAL ASSAULT STATUTE.

(a) ASSAULTS BY STRIKING, BEATING, OR WOUNDING.—Section 113(a)(4) of title 18, United States Code, is amended by striking ''six months'' and inserting ''1 year''.

(b) ASSAULTS RESULTING IN SUBSTANTIAL BODILY INJURY.—Section 113(a)(7) of title 18, United States Code, is amended by striking ''substantial bodily injury to an individual who has not attained the age of 16 years'' and inserting ''substantial bodily injury to a spouse or intimate partner, a dating partner, or an individual who has not attained the age of 16 years''.

(c) ASSAULTS BY STRANGLING OR SUFFOCATING.—Section 113(a) of title 18, United States Code, is amended by adding at the end the following:

''(8) Assault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate, by a fine under this title , imprisonment for not more than 10 years, or both.''.

(d) DEFINITIONS.—Section 113(b) of title 18, United States Code, is amended—

(1) by striking ''(b) As used in this subsection—'' and inserting the following:

''(b) DEFINITIONS.—In this section—'';

(2) in paragraph (1)(B), by striking ''and'' at the end;

(3) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(3) the terms 'dating partner' and 'spouse or intimate partner' have the meanings given those terms in section 2266;

''(4) the term 'strangling' means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim; and

''(5) the term 'suffocating' means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.''.

(e) INDIAN MAJOR CRIMES.—Section 1153(a) of title 18, United States Code, is amended by striking ''assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title)'' and inserting ''a felony assault under section 113''.

SEC. 204. EFFECTIVE DATES; PILOT PROJECT.

(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), the amendments made by this title shall take effect on the date of enactment of this Act.

(b) EFFECTIVE DATE FOR SPECIAL DOMESTIC-VIOLENCE CRIMINAL JURISDICTION.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsections (b) through (e) of section 204 of Public Law 90–284 (as added by section 201) shall take effect on the date that is 2 years after the date of enactment of this Act.

(2) PILOT PROJECT.—

(A) IN GENERAL.—At any time during the 2-year period beginning on the date of enactment of this Act, an Indian tribe may ask the Attorney General to designate the tribe as a participating tribe under section 204(a) of Public Law 90–284 on an accelerated basis.

(B) PROCEDURE.—The Attorney General (or a designee of the Attorney General) may grant a request under subparagraph (A) after coordinating with the Secretary of the Interior (or a designee of the Secretary), consulting with affected Indian tribes, and concluding that the criminal justice system of the requesting tribe has adequate safeguards in place to protect defendants' rights, consistent with section 204 of Public Law 90–284.

(C) EFFECTIVE DATES FOR PILOT PROJECTS.—An Indian tribe designated as a participating tribe under this paragraph may commence exercising special domestic violence criminal jurisdiction pursuant to subsections (b) through (e) of section 204 of Public Law 90–284 on a date established by the Attorney General, after consultation with that Indian tribe, but in no event later than the date that is 2 years after the date of enactment of this Act.

SEC. 205. OTHER AMENDMENTS.

(a) ASSAULTS.—Section 113(a) of title 18, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) Assault with intent to commit murder or a felony under chapter 109A, by a fine under this title, imprisonment for not more than 20 years, or both.'';

(2) in paragraph (3) by striking ''and without just cause or excuse,''; and

(3) in paragraph (7), by striking ''fine'' and inserting ''a fine''.

(b) REPEAT OFFENDERS.—Section 2265A(b)(1)(B) of title 18, United States Code, is amended by inserting ''or tribal'' after ''State''.

TITLE III—INDIAN LAW AND ORDER COMMISSION

SEC. 301. INDIAN LAW AND ORDER COMMISSION.

Section 15(f) of the Indian Law Enforcement Reform Act (25 U.S.C. 2812(f)) is amended by striking ''2 years'' and inserting ''3 years''.

By Mrs. HAGAN:

S. 1765. A bill to amend the Public Health Service Act to provide grants to strengthen the healthcare system's response to domestic violence, dating violence, sexual assault, and stalking; to the Committee on Health, Education, Labor, and Pensions.

Mrs. HAGAN. Mr. President, today I am proud to introduce the Violence Against Women Health Initiative. October is Domestic Violence Awareness month, and this bill will raise awareness of domestic violence among health care providers and allow them to better assess and treat survivors of domestic violence.

The rates of violence and abuse in this country are astounding. Nearly one in four women in the U.S. has reported experiencing domestic violence at some point in her life. In 2007, there were 248,300 reported incidents of sexual assault in the U.S. Young women experience the highest rates of sexual assault and stalking. Sadly, 15.5 million children in the U.S. live in families in which partner violence has occurred in the past year, and 7 million children live in families in which severe partner violence has occurred.

Domestic violence has a significant impact on our country's health. According to the Centers for Disease Control and Prevention, CDC, intimate partner violence costs the health care system over $8.3 billion annually.

In addition to injuries sustained during violent episodes, survivors suffer lifelong health complications. Research published in the journal of Women's Health in 2007 found that women who are victimized by violence have 17 percent more primary care doctor visits, 14 percent more specialist visits, and 27 percent more prescription refills than non-abused women.

Physical and psychological abuse are linked to a number of adverse physical health effects. A study released in 2010 that compared victims with never-abused women found abuse victims had an approximately six-fold increase in clinically-identified substance abuse, a more than three-fold increase in depression diagnoses, a three-fold increase in sexually transmitted diseases, and a two-fold increase in lacerations.

But it is not just the spouse who suffers these lifelong consequences. It is their children, too. Children who witness domestic violence are more likely to exhibit behavioral and physical health problems, including depression, anxiety, and violence towards peers. They are also more likely to attempt suicide, abuse drugs and alcohol, run away from home, engage in teenage prostitution, and commit sexual assault crimes. Fifty percent of men who frequently assault their wives also frequently assault their children, and the U.S. Advisory Board on Child Abuse and Neglect suggests that domestic violence may be the single major precursor to child abuse and neglect fatalities in this country.

Without question, we must tackle the underlying causes of domestic violence and abuse in this country. At the same time, we must strengthen our health care response to this abuse.

Despite the commitment of health care providers to help domestic violence victims, a critical gap remains in the delivery of health care to victims. Health care providers often only address immediate injuries, without tackling the underlying cause of those injuries. For example, each year, about 324,000 pregnant women in this country are battered by their intimate partners. However, few physicians screen pregnant patients for abuse. This highlights the need to ensure that health care providers have the necessary training and support in order to assess, refer, and support victims of domestic and sexual violence.

Victims know and trust their health care providers. Almost 3/4 of survivors say that they would like their health care providers to ask them about violence and abuse.

Multiple clinical studies have shown that short interventions in the medical environment protect the health and safety of women. These interventions are short between 2 and 10 minutes, and effective. In repeated clinical trials, violence decreased and health status improved following simple assessment and referral protocols. Integrating these effective protocols into our health care system will save lives.

This is why routine assessments for intimate partner violence have been recommended for health care settings by the American Medical Association, American Psychological Association, American Nurses Association, American College of Obstetricians and Gynecologists, American Academy of Pediatrics, and the Joint Commission on the Accreditation of Health Care Organizations.

Since its passage in 1994, the Violence Against Women Act, VAWA, has transformed our criminal justice system and social service system, helping to prevent and respond to domestic violence. The last reauthorization of VAWA, set to expire this year, included a new title authorizing three programs that support the health system's efforts to help victims, preventing further abuse and improving the health status of women. The bill I am introducing today will continue those important efforts.

This bill would consolidate the three existing health programs into one program, while increasing evaluation and accountability. Specifically, this bill would foster public health responses to intimate partner violence and sexual violence; provide training and education of health professionals to respond to violence and abuse; and support research on effective public health approaches to end violence against women.

I urge my colleagues to join us in supporting this important bill.

By Mr. BEGICH (for himself, Mr. CASEY, Mr. GRAHAM, Mr. GRASSLEY, Ms. KLOBUCHAR, Mr. LEAHY, Ms. MURKOWSKI, Mr. PRYOR, Ms. SNOWE and Mr. TESTER):

S. 1768. A bill to amend title 10, United States Code, to authorize space-available travel on military aircraft for members of the reserve components, a member or former member of a reserve component who is eligible for retired pay but for age, widows and widowers of retired members, and dependents; to the Committee on Armed Services.

Mr. BEGICH. Mr. President, today I am pleased to introduce an amended version of S. 542, the National Guard, Reserve, ''Gray Area'' Retiree, and Surviving Spouse Space-available Travel Equity Act.

The original legislation, S. 542, has been modified slightly. The modification will ensure the Department of Defense retains the authority to issue regulations to implement the bill.

The underlying intent of the legislation has not changed. The bill will provide reserve component members and retired reserve component members the ability to travel overseas and travel with their dependents when there is space-available on a military aircraft. Additionally, the bill will ensure surviving spouses of retired members or members killed in the line of duty to retain space-available travel privileges after the death of their loved one.

Members and retirees of the National Guard and Reserve, their families, and surviving military spouses make great sacrifices for our Nation. However, too often these individuals do not receive the benefits they have earned for their service.

I urge my colleagues to join me in giving parity to our reserve component members, reserve component retirees and surviving military spouses. The no-cost legislation is endorsed by the National Guard Association of the United States.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1768

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 ''National Guard, Reserve, 'Gray Area' Retiree, and Surviving Spouses Space-available Travel Equity Act of 2011''.

SEC. 2. ELIGIBILITY OF RESERVE MEMBERS, GRAY-AREA RETIREES, WIDOWS AND WIDOWERS OF RETIRED MEMBERS, AND DEPENDENTS FOR SPACE-AVAILABLE TRAVEL ON MILITARY AIRCRAFT.

(a) ELIGIBILITY.—

(1) IN GENERAL.—Chapter 157 of title 10, United States Code, is amended by inserting after section 2641b the following new section:

''§ 2641c. Space-available travel on Department of Defense aircraft: reserve members, reserve members eligible for retired pay but for age; widows and widowers of retired members; and dependents

''(a) RESERVE MEMBERS.—A member of a reserve component holding a valid Uniformed Services Identification and Privilege Card shall be provided transportation on Department of Defense aircraft, on a space-available basis.

''(b) RESERVE RETIREES UNDER APPLICABLE ELIGIBILITY AGE.—A member or former member of a reserve component who, but for being under the eligibility age applicable to the member under section 12731 of this title, otherwise would be eligible for retired pay under chapter 1223 of this title shall be provided transportation on Department of Defense aircraft, on a space-available basis.

''(c) WIDOWS AND WIDOWERS OF RETIRED MEMBERS.—

''(1) IN GENERAL.—An unremarried widow or widower of a member of the armed forces described in paragraph (2) shall be provided transportation on Department of Defense aircraft, on a space-available basis.

''(2) MEMBERS COVERED.—A member of the armed forces referred to in paragraph (1) is a member who—

''(A) is entitled to retired pay;

''(B) is described in subsection (b);

''(C) dies in the line of duty while on active duty and is not eligible for retired pay; or

''(D) in the case of a member of a reserve component, dies as a result of a line of duty condition and is not eligible for retired pay.

''(d) DEPENDENTS.—A dependent of a member or former member described in subsection (a) or (b) or of an unremarried widow or widower described in subsection (c) holding a valid Uniformed Services Identification and Privilege Card shall be provided transportation on Department of Defense aircraft, on a space-available basis, if the dependent is accompanying the member.

''(e) SCOPE.—Space-available travel required by this section includes travel to and from locations within and outside the continental United States.

''(f) DEFINITION OF DEPENDENT.—In this section, the term 'dependent' has the meaning given that term in section 1072 of this title.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2641b the following new item:

''2641c. Space-available travel on Department of Defense aircraft: reserve members, reserve members eligible for retired pay but for age; widows and widowers of retired members; and dependents.''.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement section 2641c of title 10, United States Code, as added by subsection (a).

AMENDMENTS SUBMITTED AND PROPOSED

SA 919. Mr. ROBERTS submitted an amendment intended to be proposed by him to the bill H.R. 872, to amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Water Pollution Control Act to clarify Congressional intent regarding the regulation of the use of pesticides in or near navigable waters, and for other purposes; which was ordered to lie on the table.

SA 920. Mr. LEE submitted an amendment intended to be proposed by him to the bill H.R. 2112, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 919. Mr. ROBERTS submitted an amendment intended to be proposed by him to the bill H.R. 872, to amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Water Pollution Control Act to clarify Congressional intent regarding the regulation of the use of pesticides in or near navigable waters, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. DELAY OF PERMIT IMPLEMENTATION.

During the 2-year period beginning on the date of enactment of this Act, the Administrator of the Environmental Protection Agency, or a State in the case of a permit

program under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342), shall not require a permit for the discharge of a pesticide, including pesticide residue, that is lawfully registered for sale, distribution, or use.

SA 920. Mr. LEE submitted an amendment intended to be proposed by him to the bill H.R. 2112, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes; which was ordered to lie on the table as follows:

At the end, add the following:

DIVISION D—INTERNATIONAL RELIGIOUS FREEDOM

SEC. 4001. SHORT TITLE.

This division may be cited as the ''United States Commission on International Religious Freedom Reform and Reauthorization Act of 2011''.

SEC. 4002. ESTABLISHMENT AND COMPOSITION.

(a) MEMBERSHIP.—Section 201(b)(1)(B) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431(b)(1)(B)) is amended—

(1) in the matter preceding clause (i), by striking ''Nine'' and inserting ''five'';

(2) in clause (i), by striking ''Three members'' and inserting ''One member'';

(3) in clause (ii)—

(A) by striking ''Three members'' and inserting ''Two members'';

(B) by striking ''two of the members'' and inserting ''one member''; and

(C) by striking ''one of the members'' and inserting ''the other member''; and

(4) in clause (iii)—

(A) by striking ''Three members'' and inserting ''Two members'';

(B) by striking ''two of the members'' and inserting ''one member''; and

(C) by striking ''one of the members'' and inserting ''the other member''.

(b) TERMS.—Section 201(c) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431(c)) is amended—

(1) in paragraph (1), by striking the last sentence and inserting the following: ''An individual is not eligible to serve more than two consecutive terms as a member of the Commission. Each member serving on the Commission on the date of enactment of the United States Commission on International Religious Freedom Reform and Reauthorization Act of 2011 may be reappointed to not more than one additional consecutive term.'';

(2) in paragraph (2)—

(A) in subparagraph (A), by striking ''May 15, 2003, through May 14, 2005'' and inserting ''May 15, 2012, through May 14, 2014'';

(B) in subparagraph (B) to read as follows:

''(B) PRESIDENTIAL APPOINTMENTS.—The member of the Commission appointed by the President under subsection (b)(1)(B)(i) shall be appointed to a 1-year term.'';

(C) in subparagraph (C)—

(i) by striking ''three members'' and inserting ''two members'';

(ii) by striking ''the other two appointments'' and inserting ''the other appointment''; and

(iii) by striking ''2-year terms'' and inserting ''to a 2-year term'';

(D) in subparagraph (D)—

(i) by striking ''three members'' and inserting ''two members'';

(ii) by striking ''the other two appointments'' and inserting ''the other appointment''; and

(iii) by striking ''2-year terms'' and inserting ''to a 2-year term''; and

(E) in subparagraph (E), by striking ''May 15, 2003, and shall end on May 14, 2004'' and inserting ''May 15, 2012, and shall end on May 14, 2013''; and

(3) by adding at the end the following new paragraph:

''(3) INELIGIBILITY FOR REAPPOINTMENT.—If a member of the Commission attends, by being physically present or by conference call, less than 75 percent of the meetings of the Commission during one of that member's terms on the Commission, the member shall not be eligible for reappointment to the Commission.''.

(c) ELECTION OF CHAIR.—Section 201(d) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431(d)) is amended by inserting at the end the following: ''No member of the Commission is eligible to be elected as Chair of the Commission for a second, consecutive term.''.

(d) QUORUM.—Section 201(e) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431(e)) is amended by striking ''Six'' and inserting ''Four''.

(e) APPLICABILITY.—A member of the United States Commission on International Religious Freedom who is serving on the Commission on the date of enactment of this Act shall continue to serve on the Commission until the expiration of the current term of the member under the terms and conditions for membership on the Commission as in effect on the day before the date of the enactment of this Act.

SEC. 4003. APPLICATION OF ANTIDISCRIMINATION LAWS.

Section 204 of the International Religious Freedom Act of 1998 (22 U.S.C. 6432b) is amended by inserting after subsection (f) the following new subsection:

''(g) APPLICATION OF ANTIDISCRIMINATION LAWS.—For purposes of providing remedies and procedures to address alleged violations of rights and protections that pertain to employment discrimination, family and medical leave, fair labor standards, employee polygraph protection, worker adjustment and retraining, veterans' employment and reemployment, intimidation or reprisal, protections under the Americans with Disabilities Act of 1990, occupational safety and health, labor-management relations, and rights and protections that apply to employees whose pay is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives, all employees of the Commission shall be treated as employees whose pay is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives and the Commission shall be treated as an employing office of the Senate or the House of Representatives.''.

SEC. 4004. AUTHORIZATION OF APPROPRIATIONS.

Section 207(a) of the International Religious Freedom Act of 1998 (22 U.S.C. 6435(a)) is amended by striking ''for the fiscal year 2003'' and inserting ''for each of the fiscal years 2012 and 2013''.

SEC. 4005. STANDARDS OF CONDUCT AND DISCLOSURE.

Section 208 of the International Religious Freedom Act of 1998 (22 U.S.C. 6435a) is amended—

(1) in subsection (c)(1), by striking ''$100,000'' and inserting ''$250,000''; and

(2) in subsection (e), by striking ''International Relations'' and inserting ''Foreign Affairs''.

SEC. 4006. TERMINATION.

Section 209 of the International Religious Freedom Act of 1998 (22 U.S.C. 6436) is amended by striking ''September 30, 2011'' and inserting ''September 30, 2013''.

SEC. 4007. REPORT ON EFFECTIVENESS OF PROGRAMS TO PROMOTE RELIGIOUS FREEDOM.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the implementation of this division and the amendments made by this division.

(b) CONSULTATION.—The Comptroller General shall consult with the appropriate congressional committees and nongovernmental organizations for purposes of preparing the report.

(c) MATTERS TO BE INCLUDED.—The report shall include the following:

(1) A review of the effectiveness of all United States Government programs to promote international religious freedom, including their goals and objectives.

(2) An assessment of the roles and functions of the Office on International Religious Freedom established in section 101(a) of the International Religious Freedom Act of 1998 (22 U.S.C. 6411(a)) and the relationship of the Office to other offices in the Department of State.

(3) A review of the role of the Ambassador at Large for International Religious Freedom appointed under section 101(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6411(b)) and the placement of such position within the Department of State.

(4) A review and assessment of the goals and objectives of the United States Commission on International Religious Freedom established under section 201(a) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431(a)).

(5) A comparative analysis of the structure of the United States Commission on International Religious Freedom as an independent non-partisan entity in relation to other United States advisory commissions, whether or not such commissions are under the direct authority of Congress.

(6) A review of the relationship between the Ambassador at Large for International Religious Freedom and the United States Commission on International Religious Freedom, and possible reforms that would improve the ability of both to reach their goals and objectives.

(d) DEFINITION.—In this section, the term ''appropriate congressional committees'' has the meaning given the term in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402).

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, November 8, 2011, at 10:00 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to consider market developments for U.S. natural gas, including the approval process and potential for liquefied natural gas exports.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510–6150, or by e-mail to Allison Seyferth@energy.senate.gov

For further information, please contact Deborah Estes at (202) 224–5360 or

Tara Billingsley at (202) 224–4756 or Allison Seyferth at (202) 224–4905.

PRIVILEGES OF THE CHAIR

Mt. REID. Mr. President, I ask unanimous consent that Richard Culatta, a fellow in Senator MURRAY's office, be granted floor privileges for the duration of today's session of the Senate.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 103, 416, and 420; that the nominations be confirmed en bloc, the motions to reconsider be considered made and laid upon the table with no intervening action or debate; that no further motions be in order to any of the nominations; that any related statements be printed in the RECORD; that President Obama be immediately notified of the Senate's action and the Senate then resume legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF COMMERCE

Eric L. Hirschhorn, of Maryland, to be Under Secretary of Commerce for Export Administration.

DEPARTMENT OF THE TREASURY

Cyrus Amir-Mokri, of New York, to be an Assistant Secretary of the Treasury.

UNITED STATES INTERNATIONAL TRADE COMMISSION

David S. Johanson, of Texas, to be a Member of the United States International Trade Commission for a term expiring December 16, 2018.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now resume legislative session.

APPEAL TIME CLARIFICATION ACT OF 2011

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 196, S. 1637.

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

The legislative clerk read as follows:

A bill (S. 1637) to clarify appeal time limits in civil actions to which United States officers or employees are parties.

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

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

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

The bill (S. 1637) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1637

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 ''Appeal Time Clarification Act of 2011''.

SEC. 2. FINDINGS.

Congress finds that—

(1) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure provide that the time to appeal for most civil actions is 30 days, but that the appeal time for all parties is 60 days when the parties in the civil action include the United States, a United States officer, or a United States agency;

(2) the 60-day period should apply if one of the parties is—

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States;

(3) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure (as amended to take effect on December 1, 2011, in accordance with section 2074 of that title) should uniformly apply the 60-day period to those civil actions relating to a Federal officer or employee sued in an individual capacity for an act or omission occurring in connection with Federal duties;

(4) the civil actions to which the 60-day periods should apply include all civil actions in which a legal officer of the United States represents the relevant officer or employee when the judgment or order is entered or in which the United States files the appeal for that officer or employee; and

(5) the application of the 60-day period in section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure—

(A) is not limited to civil actions in which representation of the United States is provided by the Department of Justice; and

(B) includes all civil actions in which the representation of the United States is provided by a Federal legal officer acting in an official capacity, such as civil actions in which a Member, officer, or employee of the Senate or the House of Representatives is represented by the Office of Senate Legal Counsel or the Office of General Counsel of the House of Representatives.

SEC. 3. TIME FOR APPEALS TO COURT OF APPEALS.

Section 2107 of title 28, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

''(1) the United States;

''(2) a United States agency;

''(3) a United States officer or employee sued in an official capacity; or

''(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.''.

SEC. 4. EFFECTIVE DATE.

The amendment made by this Act shall take effect on December 1, 2011.

REMOVAL CLARIFICATION ACT OF 2011

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 197, H.R. 368.

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

The legislative clerk read as follows:

A bill (H.R. 368) to amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes.

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

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

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

The bill (H.R. 368) was ordered to a third reading, was read the third time, and passed.

FEDERAL COURTS JURISDICTION AND VENUE CLARIFICATION ACT OF 2011

Mr. REID. Mr. President, I ask unanimous consent that we now proceed to Calendar No. 200, H.R. 394.

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

The legislative clerk read as follows:

A bill (H.R. 394) to amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

H.R. 394

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Courts Jurisdiction and Venue Clarification Act of 2011''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE II—VENUE AND TRANSFER IMPROVEMENTS

TITLE I—JURISDICTIONAL IMPROVEMENTS

SEC. 101. TREATMENT OF RESIDENT ALIENS.

Section 1332(a) of title 28, United States Code, is amended—

(1) by striking the last sentence; and

(2) in paragraph (2), by inserting after ''foreign state'' the following: '', except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State''.

SEC. 102. CITIZENSHIP OF CORPORATIONS AND INSURANCE COMPANIES WITH FOREIGN CONTACTS.

Section 1332(c)(1) of title 28, United States Code, is amended—

(1) by striking ''any State'' and inserting ''every State and foreign state'';

(2) by striking ''the State'' and inserting ''the State or foreign state''; and

(3) by striking all that follows ''party-defendant,'' and inserting ''such insurer shall be deemed a citizen of—

''(A) every State and foreign state of which the insured is a citizen;

''(B) every State and foreign state by which the insurer has been incorporated; and

''(C) the State or foreign state where the insurer has its principal place of business; and''.

SEC. 103. REMOVAL AND REMAND PROCEDURES.

(a) ACTIONS REMOVABLE GENERALLY.—Section 1441 of title 28, United States Code, is amended as follows:

(1) The section heading is amended by striking ''**Actions removable generally**'' and inserting ''**Removal of civil actions**''.

(2) Subsection (a) is amended—

(A) by striking ''(a) Except'' and inserting ''(a) GENERALLY.—Except''; and

(B) by striking the last sentence;

(3) Subsection (b) is amended to read as follows:

''(b) REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

''(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.''.

(4) Subsection (c) is amended to read as follows:

''(c) JOINDER OF FEDERAL LAW CLAIMS AND STATE LAW CLAIMS.—(1) If a civil action includes—

''(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

''(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute,

the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

''(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).''.

(5) Subsection (d) is amended by striking ''(d) Any'' and inserting ''(d) ACTIONS AGAINST FOREIGN STATES.—Any''.

(6) Subsection (e) is amended by striking ''(e)(1) Notwithstanding'' and inserting ''(e) MULTIPARTY, MULTIFORUM JURISDICTION.—(1) Notwithstanding''.

(7) Subsection (f) is amended by striking ''(f) The court'' and inserting ''(f) DERIVATIVE REMOVAL JURISDICTION.—The court''.

(b) PROCEDURE FOR REMOVAL OF CIVIL ACTIONS.—Section 1446 of title 28, United States Code, is amended as follows:

(1) The section heading is amended to read as follows:

''§ 1446. Procedure for removal of civil actions''.

(2) Subsection (a) is amended—

(A) by striking ''(a) A defendant'' and inserting ''(a) GENERALLY.—A defendant''; and

(B) by striking ''or criminal prosecution''.

(3) Subsection (b) is amended—

(A) by striking ''(b) The notice'' and inserting ''(b) REQUIREMENTS; GENERALLY.—(1) The notice''; and

(B) by striking the second paragraph and inserting the following:

''(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

''(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

''(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

''(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.'';

(C) by striking subsection (c) and inserting the following:

''(c) REQUIREMENTS; REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

''(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

''(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—

''(i) nonmonetary relief; or

''(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

''(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

''(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an 'other paper' under subsection (b)(3).

''(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).''.

(4) Section 1446 is further amended—

(A) in subsection (d), by striking ''(d) Promptly'' and inserting ''(d) NOTICE TO ADVERSE PARTIES AND STATE COURT.—Promptly'';

(B) by striking ''thirty days'' each place it appears and inserting ''30 days'';

(C) by striking subsection (e); and

(D) in subsection (f), by striking ''(f) With respect'' and inserting ''(e) COUNTERCLAIM IN 337 PROCEEDING.—With respect''.

(c) PROCEDURE FOR REMOVAL OF CRIMINAL ACTIONS.—Chapter 89 of title 28, United States Code, is amended by adding at the end the following new section:

''§ [1454] *1455*. Procedure for removal of criminal prosecutions

''(a) NOTICE OF REMOVAL.—A defendant or defendants desiring to remove any criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such prosecution is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

''(b) REQUIREMENTS.—(1) A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

''(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds that exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

''(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

''(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

''(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and, after such hearing, shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify

the State court in which prosecution is pending, which shall proceed no further.

''(c) WRIT OF HABEAS CORPUS.—If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into the marshal's custody and deliver a copy of the writ to the clerk of such State court.''.

(d) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 89 of title 28, United States Code, is amended—

(A) in the item relating to section 1441, by striking ''Actions removable generally'' and inserting ''Removal of civil actions'';

(B) in the item relating to section 1446, by inserting ''of civil actions'' after ''removal''; and

(C) by adding at the end the following new item:

[''1454. Procedure for removal of criminal prosecutions.]

''*1455. Procedure for removal of criminal prosecutions.*''.

(2) Section 1453(b) of title 28, United States Code, is amended by striking ''1446(b)'' and inserting ''1446(c)(1)''.

SEC. 104. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by this title shall take effect upon the expiration of the 30-day period beginning on the date of the enactment of this Act, and shall apply to any action or prosecution commenced on or after such effective date.

(b) TREATMENT OF CASES REMOVED TO FEDERAL COURT.—For purposes of subsection (a), an action or prosecution commenced in State court and removed to Federal court shall be deemed to commence on the date the action or prosecution was commenced, within the meaning of State law, in State court.

TITLE II—VENUE AND TRANSFER IMPROVEMENTS

SEC. 201. SCOPE AND DEFINITIONS.

(a) IN GENERAL.—Chapter 87 of title 28, United States Code, is amended by inserting before section 1391 the following new section:

''§ 1390. Scope

''(a) VENUE DEFINED.—As used in this chapter, the term 'venue' refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts.

''(b) EXCLUSION OF CERTAIN CASES.—Except as otherwise provided by law, this chapter shall not govern the venue of a civil action in which the district court exercises the jurisdiction conferred by section 1333, except that such civil actions may be transferred between district courts as provided in this chapter.

''(c) CLARIFICATION REGARDING CASES REMOVED FROM STATE COURTS.—This chapter shall not determine the district court to which a civil action pending in a State court may be removed, but shall govern the transfer of an action so removed as between districts and divisions of the United States district courts.''.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 87 of title 28, United States Code, is amended by inserting before the item relating to section 1391 the following new item:

''1390. Scope.''.

SEC. 202. VENUE GENERALLY.

Section 1391 of title 28, United States Code, is amended as follows:

(1) By striking subsections (a) through (d) and inserting the following:

''(a) APPLICABILITY OF SECTION.—Except as otherwise provided by law—

''(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

''(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

''(b) VENUE IN GENERAL.—A civil action may be brought in—

''(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

''(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

''(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

''(c) RESIDENCY.—For all venue purposes—

''(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

''(2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and

''(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

''(d) RESIDENCY OF CORPORATIONS IN STATES WITH MULTIPLE DISTRICTS.—For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.''.

(2) In subsection (e)—

(A) in the first paragraph—

(i) by striking ''(1)'', ''(2)'', and ''(3)'' and inserting ''(A)'', ''(B)'', and ''(C)'', respectively; and

(ii) by striking ''(e) A civil action'' and inserting the following:

''(e) ACTIONS WHERE DEFENDANT IS OFFICER OR EMPLOYEE OF THE UNITED STATES.—

''(1) IN GENERAL.—A civil action''; and

(B) in the second undesignated paragraph by striking ''The summons and complaint'' and inserting the following:

''(2) SERVICE.—The summons and complaint''.

(3) In subsection (f), by striking ''(f) A civil action'' and inserting ''(f) CIVIL ACTIONS AGAINST A FOREIGN STATE.—A civil action''.

(4) In subsection (g), by striking ''(g) A civil action'' and inserting ''(g) MULTIPARTY, MULTIFORUM LITIGATION.—A civil action''.

SEC. 203. REPEAL OF SECTION 1392.

Section 1392 of title 28, United States Code, and the item relating to that section in the table of sections at the beginning of chapter 87 of such title, are repealed.

SEC. 204. CHANGE OF VENUE.

Section 1404 of title 28, United States Code, is amended—

(1) in subsection (a), by inserting before the period at the end the following: ''or to any district or division to which all parties have consented''; and

(2) in subsection (d), by striking ''As used in this section,'' and inserting ''Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section,''.

SEC. 205. EFFECTIVE DATE.

The amendments made by this title—

(1) shall take effect upon the expiration of the 30-day period beginning on the date of the enactment of this Act; and

(2) shall apply to—

(A) any action that is commenced in a United States district court on or after such effective date; and

(B) any action that is removed from a State court to a United States district court and that had been commenced, within the meaning of State law, on or after such effective date.

Mr. REID. Mr. President, I ask unanimous consent the committee-reported amendments be agreed to, the bill, as amended, be read a third time and passed; the motion to reconsider be laid upon the table with no intervening action or debate; and any statements relating to the measure be printed in the RECORD.

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

The committee amendments were agreed to.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill (H.R. 394) was read the third time and passed.

MEASURES READ THE FIRST TIME—H.R. 674, S. 1769

Mr. REID. Mr. President, I am told there are two bills at the desk due for their first reading.

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

The legislative clerk read as follows:

A bill (H.R. 674) to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain health care-related programs, and for other purposes.

A bill (S. 1769) to put workers back on the job while rebuilding and modernizing America.

Mr. REID. Mr. President, I ask for a second reading en bloc of those two measures, and then object to my own request.

The PRESIDING OFFICER. Objection is heard. The bills will be read a second time on the next legislative day.

ORDERS FOR TUESDAY, NOVEMBER 1, 2011

Mr. REID. Mr. President, I ask unanimous consent that when the Senate

completes its business today, the Senate adjourn until 10 a.m. on Tuesday, November 1; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate resume consideration of H.R. 2112, the Agriculture, CJS, and Transportation appropriations bill, under the previous order; and that following disposition of H.R. 2112, the Senate be in a period of morning business until 4:30, with Senators permitted to speak for up to 10 minutes each; further, that the Senate recess from 12:30 to 2:15 for our weekly caucus meetings.

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

PROGRAM

Mr. REID. Mr. President, there will be a series of up to seven rollcall votes beginning at 10:15 in the morning—maybe a little earlier. The votes will be in relation to amendments to H.R. 2112 and passage of the bill.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 6:18 p.m., adjourned until Tuesday, November 1, 2011, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES COAST GUARD UNDER TITLE 14, U.S.C. SECTION 271:

To be lieutenant commander

ALONZO D. ALDAY
DAVID J. ALDOUS
JONATHAN A. ALEXANDER
CRAIG H. ALLEN
EARL F. ALLEN
WALNER W. ALVAREZ
BRAD J. ANDERSON
KARL M. ANFORTH
JASON K. APPLEBERRY
NEAL E. ARMSTRONG
RICHARD P. ARMSTRONG
MICHAEL P. ATTANASIO
MATTHEW S. BAKER
DONALD A. BALDWIN
GEOFFREY M. BARELA
ANTHEL E. BARNES
SCOTT P. BARTON
KEVIN M. BECK
MALCOLM D. BELT
JOHN M. BETTENCOURT
ADAM R. BIRST
KATHERINE D. BITEL
BRYAN R. BLACKMORE
JOY E. BLAIR
WILLIAM K. BLAIR
CHRISTOPHER W. BLOMSHIELD
JEFFREY S. BOGDANOVICH
PETER F. BOSMA
ROBERT M. BOTNEN
JASON A. BOYER
BRIAN W. BOYSTER
KENNETH T. BOYT
CONNIE L. BRAESCH
MATTHEW J. BRECKEL
DEVON S. BRENNAN
KEVIN A. BROYLES
JONATHAN W. BURBY
JOSHUA D. BURCH
MELANIE A. BURNHAM
ROBERT L. BYRD
JAMES A. CABASE
ERIC A. CAIN
MATTHEW A. CALVERT
ANDRES CAMARGO
GERALD A. CANAVAN
TAYLOR J. CARLISLE
JUSTIN M. CASSELL
XOCHITL L. CASTANEDA
HECTOR A. CASTRO
ERIC W. CHANG
DEMETRIUS T. CHEEKS
ERIN R. CHRISTENSEN
DARYL C. CLARY
JEFFREY R. CLOSE
DAVID M. COBURN
EMILE F. COCHET
ROBERT A. COLE
PAUL J. COLEMAN
TRAVIS S. COLLIER
BRIAN T. CONLEY
JAMES T. CORBETT
STACEY L. CRECY
ROBERT H. CREIGH
CARLOS M. CRESPO
MELBA J. CRISP
CHARLENE R. CRISS
CHRISTOPHER A. CULPEPPER
CHRISTOPHER J. DAVIS
BIEN J. DECENA
ANDREW D. DEGEORGE
AARON W. DELANOJOHNSON
KAREN DENNY
SHAWN B. DEWEESE
JOHN F. DEWEY
JASON D. DOLBECK
WILLIAM E. DONOHUE
ADAM H. DREWS
KEVIN M. DUGAN
WILLIAM R. DUNBAR
JASON R. DUNN
TRAVIS M. EMGE
JOSHUA M. EMPEN
THOMAS E. ENGLISH
BRENDAN M. EVANS
PETER M. EVONUK
JAY S. FAIR
KERRY A. FELTNER
KRYSTYON N. FINCH
CHARLENE S. FORGUE
BRETT A. FREELS
ANGEL M. GALINANES
BRENDAN T. GAVIN
JASON M. GELFAND
WILLIAM J. GEORGE
JOSEPH S. GIAMMANCO
WILLIAM S. GIBSON
GLENN H. GOETCHIUS
BENJAMIN F. GOFF
DENNIS D. GOOD
DERRICK S. GREER
MICHAEL C. GRIS
CHRISTOPHER L. GROOMS
BENEDICT S. GULLO
JAY W. GUYER
JASON W. HAAG
DEREK C. HAM
TREVOR M. HARE
TEDDY D. HARRE
BRENDAN J. HARRIS
LEE J. HARTSHORN
TERESA K. HATFIELD
ANDREW T. HAWTHORNE
MOLLY J. HAYES
JASON M. HEERING
CHRISTIAN J. HERNAEZ
DOROTHY J. HERNAEZ
ROBERT P. HILL
JENNIFER L. HNATOW
JACOB A. HOBSON
LOUIS J. HODAC
JASON A. HOPKINS
PETER J. IGOE
DONALD K. ISOM
WESTON R. JAMES
DOUGLAS A. JANNUSCH
VINCENT J. JANSEN
JESSICA L. JOHNSON
CHRISTOPHER L. JONES
MARC A. JONES
JOHN W. KASER
CHAD E. KAUFFMAN
DARAIN S. KAWAMOTO
ROBIN H. KAWAMOTO
BENJAMIN R. KEFFER
LUANN J. KEHLENBACH
LYLE E. KESSLER
JEFFERY A. KING
STEVEN A. KOCH
JENNIFER M. KONON
RONALD J. KOOPER
WILLIAM J. KOTOWSKI
ADAM KOZIATEK
DONALD R. KUHL
TIMOTHY J. KULZER
JOSEPH W. KUSEK
SHAWN A. LANSING
CHRISTOPHER W. LAVIN
HERBERT C. LAW
TIMOTHY J. LEE
LANCE D. LEONE
KAREN R. LEYDET
JEFFREY D. LYNCH
EZEKIEL J. LYONS
RICHARD A. MACH
AARON J. MADER
JOSUE MALDONADO
JONATHAN M. MANGUM
THOMAS D. MANSELL
EZRA L. MANUEL
RONAYDEE M. MARQUEZ
AMY G. MARRS
ARTHUR P. MARTIN
JAMES J. MAZEL
HAROLD L. MCCARTER
DOREEN MCCARTHY
JAMES F. MCCORMACK
DAVID M. MCCOWN
COLLEEN S. MCCUSKER
JAMES C. MCFERRAN
CARRIE A. MCKINNEY
WILLIAM A. MCKINSTRY
JAMES M. MCLAY
TERESA S. MCMANUS
STACY L. MCNEER
JOHN B. MCWHITE
KERRI W. MERKLIN
MATTHEW J. MESKUN
ANTHONY R. MIGLIORINI
RONALD R. MILLSPAUGH
TODD C. MOE
MARK MOLAVI
BENJAMIN P. MORGAN
JAMES K. MORROW
GLEN J. MOSCATELLO
LEWIS H. MOTION
KRISTINE B. NEELEY
JOHN R. NIMS
CHRISTOPHER D. NOLAN
KELLEE M. NOLAN
BENJAMIN J. NORRIS
MARTIN L. NOSSETT
DAVID J. OBER
ANNE E. OCONNELL
BRYAN K. ODITT
CHRISTOPHER R. ONEIL
BRENDAN P. OSHEA
DAVID M. OTANI
JEFFREY P. OWENS
CHARLES N. PARHAM
HOON PARK
MICHAEL L. PARKER
SCOTT P. PARKHURST
CHRISTOPHER R. PARRISH
ANDREW L. PATE
STEVE J. PEELISH
ERIC C. PERDUE
JOHN G. PETERSON
ELLEN M. PHILLIPS
BARTON L. PHILPOTT
MATTHEW A. PICKARD
ERNEST L. PISANO
JOHNENE T. PROBST
JOSE L. RAMIREZ
JEFFERY J. RASNAKE
MARIA L. RICHARDSON
MICHAEL A. RIDLER
FERNANDO RODRIGUEZ
MATTHEW ROONEY
JOSHUA D. ROSE
MATTHEW W. ROWE
NATHAN L. RUMSEY
JENNIFER M. RUNION
MICHAEL B. RUSSELL
DOUGLAS M. SALIK
EVELYNN B. SAMMS
DELFINO B. SAUCEDO
BRENT R. SCHMADEKE
PAUL W. SCHURKE
GINO S. SCIORTINO
DEON J. SCOTT
JOHN R. SCOTT
KIRK C. SHADRICK
KEVIN R. SHMIHLUK
AUSTIN D. SHUTT
HEATHER D. SKOWRON
RAY A. SLAPKUNAS
JAKE M. SMITH
JASON S. SMITH
GABRIEL J. SOMMA
JOHN A. SOUDERS
ARTHUR B. SOULE
HANS P. STAFFELBACH
LANE G. STEFFENHAGEN
MEGHAN K. STEINHAUS
ROBERT E. STILES
JOHN R. STRASBURG
JONATHAN E. SULLIVAN
PATRICK M. SULLIVAN
JAMES L. SURBER
PAIGE A. SWITZER
NICHOLAS J. TABORI
ERIC F. TAQUECHEL
ROBERT D. TAYLOR
VINCE Z. TAYLOR
ALFRED J. THOMPSON
JOHN K. TITCHEN
DAVID A. TORRES
JARED S. TRUSZ
DANIEL J. TWOMEY
SHAUN T. VACCARO
LINNEA R. VANGANSBEKE
ELIZABETH S. VANVELZEN
THOMAS C. VAUGHN
MICHAEL O. VEGA
SCOTT E. WALDEN
TAMARA S. WALLEN
JOHN E. WALSH
REBECCA A. WALTHOUR
AMBER S. WARD
JAMES A. WEATHERBEE
MICHAEL M. WEAVER
MATTHEW G. WEBER
STEPHEN E. WEST

DANIELLE F. WILEY
KEVIN S. WILKINSON
MATTHEW E. WILL
MARK A. WILLIAMS
SHAY R. WILLIAMS
TIMOTHY J. WILLIAMS
TODD M. WIMMER
CARRIE A. WOLFE
MICHAEL D. WOLFE
BRETT R. WORKMAN
WARREN N. WRIGHT
BEN WROBLEWSKI
JOHN T. YARES
STEVEN M. YOUDE
CHRISTOPHER J. YOUNG
KYLE S. YOUNG
PETER J. ZAUNER

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. RONNIE D. HAWKINS, JR.

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be brigadier general

COL. JUDY M. GRIEGO

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. JOHN F. MULHOLLAND, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. RAYMOND A. THOMAS III

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE ARMY'S VETERINARY CORPS UNDER TITLE 10, U.S.C., SECTIONS 3064 AND 3084:

To be brigadier general

COL. JOHN L. POPPE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY VETERINARY CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

SHERRY L. GRAHAM
ROBERT W. MCHARGUE
NOREEN A. MURPHY

THE FOLLOWING NAMED OFFICERS IN THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

JONATHAN H. JAFFIN
MARK C. PATTERSON
CHARLES E. MCQUEEN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

JOHN P. GERBER
KERRIE J. GOLDEN
JOHN E. KENT
SARA J. SPIELMANN
GREGORY A. WEAVER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY NURSE CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

LLOYNETTA H. ARTIS
WILLIAM P. BARRAS
CORINA M. BARROW
ILUMINADA S. CHINNETH
SHARON D. COLE
DAWN M. GARCIA
JEAN M. JONES
MARY A. JONESMORGAN
PETER A. KUBAS
LISA A. LEHNING
BRIDGET E. LITTLE
JULIE C. LOMAX
ROSEMARY A. MURPHY
JANET D. PAIGE
JENNIFER L. ROBISON
HENDRIX L. SNYDER
LOUIS R. STOUT
MARIA B. SUMMERS
LORI L. TREGO
SHIRLEY D. TUORINSKY
KANDACE J. WOLF
EDWARD E. YACKEL

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

MARK R. BAGGETT
BRIAN J. BALOUGH
REX A. BERGGREN
TIMOTHY G. BOSETTI
THOMAS S. BUNDT
CHRISTOPHER H. CHUN
PAUL J. DAVIS
RICHARD P. DUNCAN
SCOTT G. EHNES
SCOTT H. FISCHER
STEPHEN M. FORD
PATRICK M. GARMAN
WILLIAM E. GEESEY
PATRICK W. GRADY
DONOVAN G. GREEN
JENNIFER L. HUMPHRIES
ANGELA A. KOELSCH
DANIEL R. KRAL
PETER A. LEHNING
NEDRICK L. MCDADE
ANTHONY R. NESBITT
SANG J. PAK
PATRICK W. PICARDO
NANCY D. RUFFIN
JOHN M. SCHERER
KENNETH S. SHAW
ANDREW J. SMITH
MICHAEL W. SMITH
SHAUNA L. SNYDER
IVAN D. SPEIGHTS, SR.
JAMES E. TUTEN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

SUSAN K. ARNOLD
JEFF A. BOVARNICK
EUGENE E. BOWEN, JR.
ROBERT L. BOWERS
MARY J. BRADLEY
DANIEL G. BROOKHART
LARSS G. CELTNIEKS
IAN G. COREY
BRENDAN M. DONAHOE
JAMES M. DORN
ANTHONY T. FEBBO
MARTHA L. FOSS
CHRISTOPHER T. FREDRIKSON
ANDREW J. GLASS
STEVEN P. HAIGHT
STEVEN C. HENRICKS
MARK W. HOLZER
RAYMOND A. JACKSON
JOSEPH A. KEELER
ERIC S. KRAUSS
STEVEN R. PATOIR
ROBERT F. RESNICK
KEVIN K. ROBITAILLE
SAMUEL A. SCHUBERT
RANDOLPH SWANSIGER

CONFIRMATIONS

Executive nominations confirmed by the Senate October 31, 2011:

DEPARTMENT OF COMMERCE

ERIC L. HIRSCHHORN, OF MARYLAND, TO BE UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION.

THE JUDICIARY

STEPHEN A. HIGGINSON, OF LOUISIANA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT.

DEPARTMENT OF THE TREASURY

CYRUS AMIR-MOKRI, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE TREASURY.

UNITED STATES INTERNATIONAL TRADE COMMISSION

DAVID S. JOHANSON, OF TEXAS, TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION FOR A TERM EXPIRING DECEMBER 16, 2018.

WITHDRAWAL

Executive Message transmitted by the President to the Senate on October 31, 2011 withdrawing from further Senate consideration the following nomination:

CHARLES BERNARD DAY, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, VICE PETER J. MESSITTE, RETIRED, WHICH WAS SENT TO THE SENATE ON JANUARY 5, 2011.